

Changes At North Carolina Business Court

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In 1996, North Carolina became one of the first states to create a business court in order to make the North Carolina court system more responsive to the demands of complex business litigation. Judge Ben F. Tennille was appointed the first Special Superior Court Judge for Complex Business Cases 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.

At first, the Business Court used existing Guilford County courtrooms. Later, it established its own separate headquarters in downtown Greensboro. In the near future, it will move to new quarters also in downtown Greensboro to be provided by Elon Law School, as well as expanding to Raleigh and Charlotte.

Since its inception, the Business Court has offered speed, efficiency and flexibility in the difficult management of complex business cases. Special Superior Court Judges for Complex Business Cases do not rotate as other Superior Court Judges, therefore reducing the possibility of inconsistency on substantive and evidentiary matters during the course of the litigation. Further, the Business Court utilizes technology in its electronic filing system and the advanced equipment in the courtroom, which is not yet available in other courts. Special Superior Court Judges for Complex Business Cases are assisted by a law clerk, which other Superior Court Judges do not have. Of great benefit, Special Superior Court Judges for Complex Business Cases must write an opinion on the final disposition of each case assigned as a complex business case. These opinions are published and have established greater predictability with a more developed body of case law.

Recognizing these benefits, now, almost ten years later, the legislature has again progressively acted to increase the influence of the North Carolina Business Court by expanding the court into both Raleigh and Charlotte and by providing a new mandatory designation for complex business cases. Chief Justice Lake designated Judge John Jolly of Raleigh and Judge Albert Diaz of Charlotte to serve as Special Superior Court Judges for Complex Business Cases. Judge Ben Tennille is the Chief Special Superior Court Judge for Complex Business Cases. Before beginning service as Superior Court Judges in 2001, both Judge Diaz and Judge Jolly developed extensive experience in a wide variety of practices including commercial litigation. Judges Tennille, Diaz, and Jolly are now available to consider complex business cases from all counties in North Carolina.

With the expansion of the court, the legislature also has expanded the methods for having a case assigned to the North Carolina Business Court. The system which has existed remains in place: a party seeking to have a case designated as a complex business case and assigned to the North Carolina Business Court may make a motion to the resident Chief Superior Court Judge of the county in which the case was filed. The Chief Superior Court Judge may then recommend the complex business designation to the Chief Justice of the Supreme Court of North Carolina. The Chief Justice will consider the recommendation and if he agrees, will then enter an order accordingly.

In addition, however, cases filed on or after January 1, 2006, can be designated as mandatory complex business cases without first seeking a recommendation from the Superior Court. These actions include those that involve a material issue related to:

- Corporate Law
- Securities Law
- Antitrust Law (except claims based solely on unfair competition under N.C.G.S. 75-1.1)
- State Trademark or Unfair Competition Law (except claims based solely on unfair competition under N.C.G.S. 75-1.1)
- Intellectual Property Law
- The Internet, electronic commerce, and biotechnology.

Any party may designate the action as a mandatory complex business case by filing a Notice of Designation in the Superior Court in which the action has been filed and simultaneously serving the notice on each opposing party or counsel and on the Chief Special Superior Court Judge for Complex Business Cases, currently Judge Tennille.

Generally, a party must file the Notice of Designation at the time of its first filing. Any party may oppose the designation by filing an opposition with the North Carolina Business Court within thirty days of being served with the Notice of Designation. Judge Tennille will decide if the designation is proper, and his decision can be appealed to the Chief Justice of the Supreme Court of North Carolina. The new legislation added a nonrefundable fee of two hundred dollars (\$200) to be paid upon the filing of the Notice of Designation.

The Business Court uses its own Local Rules of Practice which are available on its website <http://www.ncbusinesscourt.net/>. These Local Rules of Practice are being revised. Brooks Pierce litigation partners James T. Williams, Jr. and Jennifer K. Van Zant will serve on the Local Rules Advisory Committee. Mr. Williams served on the Business Court Rules Advisory Committee, which created the current Local Rules of Practice.

Many of Brooks Pierce's litigation attorneys have experience practicing before the North Carolina Business Court. In addition, our attorneys have appeared in various matters before Judges Diaz and Jolly, the two new Business Court judges. We continue to develop our extensive expertise with regard to the Business Court. In that vein, Ben Norman joined Brooks Pierce this fall, after completing a clerkship with Judge Tennille.