

SUMMARY OF FINAL REPORT AND RECOMMENDATION CHIEF JUSTICE'S COMMISSION ON THE FUTURE OF THE NORTH CAROLINA BUSINESS COURT

Prepared for the North Carolina Superior Court Judge's Conference
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North Carolina Supreme Court

On 6 November 2003, the North Carolina Supreme Court created the Chief Justice's Commission on the Future of the North Carolina Business Court with instructions to assess the future of that Court and to provide a report and recommendations to the Chief Justice and members of the State Judicial Council on or before 31 December 2004. The Commission's final report, dated 28 October 2004, is based on a careful study of the practices and procedures of North Carolina's Business Court in comparison with the practices and procedures employed by business courts or business litigation programs nationwide. The report contains the following key recommendations:

1. Geographic Expansion. At present, Judge Ben Tennille is the only Business Court Judge in our State, a situation which is quickly becoming untenable given the ever-increasing caseload of the Business Court. Accordingly, the Commission recommends the geographic expansion of the Business Court into Mecklenburg and Wake Counties. This recommendation would be effectuated by the Chief Justice's designation of two new Business Court Judges from among currently serving Special Superior Court Judges and by legislative appropriation of the requisite funding.

2. Assignment of Cases/Jurisdiction. To facilitate the prompt and efficient designation of "complex business cases" for adjudication in the Business Court, the Commission recommends that the Supreme Court amend the General Rules of Practice for the Superior and District Courts to create a bifurcated system of "mandatory" and "discretionary" Business Court jurisdiction. Under the recommended system, designation of certain classes of "mandatory" complex business cases would be initiated by the filing of a Notice of Designation by or on behalf of a party to a pending action, subject to approval by the Chief Justice or his/her

designee. "Mandatory" complex business court cases would encompass specifically defined subject matters, such as the law governing corporations, partnerships, and limited liability companies; securities, antitrust, trademark, and unfair competition law; and intellectual property, the Internet, electronic commerce, and biotechnology. The process would be similar to the process of removal in federal court. The procedure for "Discretionary" complex business cases, on the other hand, would mirror the process currently used for referral of cases to the Business Court. A case would be designated as a discretionary complex business case upon the recommendation of the Senior Resident Superior Court Judge, Chief District Court Judge, or presiding Superior Court Judge, as provided by Rule 2.1 of the Rules of General Practice and Procedure. The Commission further recommends that the General Assembly enact a jurisdictional statute designed to clarify that designation of Business Court Judges and complex business cases is within the statutory authority of the Chief Justice under G.S. § 7A-34.

3. Precedential Value. To promote the desired stability and predictability in complex business litigation, the Commission recommends that the Supreme Court take measures to ensure the "internal" precedential value of Business Court decisions within the Business Court itself. Such decisions would not have precedential value with respect to any other courts within the General Court of Justice.

4. Judicial Tenure. The Commission recommends that the initial term of a Business Court Judge remain five years, but that the term be lengthened to ten years on reappointment/redesignation. The Commission believes that this arrangement will promote consistency and stability within the Business Court while providing the Governor, the Chief Justice, and interested parties in the business community an opportunity to evaluate the competence, demeanor and temperament, and integrity of a Business Court Judge.

5. Appeals Process. To further promote a stable body of precedent in the area of complex business litigation, the Commission recommends that the Chief Judge of the North Carolina Court of Appeals adopt the practice of assigning appeals from Business Court decisions to panels consisting of at least two Court of Appeals Judges who have volunteered to receive special training in the substantive areas of law

likely to arise in Business Court cases. In so recommending, however, the Commission did not propose any limitation on the authority or discretion of the Chief Judge of the Court of Appeals under G.S. § 7A-16 to assign panels. Because existing procedures are adequate, the Commission does not recommend any modifications to the Rules of Appellate Procedure to provide for expedited appeals from decisions of the Business Court. Finally, the Commission recommends that all appeals from Business Court decision be resolved via published opinions.

6. Alternative Dispute Resolution (ADR). The Commission recommends the promotion of ADR alternatives to litigation by (1) maintaining a "roster of neutrals" available to serve as arbitrators, mediators, early evaluation neutrals, judicial arbitrators, or facilitators; (2) fostering awareness of the possibility of judicial arbitration as formerly practiced by Judge James M. Long and currently delineated in Rule 12.0 of the Local Rules for the Eighteenth Judicial District; (3) the early presentation of ADR alternatives; and (4) legislative consideration of whether to permit the Business Court to make specific ADR referrals.

7. Funding/Revenue. In order to finance the geographic expansion of the Business Court into Mecklenburg and Wake Counties and to upgrade outdated technological systems at the Greensboro installation, the Commission estimates an initial cost of \$184,300.00, followed by recurring costs of \$168,000.00 per year. The Commission believes that these costs are reasonable in light of the pressing needs of the Business Court.

The full text of the Commission's Final Report and Recommendation is available on the website of the North Carolina Business Court. To view the report, go to the Business Court's homepage at <http://www.ncbusinesscourt.net> and click on the link at the upper right-hand corner of the page, or type the following URL into your browser to go directly to the Final Report: <http://www.ncbusinesscourt.net/Final%20Commission%20Report.htm>.