



Supreme Court of Appeals State of West Virginia

News

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Supreme Court directs Business Court Committee to proceed; Committee agrees on name, jurisdiction, definitions

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CHARLESTON, W.Va. – The Supreme Court of Appeals of West Virginia, in its June Administrative Conference, approved of the Business Court Committee’s proposal to allow the committee to develop rules and procedures to create a Business Court in West Virginia. The Court also directed the Committee to consider any changes in the West Virginia Code that may need to be enacted in the 2012 Legislative session to allow a business court to be established in the state.

“This should not be misunderstood as the Court’s approval of a business court at this point. The final approval of the rules is still some months ahead,” said Supreme Court Administrative Director Steve Canterbury.

Since the Supreme Court’s action, the Business Court Committee has met twice, including a conference call Thursday, July 14, at which time the Committee came to a consensus on several issues. Those issues are listed below.

- The Committee plans to have written rules available for public comment and public hearings before the end of 2011 and proposed legislation available for the 2012 legislative session.
- The proposed business court should be called a Complex Commercial Litigation Court.
- It would have five to seven judges who also would be active circuit judges appointed by the Chief Justice of the Supreme Court to serve terms of between three and seven years each. The judges would have a background in business or commercial litigation and would receive special training by the National Association of Business Court Judges.
- The proposed Complex Commercial Litigation Court would have statewide jurisdiction and operate in five to seven regional divisions based around the state’s largest population areas.
- Either party in a case could file a Certificate of Designation for a case to be handled in the Complex Commercial Litigation Court. A presiding circuit court judge also could designate a case to be handled in the Complex Commercial Litigation Court, or both parties could agree that the case would be handled in the court. There would be an additional filing fee.

- Mediation would be mandatory in all cases assigned to the new court. The Complex Commercial Litigation Court judges would act as the mediators.
- Time standards and case management rules would be designed to move cases expeditiously through the court process to a final resolution.
- The Court would use electronic filing as well as traditional paper filing.
- It would be presumptively mandatory for certain types of cases to be handled by the court. Conversely, certain types of cases would be presumptively non-complex commercial cases and would NEVER be handled by the court.
- Those cases that would be presumptively mandatory and WOULD be handled by the court would be
 - Disputes between two or more businesses involving contracts, sales, and Uniform Commercial Code disputes;
 - The purchase or sale of a business;
 - Non-consumer debts;
 - The internal affairs of a business (like shareholder disputes);
 - Trade secrets;
 - Non-compete agreements;
 - Intellectual property cases;
 - Securities cases;
 - Commercial insurance coverage disputes;
 - Malpractice lawsuits involving corporations, corporate lawyers, corporate accountants, corporate consultants, corporate executives; and
 - Torts between businesses.
- The types of cases that could NEVER be handled by the Complex Commercial Litigation Court would be
 - Consumer litigation, including product liability, personal injury, wrongful death, and consumer class action cases;
 - Employee occupational health and safety cases involving injuries in the workplace;
 - Consumer environmental actions, like cases involving toxic spills and chemical exposure;
 - Consumer malpractice lawsuits, including lawsuits against doctors and hospitals;
 - Administrative lawsuits against government agencies, including tax disputes;
 - Consumer or residential real estate or landlord disputes;
 - Domestic relations cases, even those involving a business; and
 - Criminal cases, even those involving a business.

“The goal of this committee is to design a Court that can focus on the complex issues that arise in commercial litigation that can get bogged-down in a busy circuit court docket and also to relieve busy circuit court judges from a significant burden of handling a novel or complex issues that they may not be equipped to handle,” said Judge Darrell Pratt, Chairman of the Business Court Committee.

“We hope it will provide for a more expeditious and judicious resolution of complex commercial disputes and give the business litigants confidence in a quick and

appropriate decision. Business people tell us: ‘Time is money.’ We want these specially trained judges to have statewide jurisdiction but operate in a regional venue for the convenience of the litigants. Even small counties or small circuits can have complex commercial litigation,” said Judge Pratt, of the Twenty-Fourth Judicial Circuit (Wayne County).

The Business Court Committee will meet in August to refine its plan for rules and procedures. It then will invite a group of defense and plaintiffs’ attorneys and representatives of business to work with it on refining the written rules before releasing them for public comment and public hearings, Judge Pratt said.

Other members of the committee are Circuit Judge Donald Cookman of the Twenty-Second Judicial Circuit (Hampshire, Hardy and Pendleton Counties); Circuit Judge Rudolph J. Murensky, II of the Eight Judicial Circuit (McDowell County); Circuit Judge James J. Rowe of the Eleventh Judicial Circuit (Greenbrier and Pocahontas Counties); Circuit Judge Susan B. Tucker of the Seventeenth Judicial Circuit (Monongalia County); and Circuit Judge Christopher Wilkes of the Twenty-Third Judicial Circuit (Berkeley, Jefferson, and Morgan Counties).

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