

**Mississippi Secretary of State
2008 Business Reform Committees
Minutes of Business Courts Study Group Meeting #6
Thursday, November 13, 2008**

This sixth meeting of the Business Courts Study Group was called to order on Thursday, November 13, 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 in person or by telephone is attached at Exhibit A.

Introduction

Secretary Hosemann welcomed the members and thanked them all for attending the meeting.

Roll Call

Cheryn Baker, Assistant Secretary of State, Policy and Research Division (“the Division”), called roll to verify everyone who was present.

Additional Materials

Discussing the materials provided to the members for the meeting, Ms. Baker referred the Group to a memorandum prepared by the Division which explained how a business court program could be implemented in the Mississippi courts without need for legislative action. Doug Jennings, Senior Attorney, Policy and Research Division, explained a pair of documents illustrating the number of backlogged business cases in Mississippi’s Chancery and Circuit Courts.

Potential Funding

Ms. Baker explained that the Secretary of State’s Corporations Laws Study Group and Partnerships/LLCs Study Group had jointly recommended to the Secretary of State and to the Legislature that limited liability companies should be required to file annual reports, with an annual fee of \$25. Ms. Baker noted that these filings would raise an estimated \$1.25 Million annually, which could potentially be allocated to offset the costs of implementing a pilot program for business cases.

Proposed Pilot Program

Attention next turned to two documents prepared by the Division which summarized the Sub-Groups’ recommendations regarding how the specialized forum for the disposition of business cases should be created and structured (see exhibits B and C, attached, for the final version of the proposals, as ultimately recommended by the Group). It was proposed that a three-year pilot program be established by order of the Supreme Court in the Circuit and Chancery Courts of the three (3) regions in the State where the highest concentrations of business cases were located (the “Proposed Pilot

Program”). The recommended regions were the North (Chancery Court District 1 and Circuit Court District 1); Central (Chancery Court Districts 5 and 20 and Circuit Court Districts 7 and 20); and South (Chancery Court District 8 and Circuit Court District 2).

As Ms. Baker guided the meeting through the description of the Proposed Pilot Program, Study Group Chairman Ed Pittman noted that it described a Selection Committee that would recommend a list of potential business court appointees to the Chief Justice for appointment. Pittman suggested that the description of the Proposed Pilot Program be modified so that the Secretary of State would make the recommendations on the appointees, as the Secretary of State is an elected official and accountable to the public, whereas a selection committee would not be. The members agreed that this was the best way to proceed, and that the Proposed Pilot Program should be revised to so reflect.

Next, the question was raised as to whether three (3) years would be an adequate time period to evaluate the effectiveness of the Proposed Pilot Program. Ms. Baker referred to other states which had used the three-year time frame and had found it to be a sufficient period of time by which to evaluate the programs in their respective states. Ms. Baker noted that all of the states which had implemented and evaluated such a program had then adopted the program on a permanent basis.

There was concern expressed that the appointment method in the Proposed Pilot Program might be challenged as being unconstitutional. It was noted that state law specifically allows for the temporary appointment of judges to handle an overcrowded docket. The Group agreed that as long as this aforementioned state law was still good law and had not been found unconstitutional that it could be relied upon as the basis to appoint judges for the Proposed Pilot Program.

Discussion then focused on the types of cases to be heard in the Proposed Pilot Program. The Group discussed cases over which the Proposed Pilot Program would have mandatory jurisdiction. After some discussion, the Group decided to recommend that all appeals (not only those brought by business taxpayers) from the State Tax Commission be assigned to the Proposed Pilot Program. The Group also agreed to recommend that the Proposed Pilot Program would have mandatory jurisdiction over a case only if the predominant claim was business-related. Looking to the types of cases which could be assigned to the Proposed Pilot Program upon agreement of the parties, the Group agreed that construction litigation should be removed from the list. In the Group’s reasoning, construction disputes between businesses would normally be mandatory under the Group’s proposal.

The Group next discussed the issue of how the Proposed Pilot Program’s progress would be measured. Ms. Baker suggested that an oversight task force would be created which should monitor and evaluate the need for and success of the Proposed Pilot Program. Secretary Hosemann opined that if business cases moved expeditiously through the court system and if judges produced consistent, superior written opinions in a timely manner, these would be the hallmarks of a successful program.

After Ms. Baker completed her presentation on the description of the Proposed Pilot Program, a motion was made to adopt the Group's recommendations with the agreed-upon amendments. The motion was seconded and by unanimous voice vote, the members agreed to recommend the Proposed Pilot Program as set forth in the attached exhibits and to send it to the Mississippi Supreme Court. Secretary Hosemann then complimented Ms. Baker and her staff on a job well done, and the meeting was adjourned at 12:30 P.M.

Respectfully submitted,

Cheryn Baker
Assistant Secretary of State
Policy and Research Division

Exhibit A
to the November 13, 2008 Minutes to the Business Courts Study Group

In Attendance:

1. Henry Chatham
2. Dodds Dehmer
3. Joey Diaz
4. Larry Edwards
5. Tom Grantham
6. Joel Hill
7. James Holland
8. Shane Langston
9. David Mockbee
10. Ron Peresich
11. Dale Persons
12. Ed Pittman
13. Tom Rhoden
14. Charlie Ross
15. William "Lex" Taylor

By Telephone:

1. Cathy Beeding
2. David Landrum
3. Kelley Williams
4. Blake Wilson

Secretary of State Personnel Attending:

Delbert Hosemann, Secretary of State
Cory Wilson, Chief of Staff
Cheryn Baker, Assistant Secretary of State, Policy and Research
Pamela Weaver, Communications Director
Doug Jennings, Senior Attorney, Policy and Research
Phillips Strickland, Division Coordinator, Policy and Research
Amy Foster, Intern, Policy and Research
Brad Kerwin, Intern, Policy and Research

Exhibit B
to the November 13, 2008 Minutes to the Business Courts Study Group

Secretary of State Business Court Study Group Pilot Program Recommendations
Executive Summary
November 13, 2008

1. The Group recommends that the Supreme Court establish a pilot program to last for a three (3) year period for the expedited resolution of business cases filed in the Mississippi civil courts (the “Pilot Program”).
2. The Pilot Program will be in Circuit Court and Chancery Court Districts in three (3) regions: North, Central, and South, as set forth in the attached maps.
 - a. **North:** Chancery Court District 1 and Circuit Court District 1
 - b. **Central:** Chancery Court Districts 5 and 20 and Circuit Court Districts 7 and 20
 - c. **South:** Chancery Court District 8 and Circuit Court District 2
3. The Chief Justice will appoint three (3) full-time special judges pursuant to Section 9-1-105(2) (one for each region) by reason of an overcrowded docket (the “Pilot Court Judges”). One Judge will be appointed for each of the three regions (3) who will act as both a special Chancery Court Judge and special Circuit Court Judge for the Districts listed above.
4. The Pilot Court Judges will be sitting or former judges.
5. The Secretary of State will recommend a list of potential appointees to the Chief Justice to appoint for each region.
6. The Supreme Court may issue an order or rule adopting local rules to establish a business docket for certain types of business cases as set forth by rule. The Group’s recommended business cases are set forth below. The Judges will hear cases on the business docket. Rules for the business docket will provide for expedited resolution of cases, such as expedited discovery, case management conferences, use of technology, etc.
7. The Pilot Court Judges will be required to write publishable opinions for non-jury trials.
8. All cases meeting the criteria of business cases filed in the pilot courts will be assigned to the business docket. In addition, existing business cases on the general dockets of the pilot courts at the time the pilot courts are started will be eligible for transfer to the court’s business docket in the discretion of the assigned trial judge.

9. Case assignment and transfer procedures will be established so that litigants in counties not within the pilot court districts that mutually agree to the jurisdiction of the pilot courts may file their business cases in one of the pilot courts. The Special Judges will have the discretion to accept or reject the case, depending on their caseloads and the backlog of cases on the business dockets.
10. The Pilot Program will include the collection of data on business cases filed and pending in Mississippi courts and will evaluate its own performance over the three (3) year period. A Task Force under the auspices of the Supreme Court and the Secretary of State's Office will be formed, similar to the Secretary of State's Business Courts Study Group, to evaluate the results of the program, and if the program is successful, the Task Force will make recommendations for a permanent business court to be established by the Legislature.

Types of Cases to be Assigned to Business Docket -- Category I

1. Corporate Governance/Internal Affairs
2. Business Torts (with business plaintiff and business defendants)
3. Antitrust Law
4. Intellectual Property
5. Trade Secrets between Businesses
6. Securities Laws
7. Commercial Real Estate cases between Businesses
8. Business-to-Business Disputes
9. State Tax Commission Appeals

For the case types above that refer to "businesses," the Court should adopt rules so that individual business owners or principals who are parties to a case described in Category I have the ability to request assignment of their cases to the general docket. Upon this request, the Pilot Court Judge will have the discretion to determine if the case should be assigned to the general docket due to the sophistication of the business owner or other business principal.

Other Types of Cases to be accepted to Business Docket by Mutual Agreement – Category II

These cases could be assigned if there is room on the docket and if the parties on both sides agree to the business docket.

1. Collection of Professional Fees
2. Commercial Insurance Indemnification Claims
3. Malpractice Claims brought by businesses against attorneys, accounts, architects or other non-medical professionals
4. Commercial Insurance Coverage Disputes
5. Commercial Insurance Declaratory Judgments
6. Environmental Insurance Coverage

7. Employment Law Matters, including employer/employee noncompetition, nondisclosure, non-solicitation agreements, discrimination claims, wrongful termination

Excluded Cases Not Eligible for Business Docket

Products Liability, Personal Injury, Wrongful Death, Medical Malpractice, Commercial Landlord versus Consumer Tenant, Non-Commercial Real Estate Matters, Environmental Claims, Actions by Consumers against Businesses, Matters subject to Compulsory Arbitration, Occupational Health and Safety Matters, Commercial Class Actions, Proceedings to enforce a Judgment

Exhibit C
to the November 13, 2008 Minutes to the Business Courts Study Group

MISSISSIPPI SECRETARY OF STATE
BUSINESS COURT STUDY GROUP
RECOMMENDATIONS
CONCERNING ESTABLISHMENT OF SPECIALIZED DOCKET
WITHIN THE EXISTING COURT SYSTEM FOR BUSINESS CASES
NOVEMBER 13, 2008

The Secretary of State's Business Court Study Group (the "Group") was organized in the Spring of 2008 and held its first meeting on May 20, 2008. The Group, which is comprised of over forty (40) attorneys, business leaders and representatives from other interested constituencies from across the State, was formed to study the need for Mississippi to establish a specialized forum for the disposition of business cases (commonly referred to herein and elsewhere as a "business court") and to make recommendations as to the structure of this forum. The Policy and Research Division of the Secretary of State's Office provided the Group with extensive research on business courts in other states and jurisdictions. In addition, the Division provided the Group with research on the State's existing court systems and business cases filed and pending in such systems. The Group met over the Summer and Fall of 2008 and reviewed this research. The Group also heard a presentation on how to establish a business court from a group of persons who are recognized national experts in business courts.

On June 11, 2008, the Group agreed that a business court was a good idea and voted to pursue the business court idea with further study and investigation. On November 13, 2008 the Group met and made the following recommendations:

1. GENERAL

- a. A pilot program to provide for a specialized docket for the expedited resolution of business cases filed in the civil courts of Mississippi should be established by Supreme Court rule or order (the "Pilot Program").
- b. The Pilot Program should be established for a period of at least three (3) years.

2. LOCATIONS

The Pilot Program will be implemented in three (3) regions of the State: North, Central and South (the "Region" or the "Regions"). See attached maps and below.

- a. **North:** Chancery Court District 1 and Circuit Court District 1
- b. **Central:** Chancery Court Districts 5 and 20 and Circuit Court Districts 7 and 20
- c. **South:** Chancery Court District 8 and Circuit Court District 2

The Districts listed above shall be described herein as the “Districts” or the “Pilot Courts.”

3. NUMBER AND SELECTION OF JUDGES

- a. The Chief Justice of the Supreme Court will appoint a special judge pursuant to the authority set forth in Section 9-1-105(2) for each of the Districts to serve as judges for the Pilot Program (the “Pilot Court Judges” or the “Special Judges”). Each Pilot Court Judge will be assigned to work in the Chancery Court and Circuit Court Pilot Courts in their respective Regions.
 - i. If only two (2) regions are recommended then the Chief Justice would appoint two (2) judges instead of three (3).
 - ii. The Group recommends that at least two (2) judges be appointed.
- b. The Chief Justice will appoint the Pilot Court Judges based on their interest in and willingness to hear business cases.
- c. The Secretary of State will recommend a list of potential appointees to the Chief Justice to appoint for each Region.
- d. The Pilot Court Judges will be all sitting or former Mississippi judges.
- e. If the Chief Justice determines that the Special Judge should not continue to hear cases in the Pilot Program, the Chief Justice may re-assign the Special Judge from the business docket to the general docket in the Pilot Court for the remainder of the appointed term.

4. ELIGIBLE CASES

- a. The Supreme Court may issue an order or rule adopting local rules to establish a special business docket of the Pilot Courts for business cases that meet eligible criteria (the “Business Docket”). Cases accepted by the Pilot Program and assigned to the Business Docket that are otherwise eligible for jury trials will still be eligible for jury trials.
- b. The Group has recommended a list of types of cases that should be assigned to the Business Docket of a Pilot Court. See Exhibit A. The Group has also recommended a list of cases that should not be assigned to the Business Docket. See Exhibit A.

5. FEATURES OF THE PILOT PROGRAM

- a. The Pilot Court Judges will be required to write opinions, which will be published and available to the public, as precedent under Mississippi law.
- b. The Pilot Program rules should provide for the expedited resolution of the cases on the Business Docket, such as fast-tracking of discovery and case management conferences.
- c. The Pilot Program shall utilize free training provided for business court judges and may also use (unpaid) law students to act as law clerks for school credit. Graduate students working on MBAs or masters in finance may also be used as unpaid interns to assist the special judges for graduate school credit.

6. ASSIGNMENTS AND TRANSFER PROCEDURES

- a. Mandatory Assignment to Business Docket. Cases that meet the criteria of a business case in Category I of Exhibit A that are filed in the Pilot Courts will be automatically assigned to the Business Docket for hearing by the Special Judges. The parties do have the right or ability to choose the Business Docket or the general docket. If their case fits the criteria as set forth in the rules adopted for this purpose, then it will be assigned to the business docket.
- b. Transfer of Business Cases from Pilot Court General Docket to Business Docket. In addition, existing business cases on the general dockets of the Pilot Courts at the time the Business Dockets are started will be eligible for transfer to the Business Docket in the discretion of (and at the request of) the assigned trial judge.
- c. Cases Eligible for Business Docket if the Parties Agree. In addition to the cases assigned to the Business Docket pursuant to paragraphs a. and b. above, for the following cases, the Pilot Court Judges will have the discretion to accept or reject these cases due to their caseload or an overcrowded business docket.
 - i. The types of cases listed in Category II of Exhibit A filed in the Districts shall be eligible for assignment to the Business Docket upon the agreement of both parties to the case.
 - ii. Plaintiffs with business cases that are not in the venue jurisdiction of the Pilot Courts but that want to participate in the Pilot Program may file their cases in the Pilot Courts. As long as the case meets the criteria and the defendant party does not object to the improper venue, the Pilot Court Judge may accept the case.
 - iii. If a business case is filed in a non-Pilot Court by the plaintiff, the defendant may request a transfer to the Pilot Court. As long as the

case meets the criteria and the plaintiff does not object, the Pilot Court Judge may accept the case.

- iv. Trial Judges in non-Pilot Courts who have been assigned cases that are eligible for the Pilot Program may request a transfer of such cases to the Pilot Program. As long as the parties do not object to the transfer and the case meets the criteria, the Pilot Court Judge may accept the case.

7. PILOT PROJECT EVALUATION

- a. The Circuit Court and Chancery Court civil case cover sheet forms should be modified to capture information to identify all business cases filed in the courts. For example, the parties will be able to complete the cover sheet in a manner that will identify cases that meet the criteria for the Business Dockets in the Pilot Courts, even if the cases are filed in non-Pilot Courts or are ultimately assigned to the general docket of a Pilot Court.
- b. A task force under the auspices of the Supreme Court and the Secretary of State's Office shall be formed, similar to the Secretary of State's Business Courts Study Group (the "Task Force") to collect, analyze, correlate and interpret information and data concerning the Business Docket of each Pilot Court in addition to detailed and specific data on the volume of and types of all business cases pending and being filed in the Mississippi court system.
- c. The Task Force shall also measure the performance of the Pilot Program and the Pilot Court Judges in the areas of quality of decisions, efficiency, clearance rates, and other performance indicators. In addition, the Task Force may make recommendations to the Chief Justice as to the re-assignment of Pilot Court Judges to the general docket for the remainder of their appointed terms. It will also compare the performance of the Pilot Courts with the performance of the non-Pilot Courts in the area of handling business cases and with business courts in other states.
- d. The Task Force will conduct this data collection and evaluation and, upon the completion of the Pilot Program, shall make recommendations to the Legislature concerning a business court to be established on a permanent basis. Specifically, the Task Force will provide data and reports to justify the need to establish a permanent business court and shall make recommendations on the structure of the permanent business court to be established by statute by the Legislature.

This is not part of the recommendation but is for informational purposes.

FUNDING FOR PILOT PROGRAM

The Secretary of State's Corporations and LLCs Study Groups have recommended that state law be changed to require limited liability companies to file annual reports with the Secretary of State's Office. The potential revenue from these reports is approximately \$1.4 Million a year. Once this revenue starts coming in, which would not be sooner than 2010, it could be used to pay for judges' salaries, paid law clerks and any other support staff needed. In the meantime the annual appropriation from the Legislature for the Circuit and Chancery Courts includes funding to compensate special judges appointed pursuant to Section 9-1-105. Unfortunately, the Supreme Court may not on its own require parties to pay a special filing fee to participate in this Pilot Program. Fee increases must be approved by the Legislature.

One drawback of using Section 9-1-105 to appoint the special judges is that the judges appointed pursuant to this Section are compensated as independent contractors. These persons do not receive retirement or health benefits. The lack of an employee status and benefits might discourage a person from accepting a long term appointment for the Pilot Program. However, an alternative that would alleviate this problem would be to appoint existing sitting judges as part-time Pilot Court Judges. Under current law existing judges may be appointed special judges. If an existing judge is appointed as a special judge the judge does not receive additional compensation for the special judge appointment. This alternative has several benefits. It would not require additional funds, and the Pilot Court Judges would be able to receive health and retirement benefits. An example of this would be to use a Court of Appeals Judge as a special judge. The Court of Appeals judge would continue to work part-time at the Court of Appeals while using the rest of his or her time serving on a Pilot Court.

Exhibit A

Types of Cases to be Assigned to Business Docket -- Category I

10. Corporate Governance/Internal Affairs
11. Business Torts (with business plaintiff and business defendants)
12. Antitrust Law
13. Intellectual Property
14. Trade Secrets between Businesses
15. Securities Laws
16. Commercial Real Estate cases between Businesses
17. Business-to-Business Disputes
18. State Tax Commission Appeals

For the case types above that refer to “businesses,” the Court should adopt rules so that individual business owners or principals who are parties to a case described in Category I have the ability to request assignment of their cases to the general docket. Upon this request, the Pilot Court Judge will have the discretion to determine whether the case should be assigned to the general docket due to the sophistication of the business owner or other business principal.

Other Types of Cases to be accepted to Business Docket by Mutual Agreement – Category II

These cases could be assigned if there is room on the docket and if the parties on both sides agree to the business docket.

8. Collection of Professional Fees
9. Commercial Insurance Indemnification Claims
10. Malpractice Claims brought by businesses against attorneys, accounts, architects or other non-medical professionals
11. Commercial Insurance Coverage Disputes
12. Commercial Insurance Declaratory Judgments
13. Environmental Insurance Coverage
14. Employment Law Matters, including employer/employee noncompetition, nondisclosure, non-solicitation agreements, discrimination claims, wrongful termination

Excluded Cases Not Eligible for Business Docket

Products Liability, Personal Injury, Wrongful Death, Medical Malpractice, Commercial Landlord versus Consumer Tenant, Non-Commercial Real Estate Matters, Environmental Claims, Actions by Consumers against Businesses, Matters subject to Compulsory Arbitration, Occupational Health and Safety Matters, Commercial Class Actions, Proceedings to enforce a Judgment