

North Carolina Business Court: What North Carolina Companies Need to Know

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North Carolina was one of the first states to create a business court in order to make the court system more responsive to the demands of complex business litigation. The N.C. Business Court was designed with several goals in mind: to allow for the appointment of judges with expertise in substantive law and case management related to complex business issues; to further the development of a substantial body of written decisions on complex business issues to provide greater predictability for decision making; and to enhance the ability to act with speed and flexibility when dealing with complex legal issues.

In the fall of 1995, the North Carolina legislature appropriated the necessary funds and the Supreme Court of North Carolina amended and adopted the rules necessary to form the Business Court. In January 1996, Ben Tennille became the first special superior court judge for complex business cases, or Business Court judge. For approximately three years, Tennille and the Business Court operated without a permanent home or staff. In 1999, private foundations raised funds to lease space in downtown Greensboro, and the legislature approved an administrative assistant and a law clerk for the Business Court.

In 2006, the legislature acted to increase the influence of the Business Court, expanding into Raleigh and Charlotte and adding two new judges. The legislature also enacted an easier procedure permitting parties themselves to designate certain categories of cases directly to the Business Court, instead of seeking the recommendation of a local judge and the permission of the chief justice, as was previously required.

What's new in the Business Court?

In 2014, the legislature enacted the Business Court Modernization Act, which refined, clarified and expanded the types of actions that may be designated to the Business Court by any party.

Qualifying cases involve a material issue in at least one of several categories:

- governance and other matters of corporate, partnership, or limited liability company law;
- securities law;
- antitrust law;
- trademark law;
- the ownership, use, licensing, lease, installation, or performance of intellectual property;
- trade secrets; or
- contract disputes where the amount in controversy is at least \$1 million, at least one party on

each side is a business, and all parties consent to the Business Court.

In addition to the categories above, there are now some lawsuits that must be designated to the Business Court:

- contested tax lawsuits or constitutional challenges to a tax statute;
- lawsuits in one of the designation categories described above (except the \$1 million contract dispute category) in which the amount in controversy is at least \$5 million; or
- the regulation of utility pole attachments.

As a result of the Business Court Modernization Act, more lawsuits in North Carolina will be headed to the Business Court than ever before, and the lawsuits with the highest dollar amounts will not be able to proceed anywhere else.

More changes appear to be on the horizon, including further legislative amendments and amended local rules for the Business Court. The court also continues to expand. In addition to its three current judges — James Gale of Greensboro (who is the chief judge), Louis Bledsoe III of Charlotte and Gregory McGuire of Raleigh two more Business Court judges might be appointed this year. On March 23, Gov. Pat McCrory nominated Winston-Salem attorney Michael Robinson to fill one of those positions.

What are the advantages of having your case in the Business Court?

1. *Case management and discovery.* In superior courts across North Carolina's 100 counties, the judge presiding over a matter may vary from hearing to hearing. In contrast, a case in the Business Court ordinarily remains with a single judge from complaint through trial. The Business Court is thus able to take a much more active role in case management, promoting efficiency and reducing costs by providing consistent decisions throughout the litigation. The Business Court encourages creative solutions outside the default provisions of the court rules, such as dividing discovery into phases based on discrete issues.

The Business Court is also keenly aware of cost issues associated with discovery, including concerns about proportionality of requests and cost-shifting, especially when voluminous and costly electronic document production is involved. For example, in a recent decision, the parties could not agree on who should pay the approximately \$140,000 necessary to restore one party's computer backup tapes that were requested by the other side. The Business Court ordered the requesting party to front one-half of the anticipated cost and indicated that, if the backup tapes turned out not to contain the information the requesting party was seeking, the court would consider ordering the requesting party to pay an even higher portion of the tab.

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2. *Consistency and predictability of decisions.* Because of the sophisticated nature of the legal issues typically before the Business Court and the counsel that present those issues, the Business Court frequently deals with novel issues of first impression in areas of interest to businesses, particularly in corporate governance and securities matters. Business Court judges are statutorily required to issue written opinions explaining their rulings on most major motions. This creates a body of publicly available law on difficult issues that have not been resolved by the appellate courts, which enables businesses to refine their conduct in advance of disputes as well as to better evaluate their own matters when litigation arises.

North Carolina trial judges are bound by precedential rulings of the appellate courts, but not by rulings of other trial judges. Although that same rule prevents one Business Court judge's ruling from "binding" another, current and former judges have frequently shown deference to rulings of their colleagues. This consistency in ruling helps reduce the variability of outcomes in cases that come before the Business Court.

3. *Practical, focused, subject matter experience by the judges.* Judges in North Carolina's trial courts come to the bench from a number of practice backgrounds, some in business litigation, but others including criminal prosecution and defense, personal injury and family law. The current judges of the Business Court have all had long civil litigation careers in complex business matters before joining the bench.

4. *Caseloads.* The Business Court judges have resources that other trial courts in North Carolina do not, such as law clerks to assist in complex research and mastery of evidentiary materials. The judges' dockets are also significantly less crowded than the average superior court. According to The Charlotte Observer, North Carolina's 112 superior court judges (including the three Business Court judges) disposed of more than 300,000 cases a year. At any given time, each Business Court judge has approximately 60 to 65 active cases, which allows the court to develop and maintain a depth of understanding about the substantive law and management issues involved in the case.

What should I do if my business has a case involving the Business Court's areas of the law?

If your business has a claim or needs to defend against a claim in one of the Business Court's core legal subjects, or if your business is facing a breach of contract claim with more than \$1 million in controversy, the Business Court may be an attractive option for you. An attorney with significant experience before the Business Court can help you decide the advantages and disadvantages of designating a case to the Business Court, and can help you navigate the rules and procedures once you're there.

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