

## STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on April 11, 2014, the following order was made and entered:

**RE:   REQUEST FOR PUBLIC COMMENT  
      ON PROPOSED AMENDMENTS TO TRIAL COURT RULE 29**

On a prior day, came the Honorable Christopher C. Wilkes, Chair, Business Court Division, on behalf of all the judges of the Business Court Division, and presented to the Court proposed amendments to West Virginia Trial Court Rule 29.

Upon review and consideration whereof, the Court is of the opinion to and does hereby approve a thirty-day period of public comment on the proposed amendments. All comments must be filed in writing with the Clerk of this Court no later than **Monday May 12, 2014**.

Proposed additions are indicated by underlining and proposed deletions are indicated by strikethrough.

### WEST VIRGINIA TRIAL COURT RULES

#### CHAPTER 2. CIVIL MATTERS.

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#### 29. BUSINESS COURT DIVISION.

##### **Rule 29.01. Business Court Division — Preamble**

In accordance with West Virginia Code § 51-2-15, there is hereby adopted a process for efficiently managing and resolving litigation involving commercial issues and disputes between businesses that includes the establishment of a Business Court Division to handle a specialized court docket within the circuit courts.

##### **Rule 29.02. Business Court Division**

The Business Court Division "Division" consists of up to seven (7) active or senior status circuit court judges who shall be appointed by the Chief Justice, with the approval of the Supreme Court of Appeals. Each appointment is for a term of seven (7) years. In 2012 at least three judges shall be appointed, with subsequent appointments to be made in such a fashion as to insure that the terms are staggered. Beginning in 2012 and every three years thereafter, the Chief Justice shall designate a judge of the Division to serve as its Chair to preside over the activities of the Division and to report to the Supreme Court of Appeals. There is no prohibition against serving successive terms, either as judge or as Chair of the Division. ~~In order to be eligible for~~

~~appointment, a judge must have at least three years of experience as a sitting circuit judge in West Virginia.~~

**Rule 29.03. Application.**

These rules apply to and govern all actions in the circuit courts that are referred and transferred by the Chief Justice as Business Litigation to the Division. These rules shall not be construed to limit the jurisdiction of the circuit courts or to create any new cause of action.

**Rule 29.04. Definitions**

For purposes of this Rule, the following definitions apply:

(a) “Business Litigation” — one or more pending actions in circuit court in which:

(1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and

(2) the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable; and

(3) the principal claim or claims do not involve: 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; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

(b) “Business Litigation Assignment Region” — a group of existing judicial circuits that meets the population requirements set forth in West Virginia Code § 51-2-15(b). The Assignment Regions are:

Assignment Region A	Barbour, Harrison, Lewis, Marion, Monongalia, Preston, Taylor, and Upshur Counties
Assignment Region B	Brooke, Doddridge, Hancock, Marshall, Ohio, Pleasants, Ritchie, Tyler, Wetzell, Wood, and Wirt Counties
Assignment Region C	Calhoun, Jackson, Kanawha, Mason, Putnam, and Roane Counties
Assignment Region D	Boone, Cabell, Lincoln, Logan, Mingo, and Wayne Counties

Assignment Region E	Braxton, Clay, Fayette, Gilmer, Nicholas, Raleigh, Webster, and Wyoming Counties
Assignment Region F	Greenbrier, McDowell, Mercer, Monroe, Pocahontas, and Summers Counties
Assignment Region G	Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, Pendleton, Randolph and Tucker Counties

(c) “Central Office of the Business Court Division” — a location designated by the Supreme Court to act as the central administrative headquarters for the operation of the Business Court Division.

(d) “Presiding Judge” — A member of the Division assigned by order of the Division Chair, with the advice and consent of the Division, to preside in Business Litigation or proceedings therein referred by the Chief Justice to the Division.

(e) “Resolution Judge” - A member of the Division assigned by order of the Division Chair, with the advice and consent of the Division, to mediate, arbitrate, or provide any other form of dispute resolution agreed to by the parties. To protect confidentiality of the mediation process, communication between the presiding judge and the resolution judge regarding the mediation during or after the process shall be limited to procedural status or other matters agreed to by all parties. The presiding judge will retain control and jurisdiction over the case.

**Rule 29.05. Division Duties.**

The Division shall:

- (a) develop and implement effective case management and trial methodologies to fairly and expeditiously resolve Business Litigation referred to the Division by the Chief Justice;
- (b) preside over Business Litigation or proceedings therein referred to the Division by the Chief Justice;
- (c) recommend for adoption by the Supreme Court of Appeals rules for conducting the business of the Division as needed;
- (d) make an annual report to the Supreme Court and communicate with the Chief Justice and the Administrative Director concerning the Division'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 Division files to the appropriate judicial circuit, implementation of appropriate technology, adoption of necessary procedures, and any other administrative action necessary to achieve the effective management of Business Litigation.

**Rule 29.06. Motion to Refer Actions as Business Litigation.**

(a)(1) Any party or judge may seek a referral of Business Litigation to the Division by filing a Motion to Refer to the Business Court Division with the Clerk of the Supreme Court of Appeals of West Virginia. ~~in the circuit court where the matter is pending.~~ The motion shall identify the nature of the action(s) sought to be referred, the basis for the request, and, if known, whether additional related actions are pending or may be filed in the future. A copy of the complaint, answer, docket sheet and any other documents that support referral under Trial Court Rule 29.04(a) shall be attached to the motion.

(2) The motion ~~may~~ shall be filed after the time to answer the complaint has expired. For good cause shown to the Chief Justice, the motion may be filed sooner. ~~within three (3) months after the filing date of the action; provided, however, that a judge may file the motion at any time, if it is determined the litigation qualifies as Business Litigation that may be resolved more expeditiously by referral to the Division.~~

(3) The motion shall be served on all the parties, including those parties not represented by counsel, all judges in action(s) that are the subject of the motion, the circuit clerk where the case is pending, and the Central Office of the Business Court Division.

(4) Any party or affected judge shall have twenty (20) days after the motion is filed to file a reply memorandum stating its position and opposition, if any. ~~Any affected judge may file a reply memorandum within twenty (20) days thereafter.~~ Any reply memorandum must be filed with the Clerk of the Supreme Court of Appeals and served in accordance with Trial Court Rule 29.06(a)(3). The Chief Justice shall have the authority to grant or deny the motion to refer without response for good cause shown.

(b) The filing of a Motion to Refer shall not operate as a stay of the civil action(s), unless otherwise ordered by the judge of the circuit court in which the ~~Motion to Refer was filed~~ case is pending.

(c)(1) After the response periods ~~have~~ has expired, ~~the judge of the circuit court in which the Motion to Refer was filed shall direct the clerk of the circuit court to transmit to the Clerk of the Supreme Court of Appeals for filing a copy of the motion and all reply memoranda for review by the Chief Justice.~~ Upon review of the motion and reply memoranda, the Chief Justice may act directly upon the motion or may direct the Division to conduct a hearing. and make recommendations concerning coordinated or consolidated proceedings under this rule.

(2) If the Chief Justice directs, a Division member or members shall hold a hearing to receive evidence and entertain arguments by the parties or any judge, and shall submit findings of fact and a recommendation to the Chief Justice.

(3) The Chief Justice, whether acting directly upon the motion or upon the recommendation of the Division member or members, shall promptly enter an order either granting or denying the motion, or providing modified relief. The order shall be filed with the Clerk of the Supreme Court of Appeals who shall send a copy of the order to the Division Chair, to the Central Office of the Business Court Division, and to the clerk(s) of the circuit court(s) where the action(s) are pending for service on all parties.

(d) Nothing contained in this rule affects the authority of a circuit court judge to act independently under the provisions of W. Va. R.Civ.P. 42.

**Rule 29.07. Assignment of Presiding and Resolution Judge in Business Litigation.**

(a) An order from the Chief Justice granting a Motion to Refer is a transfer of Business Litigation to the Division. Upon receipt of the order, the Division Chair shall, with the advice and consent of the Division, enter an order assigning a Presiding and Resolution Judges. The Division Chair may serve as a Presiding or Resolution Judge.

~~(b) If the Presiding Judge designated by the Division Chair does not sit in the county where the Business Litigation is pending, the Division Chair may submit a request to the Chief Justice that Upon referral by the Chief Justice and assignment by the Division Chair, the Presiding Judge be is authorized, pursuant to Article VIII § 3 of the West Virginia Constitution, to preside over the action in any county that is within the same Business Litigation Assignment Region in which the case is filed. The assignment request shall be filed with the Clerk of the Supreme Court of Appeals for review by the Chief Justice, with a copy provided to all parties in the case. Any party shall have twenty (20) days after the motion is filed to file a response stating its position and opposition, if any. The Chief Justice shall enter an appropriate order promptly after expiration of the time period for a response. The order shall be filed with the Clerk and sent by the Clerk to the Division Chair, to the Central Office of the Business Court Division, and to the clerk(s) of the circuit court(s) where the actions are pending for service on all parties.~~

**Rule 29.08. Powers and Duties of Presiding and Resolution Judges.**

(a) The Presiding Judge is authorized to preside in any circuit in which Business Litigation or proceedings therein are pending, or in which Business Litigation or proceedings therein are transferred for purposes consistent with the Division's case management and trial methodologies.

(b) With the advice and consent of the Division, the Presiding Judge is authorized to consolidate and/or transfer Business Litigation or proceedings therein from one circuit to one or more other circuits to facilitate the Division's case management and trial methodologies and to order the transfer of court files to the appropriate circuit.

(c) Within thirty (30) days of being assigned, the Presiding Judge shall conduct a case management and scheduling conference.

(d) Within fifteen (15) days of the case management conference, the Presiding Judge shall issue a case management order that includes any deadlines or procedures deemed appropriate to fairly and efficiently manage and resolve the Business Litigation.

(e) The Presiding Judge may schedule conferences, motions, mediation, pretrial hearings, and trials in any circuit court courtroom within the Assignment Region, with due consideration for the convenience of the parties.

(f) The Presiding Judge shall have the sole authority to supervise the jury selection process, to disqualify a prospective juror from jury service, and to excuse jurors from juror service in

Business Litigation to which the Presiding Judge has been assigned, all pursuant to W.Va. Code § 52-1-1 et seq.

(g) The Business Litigation should proceed to final judgment in an expedited manner. The time standards for general civil cases set forth in Trial Court Rule 16.05 shall apply; provided, however, that the Presiding Judge shall make all reasonable efforts to conclude Business Litigation within ten (10) months from the date the case management order was entered. All other time standards for service of notices and entry of order set forth in the West Virginia Rules of Civil Procedure shall apply unless modified by order entered by the Presiding Judge.

(h) The Resolution Judge is authorized to schedule and conduct mediation of the case or any Alternative Dispute Resolution as agreed to by the parties and the Resolution Judge in an attempt to resolve the case in an expedient and efficient manner.

**Rule 29.09. Scope; Conflicts.**

If these Rules conflict with other rules or statutes, these rules shall apply; otherwise all applicable Rules apply.

A True Copy

Attest: //s// Rory L. Perry II  
Clerk of Court

