

OVERVIEW

The West Virginia Business Court is a Division within West Virginia’s Judiciary designed to handle complex commercial litigation between businesses. In 2010, the legislature passed House Bill 4352 authorizing the Supreme Court of Appeals to conduct a study and make a recommendation regarding the creation of a Business Court Division. The Court appointed a committee to study the feasibility of a business court and ultimately a proposal was presented to the Supreme Court with a recommendation by the committee that a Business Court Division be established within the circuit courts. The committee then drafted a rule to govern complex business litigation. After deliberation, public comment, and revision, the Supreme Court of Appeals of West Virginia unanimously approved Trial Court Rule 29 on September 11, 2012, later amended by order entered June 13, 2014. A formal opening of the Business Court Division was held on October 10, 2012, at the Central Office located in the Berkeley County Judicial Center in Martinsburg.



BUSINESS COURT JUDGES

The Division consists of up to seven judges appointed by the Chief Justice to serve a term of seven years. While maintaining their own general dockets, the judges have agreed to undertake the additional caseload because they have a particular interest and expertise in business litigation. The Chief Justice designates one of the Division judges to serve as Chair every three years. Rule 29 does not prohibit successive terms, either as judge or as Chair of the Division.



The Division judges receive specialized training in business law subjects and are members of the American College of Business Court Judges. Some are members of the American Bar Association Business Law Section. The Division judges meet biannually at the judicial conferences to discuss new developments, caseload distribution, case management techniques, and any other issues that may need addressed.

Division Judges: front row: Judges Clawges & Tabit; back row: Judges Young, Carl, Wilkes, & Farrell. Not pictured, Judge Matish. *Photo by Jennifer Bundy.*

Below are the Business Court Division Judges and their terms:



Honorable Christopher C. Wilkes
Judge of the Twenty-Third Circuit
Business Court Region G

October 9, 2019

Chair through January 31, 2019



Honorable Paul T. Farrell
Judge of the Sixth Circuit
Business Court Region D

September 30, 2020



Honorable James H. Young Jr.
Judge of the Twenty-Fourth Circuit
Business Court Region D

December 31, 2019



Honorable Joanna I. Tabit
Judge of the Thirteenth Circuit
Business Court Region C

October 9, 2019



Honorable Russell M. Clawges Jr.
Judge of the Seventeenth Circuit
Business Court Region A

September 30, 2020

Resigned from Division May 2018



Honorable James A. Matish
Judge of the Fifteenth Circuit
Business Court Region A

October 9, 2019



Honorable H. Charles Carl III
Judge of the Twenty-Second Circuit
Business Court Region G

June 30, 2022

STAFF

Carol A. Miller, the Executive Director of the Business Court Division administers the central office of the Division. She works closely with the Division judges to implement procedures and policies to improve efficiency. Her duties also include coordinating referrals and assignments, implementing appropriate technology, and any other administrative duties necessary to assist the Division judges with achieving effective management of business litigation. Lorri J. Stotler assists the Executive Director of the Business Court Division as needed in the central office. Claire A. Watson served as law clerk to assist the Division judges with legal research and analysis, drafting orders, and assisting in court hearings and trials, but resigned from the Division in July. A new clerk is in the process of being hired.

PURPOSE

The Business Court Division efficiently manages and resolves litigation involving complex commercial issues and disputes between businesses. The Division judges respond to discovery issues in a timely manner and offer various alternate dispute resolution options throughout the pending case, making all reasonable efforts to conclude business litigation within ten (10) months from the date the case management order is entered. The informed decisions provide guidance to the parties and the expediency reduces litigation costs for the businesses and courts, creating an attractive forum for business litigation in the State of West Virginia. Since inception, approximately 290 businesses have been involved in litigation in the Business Court.

UPDATES AND HIGHLIGHTS

In 2018, Judge Wilkes continued to serve as one of three business court judges from across the country as a Business Court Representative to the Business Law Section of the American Bar Association. He attended Section Meetings in Orlando, Florida; Austin, Texas; and Washington, D.C.. The American Bar Association Business Law Section underwrote all expenses. His term concluded in November of 2018, at which time he accepted two leadership appointments on the Business and Corporate Litigation Committee – 1. Co-Chair of the E-Discovery Subcommittee, and 2. Vice Chair of the ADR Subcommittee. By attending these meetings and accepting the leadership positions, he hopes to not only share his views but also acquire new ideas from other business court judges throughout the country that will assist in cultivating best practices in West Virginia's Business Court Division.

The Business Court Division judges are members of the American College of Business Court Judges. Membership allows the judges to attend annual meetings, highly regarded educational programs and seminars related to business litigation through the Antonin Scalia Law School's Law & Economics Center, at no additional cost to the Court. In 2018, Judge Wilkes and Judge Farrell completed the educational program offered at the 13th Annual Meeting in Charleston, South Carolina. They had a total of 8 hours and 45 minutes of instruction that may be counted for Continuing Judicial Education credit.

Two of the Division Judges, Farrell and Tabit, were recognized in 2018 as West Virginia Bar Foundation Fellows, meaning their professional, public and private careers have demonstrated outstanding dedication to the welfare of their communities and honorable service to the legal profession.

Senior Business Court Judge Groger from Georgia is authoring a report detailing the best methods for Georgia to establish a statewide business court and chose to look at several states as models (particularly West Virginia and North Carolina). Judge Groger's Staff Attorney and Program

Director, Lynette Jimenez interviewed Judge Wilkes and advised she would be incorporating many of the discussed matters into the report.

Judge Wilkes was later interviewed by Brenae Jacobs for his insight on a few areas regarding business court, but particularly case management. His contribution will be included in a book being crafted by the American Bar Association Business Law Section, to assist lawyers in their navigation of Business Courts. This project is being led by one of South Carolina's Business Court Judges who is also Past-President of the American College of Business Court Judges, the Honorable Clifton Newman.

CHANGES TO THE DIVISION

Judge Clawges resigned from the Business Court Division in May of 2018, and in December announced his retirement as circuit judge. The Honorable Michael D. Lorensen in the 23rd Circuit was appointed to Judge Clawges's unexpired term by order entered October 17, 2018, by Chief Justice Margaret L. Workman.

Judge Wilkes announced his retirement as circuit judge in December of 2018. He intends to remain active in the judiciary as a senior status judge and will remain a senior business court judge. Rule 29.02 contemplates senior status judges serving in the Division.

The Chief Justice approved Judge Wilkes to serve as Chair until January 31, 2019, the effective date of taking senior status.

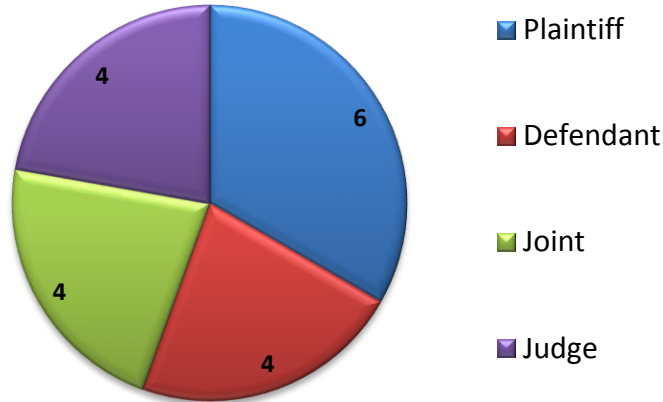
NEW APPOINTMENT



Judge Lorensen is a native of Morgantown. He has a 1981 bachelor's degree in journalism from West Virginia University and a 1984 law degree from West Virginia University College of law. He worked three years as a law clerk for U.S. District Judge Charles Haden in the Southern District of West Virginia before practicing law for twenty-five years in Martinsburg at the firm Bowles Rice. His practice focused on civil litigation, although he also did criminal law and for seven years was a member of the panel of court-appointed attorneys in federal courts. Governor Earl Ray Tomblin appointed him to the Twenty-Third Judicial Circuit (Berkeley, Jefferson, and Morgan Counties) in 2012 and he was elected in 2014 and re-elected in 2016. He was a member of Governor Tomblin's 2014 West Virginia Intergovernmental Task Force on Juvenile Justice. He was a member of the Judicial Hearing Board, a member of the local rules committee for the U.S. District Court for the Northern District of West Virginia, and a former member of the board of the West Virginia Board of Law Examiners. He formerly served thirteen years on the Shenandoah Community Health Control Board of Directors, including two years as President of the Board.

WHO FILED MOTIONS TO REFER IN 2018

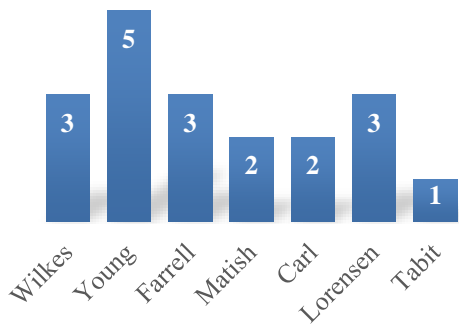
Number of Motions to Refer Filed in 2018 18



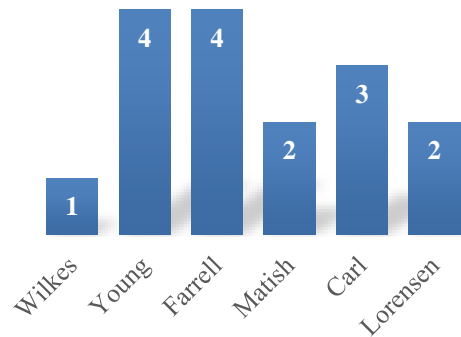
HOW CASES ARE ASSIGNED AND NUMBER OF PENDING CASES PER JUDGE

The Chair considers the locality, number of assignments, and expertise of the judges when receiving a new referral. The Chair then consults with the Division judges to ensure there are no conflicts before making assignments of presiding and resolution judges. The charts below show how many cases are currently pending per judge.

Pending Cases Per Judge
as Presiding

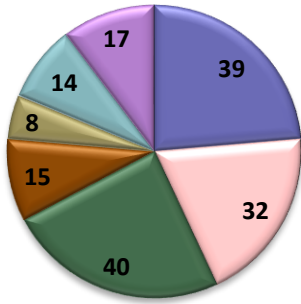


Pending Cases Per Judge
as Resolution



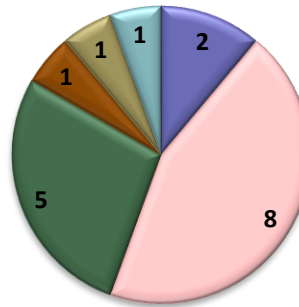
NUMBER OF MOTIONS TO REFER FILED IN BUSINESS COURT BY REGION/COUNTY

Motions to Refer Filed Since Inception, **165**



- Region A
- Region B
- Region C
- Region D
- Region E
- Region F
- Region G

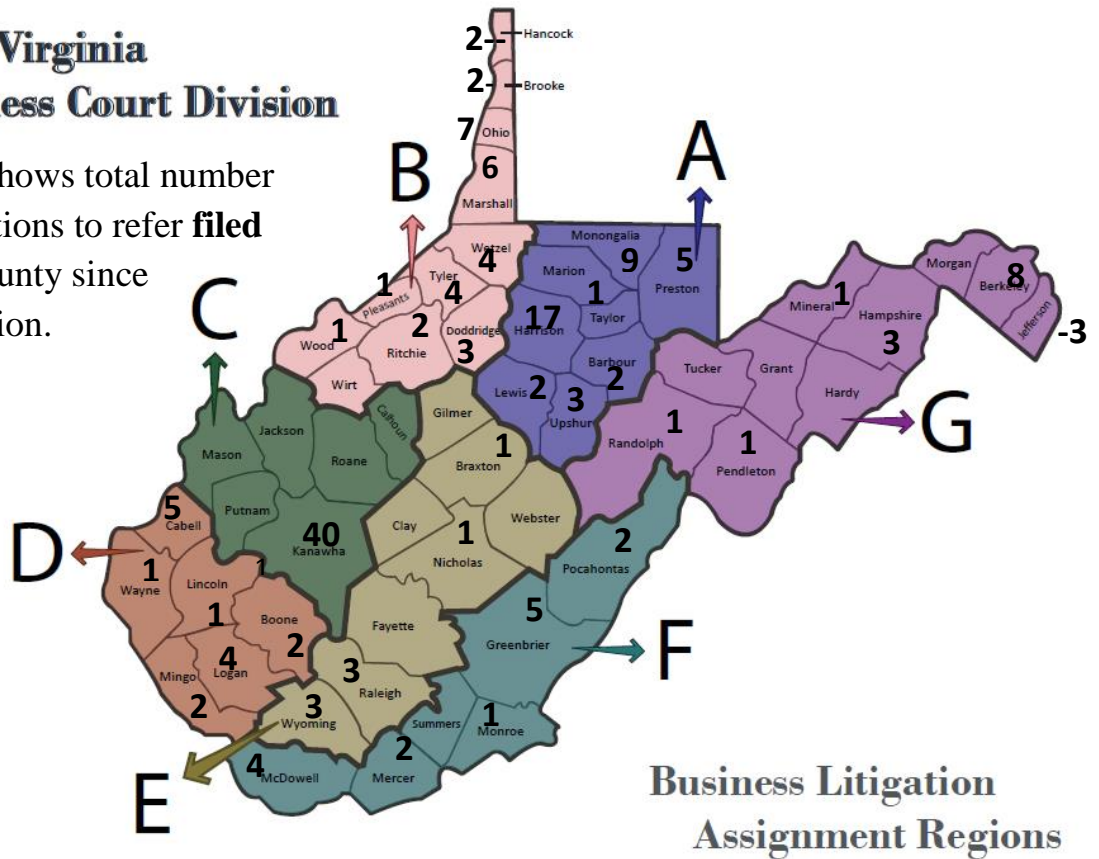
Motions to Refer Filed in 2018, **18**



- Region A
- Region B
- Region C
- Region D
- Region E
- Region F
- Region G

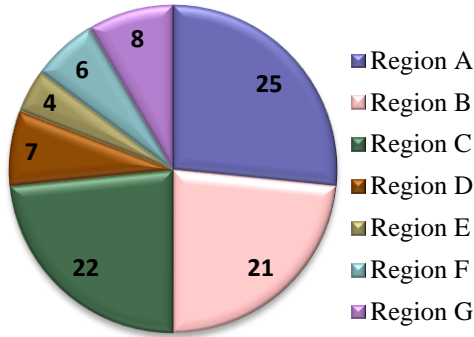
West Virginia Business Court Division

Map shows total number of motions to refer filed per county since inception.

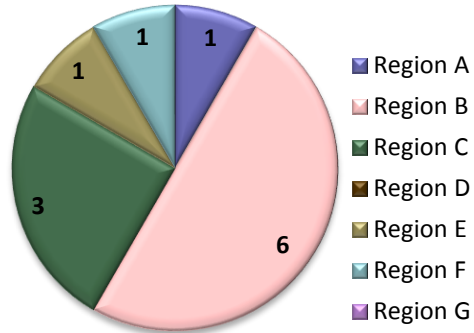


NUMBER OF MOTIONS TO REFER **GRANTED/REFERRED** TO BUSINESS COURT BY REGION/COUNTY

Motions to Refer granted since inception, **93**

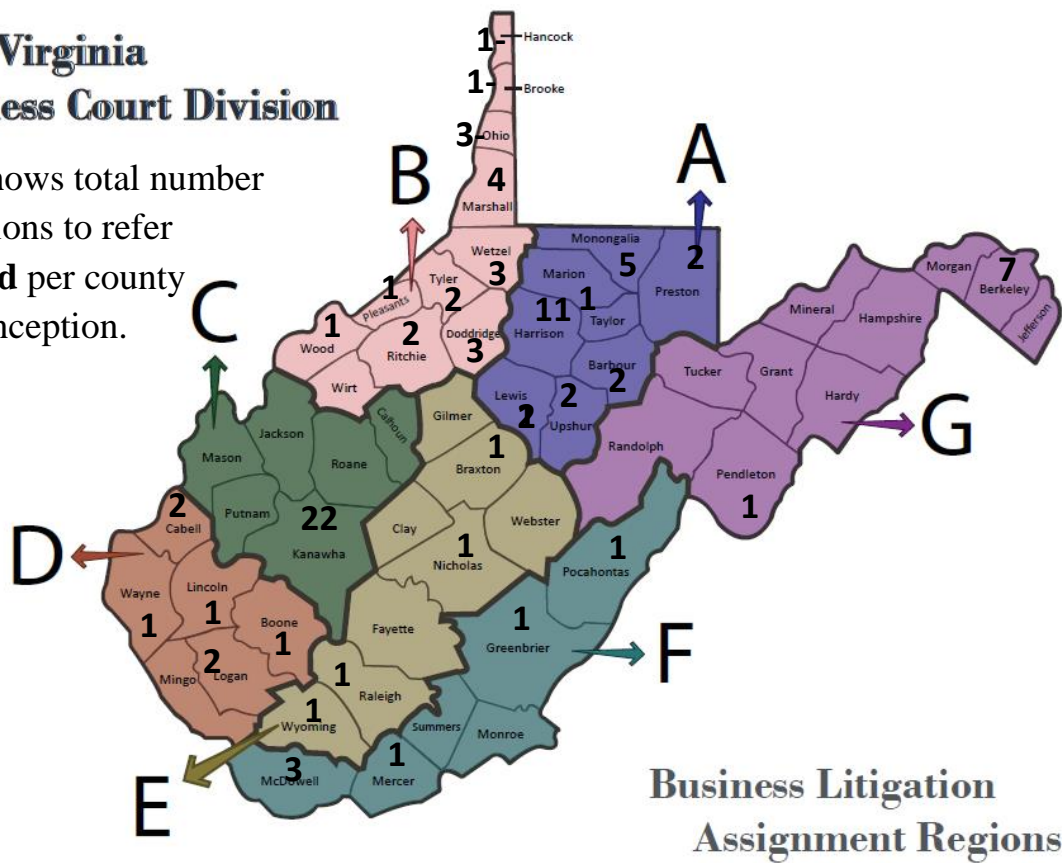


Motions to Refer Granted in 2018, **12**



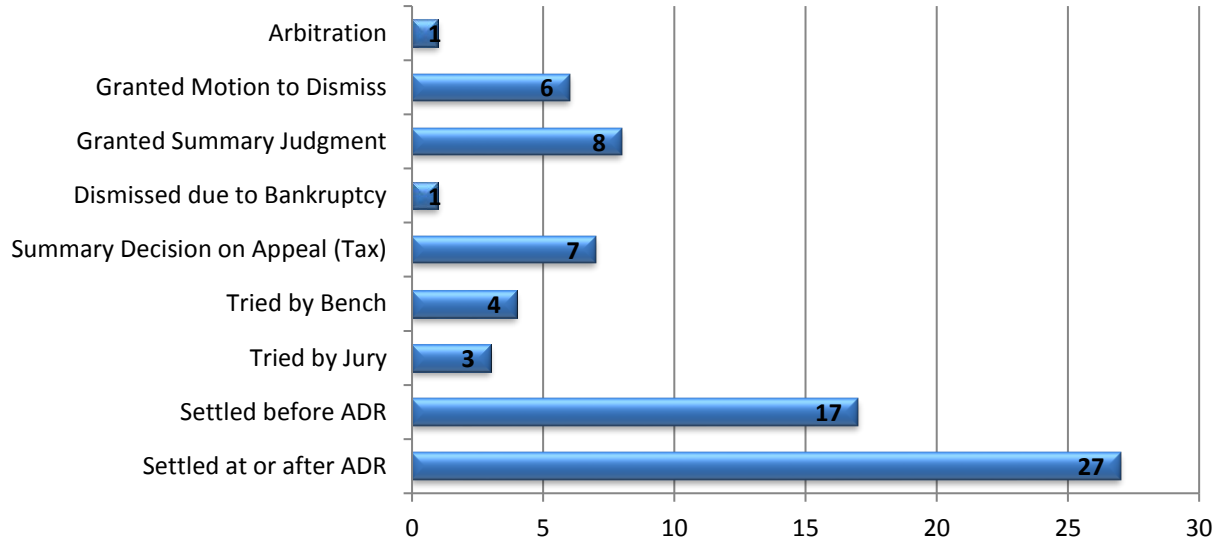
West Virginia Business Court Division

Map shows total number of motions to refer **granted** per county since inception.



RESOLUTION OF CASES

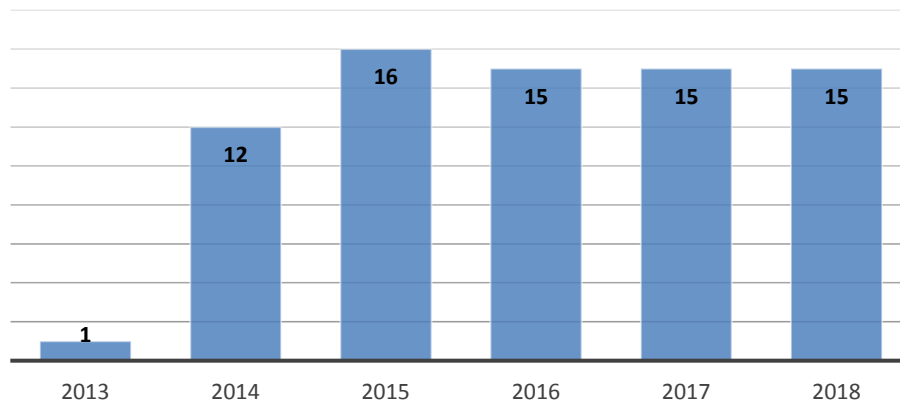
How Cases Were Resolved



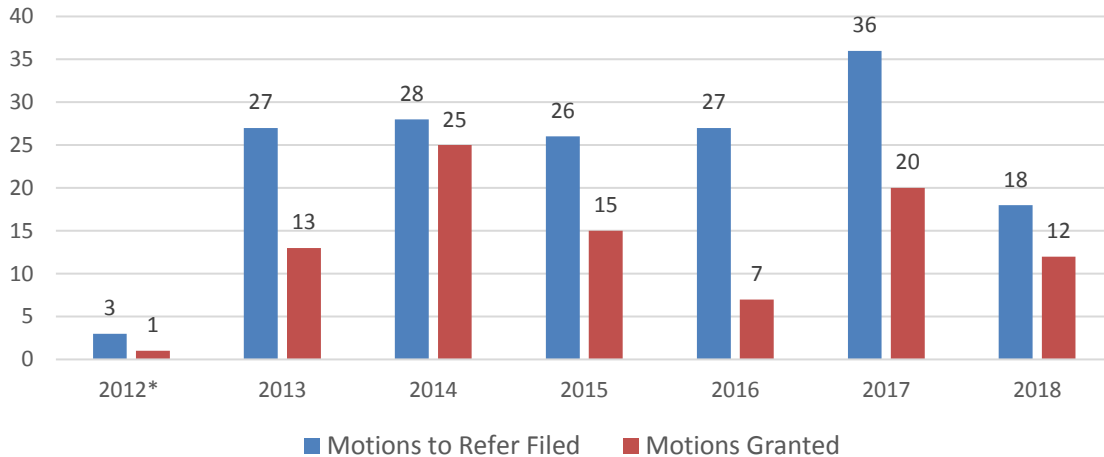
The chart above shows that the majority of the **74** cases were resolved at or after some form of alternate dispute resolution. Three were resolved by jury trials and four by bench trials. Resolution judges have successfully aided in the settlement of numerous issues and cases.

The chart below shows there has been a steady resolution of business court cases each year.

Cases Closed by Year (2013-2018)



Comparisons of Motions Filed to Motions Granted



*Business Court was established October of 2012

NATURE OF CASES REFERRED TO BUSINESS COURT

The majority of cases that have been referred to the business court involve contract disputes or alleged tortious business practices. Twenty of the cases referred were complex tax appeals. The remainder of cases referred to the business court involve other complex matters of significance to the transactions, operations or governance between business entities which include shareholder derivative actions, alleged monopolies, mismanagement of trusts, violations of the WV Unfair Trade Practices Act, and disputes regarding the scope of easements, right of ways, and restrictive covenants.

PENDING CASES

The Business Court Division currently has nineteen pending cases. Twelve of the pending cases have been in business court for less than a year. One case referred in February of 2016, has been in bankruptcy since 2016. All pending cases are being closely monitored by the assigned judges and business court staff so they continue to move toward final adjudication in a timely manner.

SUMMARY

Since the inception of Business Court, October of 2012, **165** motions to refer to the Business Court Division have been filed. Of those motions, **93** were granted and referred to the Business Court Division. In 2018, **18** Motions to Refer were filed, **12** were granted, **4** were denied, and **2** were pending with the Chief Justice at the end of 2018.