

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 9th day of February, 2012, the following order was made and entered:

IN RE: Request for Comments on Proposed Amendments to Create Rule 29,
Commercial Litigation, West Virginia Trial Court Rules

On a former day, to wit, December 13, 2011, came the Chair of the Business Court Study Committee, The Honorable Darrell Pratt, and presented to the Court proposed amendments to the Trial Court Rules as drafted by the Committee. The Business Court Study Committee was created by the Court for the purpose of evaluating the business court legislation passed as Enrolled Committee Substitute for House Bill No. 4352, including the law's applicability, practicality, and any other issues the members may discover in the course of their study.

Upon initial consideration of the proposed amendments as submitted by the Committee, the Court is of the opinion that a period of public comment on the proposed amendments would greatly assist the Court in its further consideration of the Committee's submission. Accordingly, the Court does hereby approve a period of public comment on the proposed amendments, as submitted by the Committee. Comments should be filed in writing with the Clerk of this Court on or before May 11, 2012.

The proposed amendments, as submitted by the Committee, creating Rule 29. Commercial Litigation, read as follows:

29. Commercial Litigation.

Rule 29. Commercial Litigation Court – Preamble.

By the establishment of a Commercial Litigation Court, there is hereby adopted a process for the just and efficient litigation of cases between commercial entities.

The Court will specialize in the timely resolution of disputes between commercial entities by the use of:

1) judges with training and expertise in commercial litigation, and 2) standardized pretrial and trial procedures which will address situations that are unique to commercial litigation.

The purpose of the Court is to create and provide an efficient and consistent body of commercial law upon which both the legal and business community may rely. In keeping with this purpose, all opinions shall be published.

Rule 29.01 Commercial Litigation Court.

(a) The Commercial Litigation Court consists of seven judges, appointed by the majority of the Supreme Court of Appeals of West Virginia from the pool of currently active sitting circuit court judges and senior status judges who have served at least three years. Not more than two judges may be from any one Commercial Litigation Region. After the initial appointments, all future terms of service shall be for seven consecutive years. There is no prohibition against serving successive terms either on the court or as the chief judge thereof. In the event of a vacancy on the Commercial Litigation Court, the Chief Justice shall appoint a replacement judge to fill the vacancy and serve out the remainder of the term. The Supreme Court shall annually designate one judge to serve as the Commercial Litigation Court Chief Judge. The Chief Judge will be responsible for handling all administrative matters for the court.

(b) All judges, law clerks, and paralegals of the Commercial Litigation Court shall receive training and education designed to prepare them for the specialized caseload they will handle while serving on, or being employed by, the court. All expenses incurred as a result of participation in such training shall be reimbursed by the Supreme Court of Appeals of West Virginia as authorized by law.

(c) The Administrative Director for the West Virginia Supreme Court of Appeals shall provide support staff for the Commercial Litigation Court including, but not limited to, a secretary, a law clerk, a paralegal, a certified court reporter and clerical staff. Any party to a commercial litigation case may request the services of a real-time court reporter for trial. The Commercial Litigation Court staff shall be provided with the office space and equipment necessary to carry out their court duties.

(d) The Court shall have statewide jurisdiction, and shall also have regional venues that will incorporate the population requirements set forth in West Virginia Code §51-2-15.

Rule 29.02 Application.

These rules shall apply to and govern all actions in the circuit courts which are transferred by the Chief Justice to the Commercial Litigation Court. These rules shall not be construed to either limit the jurisdiction of the circuit courts or create any new causes of action.

Rule 29.03 Court Duties.

The Court shall:

(a) develop and implement effective case management and trial methodologies, and fairly and expeditiously resolve commercial litigation referred to the Court by the Chief Justice;

(b) preside over commercial litigation or proceedings assigned to the Court by the Chief Justice;

(c) recommend for adoption by the Supreme Court of Appeals of West Virginia rules for conducting the business of the Court as needed;

(d) communicate with the Chief Justice and Administrative Director concerning the Court's activities as requested;

(e) take all such necessary actions incidental to the powers and responsibilities conferred by this rule, as well as actions specifically directed by the Chief Justice; and

(f) develop and implement plans for central organization including, but not limited to, staffing, record keeping, transfer and storage of Commercial Litigation Court files to the appropriate circuit, implementation of appropriate technology, adoption of necessary rules and procedures and any other administrative action necessary to achieve the effective management of commercial litigation.

Rule 29.04 Jurisdiction.

(a) The jurisdiction of the Commercial Litigation Court shall include any action between two or more commercial entities, their officers, directors, shareholders, members, or partners, involving:

- (1) The commercial relationship, including breaches of business contracts;
- (2) The sale or purchase of a commercial entity;
- (3) The sale or purchase of commercial real estate;
- (4) The sale or purchase of commercial products covered by the Uniform Commercial Code;
- (5) The terms of a commercial lease;
- (6) Commercial non-consumer debts;
- (7) The internal affairs of a commercial entity;
- (8) Trade secrets and trademark infringement;
- (9) Non-compete agreements;
- (10) Intellectual property, securities, technology disputes;
- (11) Commercial torts;
- (12) Insurance coverage disputes in commercial insurance policies;
- (13) Professional liability claims in connection with the rendering of professional services to a commercial entity;
- (14) Anti-trust actions between commercial entities;
- (15) Injunctive and declaratory relief between commercial entities;
- (16) Liability of shareholders, directors, officers, partners, etc.
- (17) Mergers, consolidations, sale of assets, issuance of debt, equity and like interests;
- (18) Shareholders derivative claims;
- (19) Unfair trade practices;
- (20) Commercial bank transactions;
- (21) Franchisees/Franchisors;
- (22) Internet, electronic commerce and biotechnology disputes involving commercial entities; and
- (23) Other cases involving commercial entities deemed by the Chief Justice to require transfer.

(b) The following types of actions are presumed to be actions that do not come within the jurisdiction of the Commercial Litigation Court:

- (1) Consumer litigation such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act, and consumer insurance coverage disputes;

- (2) Non-commercial insurance disputes relating to bad faith, or disputes in which an individual person may be covered under a commercial policy, but is involved in the dispute in an individual capacity;
- (3) Employee Suits;
- (4) Consumer environmental actions;
- (5) Consumer malpractice actions;
- (6) Administrative disputes with government organizations, regulatory agencies, and taxing authorities;
- (7) Consumer and residential real estate, such as landlord/tenant disputes;
- (8) Domestic relations;
- (9) Criminal cases;
- (10) Eminent domain/condemnation;
- (11) All other cases not included in Rule 29.04(a)

Rule 29.05 Applicable Rules.

All provisions of the West Virginia Rules of Civil Procedure, the West Virginia Rules of Evidence and the West Virginia Trial Court Rules shall apply to the Commercial Litigation Court. If the instant rules conflict with other rules or statutes, the instant rules shall apply.

Rule 29.06 Designation and Transfer of Actions to Commercial Litigation Court.

(a) Any party may file a verified Certificate of Designation of a case as a mandatory commercial litigation action with the circuit clerk of the circuit wherein the action is pending. A copy of the Certificate of Designation must be filed with the complaint, answer, or motion to intervene, and shall be simultaneously served upon each opposing party and the presiding circuit court judge.

(b) Within 30 days from service of the Certificate of Designation, an opposing party may file a stipulation to the designation or a response in opposition to the designation, and shall serve the same on opposing parties and the presiding circuit court judge, setting forth the reasons for opposing the designation of the matter as a Commercial Litigation Court action. The presiding circuit court judge has 30 days to rule on the Certificate of Designation. If the presiding circuit court judge rules that the case be transferred to the Commercial Litigation Court, then he or she shall notify the Chief Justice immediately of such designation or denial of such designation. Provided, a presiding circuit court judge has the authority to recommend the case be transferred to the Commercial Litigation Court, without a Certificate of Designation of a party to the action, by making such recommendation to the Chief Justice of the Supreme Court of Appeals of West Virginia.

(c) The Chief Justice shall make a final decision, by either confirming or denying the designation, within five days from receipt of the ruling of the presiding circuit court judge on the Certificate of Designation, or his or her recommendation to transfer the case to the Commercial Litigation Court.

Rule 29.07 Assignment and Duties of Presiding Judge.

(a) When an action is certified as a Commercial Litigation Court action, the Chief Judge of the Commercial Litigation Court shall assign a special commercial litigation

judge from within the commercial litigation region wherein the action originated to be the presiding judge and to manage and litigate the case within any region where venue is proper. The Chief Justice shall enter an administrative order designating the Chief Judge as his or her designee concerning Commercial Litigation Court appointments or administration. As such designee, the Chief Judge of the Commercial Litigation Court shall have the authority to assign a judge from one circuit to sit in another circuit or region, as authorized by Article VIII, Section 3, of the West Virginia Constitution.

(b) The presiding judge, within 45 days of being assigned, shall conduct a Case Management and Time Scheduling Conference with all counsel of record and parties, and may assign a Special Commercial Litigation judge from another region to serve as a mediator in the case.

(c) The presiding judge may schedule conferences, motions, mediation, pretrial hearings, and trials, in any circuit court courtroom within the region where the case is pending, with due consideration for the convenience of the parties.

Rule 29.08 Case Management Orders.

After the presiding judge has conducted the case management conference with all counsel of record and parties as provided in Rule 29.07, he or she shall issue a Case Management Order within 15 days of the conference that includes, but shall not be limited to, the following:

(a) The length of the discovery period, as well as the number of interrogatories and depositions permitted;

(b) The time and date for concluding discovery;

(c) The period of time within which the identity of witnesses, including expert witnesses, shall be disclosed, and a list of the documents to be offered at trial;

(d) The date by which a mediator shall be either stipulated to by the parties, or appointed by the Commercial Litigation Court presiding judge;

(e) The time periods relevant to the filing, briefing, and docketing of dispositive motions;

(f) The time for, and location of, a pretrial conference, as well as the requirements of the pretrial memorandum;

(g) The time for, and location of, the trial;

(h) A statement from each party setting forth the principal legal and factual issues in dispute;

(i) A statement from each party concerning the potential for utilizing any methods of alternative dispute resolution; and

(j) Any stipulations by the parties as to any legal or factual issues.

All cases should proceed to final judgment in an expedited manner. The time standards set forth in the West Virginia Trial Court Rules for general civil cases shall apply; however, the Court shall make all reasonable efforts to conclude the case within twelve (12) months from the date the Case Management Order was entered.

All other time standards for service of notices and entry of orders as set forth in the West Virginia Rules of Civil Procedure shall apply, unless modified by a court order executed by the presiding judge.

Rule 29.09 Mediation.

(a) Unless waived by the parties pursuant to subsection (c) of this section, mediation shall be mandatory in all cases certified as commercial litigation. All mediation shall be conducted in accordance with Rule 25 of the West Virginia Trial Court Rules and shall commence within 30 days of the designation of a mediator, either by stipulation or judicial appointment.

(b) The parties shall file a stipulation designating a mediator within ten days of the Case Management Conference. If the parties fail to agree on a mediator, the presiding Commercial Litigation Court Judge shall appoint a Commercial Litigation Court judge from a region other than the region where the case is pending to act as mediator. No sitting circuit court judge serving as a Commercial Litigation Court judge shall receive additional compensation above his or her salary as set out in W. Va. Code §51-2-13. Provided, however, that such judge shall be reimbursed by the Supreme Court of Appeals of West Virginia for any and all expenses incurred in connection with his or her participation in commercial litigation cases, as authorized by law.

(c) If the parties stipulate a method of alternative dispute resolution involving arbitration, the parties shall file such stipulation with the court setting forth the agreed upon method of arbitration, and shall waive mediation in lieu of binding arbitration on all or some of the issues in dispute.

Rule 29.10 Trials and Appeals.

(a) The right to a trial by jury, if applicable, shall be preserved for any party involved in litigation before the Commercial Litigation Court. Any party may demand a jury trial pursuant to Article VI of the West Virginia Rules of Civil Procedure. All rules contained in Article VI of the West Virginia Rules of Civil Procedure shall apply to such trials.

(b) The West Virginia Rules of Evidence shall apply to every case tried before the Commercial Litigation Court.

(c) The Rules of Appellate Procedure for the Supreme Court of Appeals of West Virginia shall apply to every case tried before the Commercial Litigation Court.

(d) Every effort shall be made by the presiding judge to try the case in the county of origin. However, the judge, at his or her discretion, may order that the case be tried in another county within the region where the case originated.

(e) Jurors shall be summoned from the county where the case shall be tried, as authorized by law.

(f) The circuit clerk of the county of origin shall maintain the official court file on behalf of the Commercial Litigation Court.

A True Copy


Deputy Clerk, Supreme Court of Appeals