



*Supreme Court of Tennessee*

**Business Court Docket Advisory Commission**

**Report and Recommendations for the  
Business Court Docket Pilot Project**

**December 18, 2017**

## TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION .....	1
II. REPORT ON THE BUSINESS COURT DOCKET PILOT PROJECT, PHASE 1 .....	2
III. REPORT ON THE BUSINESS COURT DOCKET PILOT PROJECT, PHASE 2 .....	13
IV. CUMULATIVE RECOMMENDATIONS OF THE ADVISORY COMMISSION .....	17
V. CONCLUSION.....	21

### APPENDICES

- A. Supreme Court Order No. ADM2015-00467, March 16, 2015
- B. List of Advisory Commission Members
- C. Advisory Commission’s March 14, 2016 Recommendation Letter
- D. Tennessee Business Court Docket Evaluation Survey Form
- E. Sample Letter to Pilot Project Participants in Concluded Cases
- F. Advisory Commission’s August 4, 2016 Recommendation Letter
- G. Monthly Business Court Pilot Project Report – October 2016
- H. Supreme Court Supplemental Order, Nov. 1, 2016
- I. Monthly Business Court Pilot Project Report – January 2017
- J. Advisory Commission’s January 11, 2017 Recommendation Letter
- K. Supreme Court Order No. ADM2017-00638, April 4, 2017
- L. Advisory Commission’s August 11, 2017 Recommendation Letter
- M. Monthly Business Court Pilot Project Report – November 2017
- N. Advisory Commission’s December 4, 2017 Letter with Evaluation Survey Results
- O. Advisory Commission’s December 5, 2017 Comments Letter
- P. Advisory Commission’s Governance Proposal

## I. INTRODUCTION

By Order dated March 16, 2015, then Tennessee Supreme Court Chief Justice Sharon G. Lee established the Davidson County Business Court Pilot Project. Order No. ADM2015-00467 (copy at **Appendix A**). The Pilot Project is designed to meet the litigation needs of existing and future businesses in this State and serve as an effective tool for business retention, economic development, and enhanced effectiveness of the judicial system. *Id.* at 1. The several stated purposes of the business court docket are to (i) “provide expedited resolution of business cases by a judge who is experienced and has expertise in handling complex business and commercial disputes,” (ii) “provide proactive, hands-on case management with realistic, meaningful deadlines and procedures adapted to the needs of each case for customized, quality outcomes,” (iii) “develop a body of rulings from which lawyers and litigants can better predict and assess outcomes in business cases,” and (iv) benefit non-business case dockets by “the removal of complex and time-consuming business cases from the general docket.” *Id.* at 1-2. With the establishment of the Pilot Project, Tennessee joined twenty-six other states, at that time, utilizing specialized business courts, including the surrounding states of Alabama, Florida, Georgia, North Carolina, South Carolina and West Virginia. *Id.* at 1.

To launch the Pilot Project, Chief Justice Lee designated the Davidson County Chancery Court Part III, the Honorable Ellen Hobbs Lyle, Chancellor, as the Business Court docket for the Pilot Project, to gather data and information, and to identify best practices for development of potential future Tennessee business courts. *Id.* at 2. The Order defined the criteria for cases that were eligible for transfer to the Pilot Project docket and also identified cases that were excluded from the Pilot Project. *Id.* at 2-4. The Order also established the procedure for requesting designation to the Pilot Project docket and began accepting eligible business cases for transfer filed after May 1, 2015. *Id.* at 4-5.

In July 2015, the Supreme Court established a nine-member Business Court Rules Advisory Commission (name subsequently changed to the in Business Court Docket Advisory Commission in 2017), chaired by the Honorable W. Neal McBrayer, Tennessee Court of Appeals Judge, with members from each of the three Grand Divisions of the State and comprised of commercial litigation attorneys in private practice and corporate general counsel. The Commission Members are David Golden and Celeste Herbert from East Tennessee, Scott Carey, Patricia Head Moskal, Bill Tate and Tim Warnock from Middle Tennessee, and Jef Feibelman and Charles Tuggle from West Tennessee. *See* List of Advisory Commission Members (copy at **Appendix B**). The Advisory Commission submits this report regarding its work from July 2015 through December 2017.

## **II. REPORT ON THE BUSINESS COURT DOCKET PILOT PROJECT, PHASE 1**

The Advisory Commission set two initial objectives at its first meeting: (i) to develop an evaluation survey for attorneys and their clients upon the conclusion of cases transferred to the Business Court docket as a tool for gathering information and measuring the effectiveness and success of the Pilot Project, as provided in the Supreme Court's Order; and (ii) to review the Business Court docket case eligibility criteria to determine whether any adjustments should be recommended to better meet the objectives of the Pilot Project. The Commission formed two working groups to study and report on these areas.

### **A. March 14, 2016 Recommendations from the Advisory Commission.**

On behalf of the Advisory Commission, Judge McBrayer submitted a report to then Chief Justice Lee on the initial work of the Advisory Commission, including recommendations by letter dated March 14, 2016. Letter dated March 14, 2016 (copy at **Appendix C**). The Advisory Commission's report is summarized as follows:

Evaluation Survey Working Group. The evaluation survey working group, led by Commission Member Celeste Herbert, developed participant survey questions, which the full Advisory Commission subsequently approved. *See* Tennessee Business Court Docket Evaluation Survey Form (copy at **Appendix D**). The Administrative Office of the Courts (AOC) posted the survey online for responding participants to complete. Periodically, the Chief Justice and AOC Director Deborah Taylor Tate send letters to participating attorneys after their business court docket cases are concluded, inviting the attorneys and their clients to complete the online survey. *See* Sample Letter to Pilot Project Participants (copy at **Appendix E**).

As of March 2016, the Advisory Commission noted that there was a good level of survey responses by participating attorneys in concluded cases, but no responses from client representatives. Overall, the early survey results were extremely positive and indicated that the specialized business court concept was achieving the objectives outlined in the Supreme Court's Order. Judge McBrayer shared the survey results, in a summary fashion to preserve anonymity of the respondents, with Chancellor Lyle.

Eligibility Criteria Working Group. The eligibility criteria working group, led by Commission Member Jef Feibelman, studied the eligible business case criteria, the criteria used by other states with specialized business courts, and the periodic reports from the Business Court Docket summarizing the number, types of cases, and causes of action being transferred to the Business Court Pilot Project. The focus of this working group was to determine if the transferred cases were the type of cases that were sufficiently complex and would benefit from the expedited Business Court docket and proactive case management, particularly in light of the immediate and significant demand for and large number of cases for which Pilot Project designation was being sought. The working group recommended several changes to the eligibility criteria to refine the

criteria, including the threshold dollar amount of damages, in an effort to more selectively limit the number of eligible cases and reduce the burden on the Business Court Docket. The full Advisory Commission approved the following recommended changes, which were submitted to the Supreme Court for consideration:

- (1) increase the threshold amount of alleged compensatory damages from “\$50,000” to “\$100,000,”
- (2) remove the following types of cases from the list of “Eligible Cases:”
  - (i) “commercial real property disputes” (subpart 1.c.iv), and
  - (ii) “business claims between or among two or more business entities or individuals as to their business or investment activities relating to contracts, transactions, or relationships between or among them” (subpart 1.c.v); and
- (3) revise subpart 2.g of the list of “Excluded Cases” to also exclude “cases in which the State of Tennessee or any other government or governmental agency is a party.”

The eligibility criteria working group also discussed the transfer process and considered whether it would be beneficial to provide a measure of discretion by the Business Court Judge, in addition to reviewing a case to determine whether it met the eligibility criteria, to make a further recommendation to the Chief Justice whether a case should be accepted or rejected. The thinking was that there may be cases that otherwise meet the eligibility criteria but lack sufficient complexity to justify assignment to the Business Court docket. This comment was included in the Advisory Commission’s March 2016 report, but without a specific recommendation to the Court.

**B. March 2016 Report from the Davidson County Pilot Business Court.**

Chancellor Lyle and her staff attorney, Justin Seamon, submitted to the Supreme Court in March 2016 a “Report from Davidson County Pilot Business Court: Completion of March 16, 2015 Supreme Court Order.” A copy of the Report is available at <https://www.tncourts.gov/bizcourt>. Chancellor Lyle reported that, as of the date of the report, the Pilot Project had a full docket, having received fifty-seven (57) requests for designation and with fifty-three (53) cases transferred to the docket. The average of new cases transferred were approximately five (5) per month. Chancellor Lyle described the proactive case management practices and procedures implemented and discussed the overall success of the Pilot Project. The Business Court Pilot Project had also developed a substantial body of rulings, and selected decisions are posted on the Business Court webpage of the Tennessee State Courts website at <https://www.tncourts.gov/node/3938267>. The Business Court Pilot Project continues to add new decisions to the Business Court webpage.

From April 2015 and continuing throughout 2016, Justice Lee, Chancellor Lyle, and Staff Attorney Seamon actively provided information to the legal community and various business and civic groups about the Business Court Pilot Project, including bar journal articles, seminars, continuing legal education presentations, and meetings.

**C. August 4, 2016 Recommendations from the Advisory Commission.**

The Advisory Commission continued its study and review of the Business Court Pilot Project from March through July, 2016, including the survey results received from participants in the Pilot Project, monthly reports of the Business Court Docket summarizing the number of requests received, number of cases transferred, and number of cases pending, and comparative information about the case criteria and operation of specialized business courts in other states.

The Advisory Commission submitted a second recommendation letter to the Supreme Court dated August 4, 2016. *See* Letter dated Aug. 4, 2016 (copy at **Appendix F**). The Advisory Commission concluded that the Pilot Project had been extremely successful in terms of the large volume of requests for designation and the positive evaluation responses of attorneys participating in Business Court docket cases. *Id.* It strongly recommended continuing the Business Court Pilot Project. The Advisory Commission also submitted several additional recommendations to then Chief Justice Lee for the Supreme Court's consideration. *Id.* The recommendations focused on two areas: (i) management of the Pilot Project docket; and (ii) future work of the Advisory Commission.

Recommendations for the Pilot Project Docket.

(1) Continue the Business Court docket as a Pilot Project and establish a projected deadline for the conclusion of the Pilot Project.

(2) Establish, at a minimum, the following three goals to be achieved during the extended Pilot Project to help evaluate the future sustainability and potential expansion of the Business Court docket:

(a) determine the appropriate weighting to be given a business court docket case for purposes of managing the overall workload of the designated Business Court Judge. Currently, a one-to-one ratio is being applied to Business Court cases, which assumes that a business court case is no more labor intensive or time consuming than a regular chancery court case. The Advisory Commission finds that this approach is unsustainable given the stated objectives of the Business Court Pilot Project to provide expedited resolution of business cases and proactive case management.

(b) determine how the Business Court docket can be managed utilizing multiple assignment judges. The Advisory Commission found that a second judge should be assigned to hear Business Court docket cases for several reasons: (i) the need to share the workload given the high volume of cases requesting transfer, (ii) the need to accommodate a single judge's recusal without denying the litigants access to the Business Court docket, and (iii) the need to evaluate whether the success of the Business Court docket is tied to the new procedures for business cases or a preference for assignment to any one judge.

(c) further refine the criteria for eligible cases and excluded cases, in addition to the Advisory Commission's recommendations made in March 2016, to better manage the volume of cases being transferred to the Business Court docket. The Advisory Commission found that implementing these recommended changes to the case criteria during the extended Pilot Project would provide an opportunity to gauge how the changes might impact the volume of business cases requesting designation.

(3) Establish a judicial law clerk position dedicated to the Business Court docket to assist the assignment judges assigned to the Business Court docket with research and the drafting rulings and to assist with maintaining the Business Court webpage by organizing and posting noteworthy Business Court docket decisions.

#### Recommendations Regarding the Future Work of the Advisory Commission

(1) Change the Commission's name to "Business Court Docket Advisory Commission," to better reflect the nature of its advisory role regarding the operation and evaluation of the Business Court Pilot Project.

(2) Establish the length of terms for Advisory Commission members if the Pilot Project is to be extended and consider increasing the number of members to provide a broader base if the Pilot Project is to be expanded to other judicial districts.

(3) Invite an academician to join the Advisory Commission to serve in the role of reporter regarding survey results.

**D. Continued Work of the Advisory Commission.**

Current Chief Justice Jeffrey S. Bivins met with the Advisory Commission at its October 26, 2016 meeting. He announced that Judge McBrayer would voluntarily step down as Chair of the Advisory Commission to avoid potential conflicts of interest and recusal as a sitting Judge on the Tennessee Court of Appeals from hearing Business Court docket cases as those cases progress through the appellate courts. Chief Justice Bivins acknowledged and thanked Judge McBrayer for his service and leadership role with the Commission. Chief Justice Bivins asked Commission Member Patricia Head Moskal to serve as Interim Chair and asked the Advisory Commission to continue its review of the Pilot Project and determine if supplemental recommendations for the Pilot Project should be made to the Supreme Court.

As of October 31, 2016, a total of 101 requests for designation to the Business Court Pilot Project had been received, greatly exceeding expectations for the first eighteen months of the Pilot Project and surpassing the volume of business cases received by similar business court projects implemented in sister states for comparable time periods. Monthly Business Court Pilot Project Report – October 2016 (copy at **Appendix G**). Of those 101 requests, eighty-nine (89) cases were transferred to the Business Court docket. During 2016, the average number of requests for transfer increased to six (6) cases per month. As of October 31, 2016, fifty-five (55)

cases remained pending. Given the large volume of cases transferred to the Business Court docket, which were being handled with existing judicial and administrative resources, it was reported that the Pilot Project was at maximum capacity and unable to accept new cases.

**E. November 1, 2016 Supplemental Order.**

On November 1, 2016, Chief Justice Bivins issued a Supplemental Order Regarding the Business Court Docket Pilot Project, stating that it would continue with its existing caseload pending further orders of the Court. Supplemental Admin. Order dated Nov. 1, 2016 (copy at **Appendix H**). Chief Justice Bivins requested the Advisory Commission to continue its work and submit any additional recommendations directed to the next phase of the Business Court Pilot Project.

As of January 2017, a total of 104 requests for designation to the Business Court Pilot Project had been received, with three requests having been filed after the entry of the Supplemental Order. Monthly Business Court Pilot Project Report – January 2017 (copy at **Appendix I**). Of those requests, eighty-nine (89) cases were transferred to the Business Court docket, eighty-one (81) of which were cases from Davidson County and eight (8) of which were from outside Davidson County. As of January 2017, forty-eight cases have been closed and forty-one (41) cases remain pending, with fourteen (14) additional cases resolved since the October 2016 report.

**F. January 11, 2017 Recommendations of the Advisory Commission.**

During November and December, 2016, at the request of the Supreme Court, the Advisory Commission continued its study and review of the Business Court Pilot Project. By letter dated January 11, 2017, the Advisory Commission submitted cumulative recommendations to Chief Justice Jeffrey S. Bivins for consideration by the Supreme Court regarding the

continuation of the Business Court Pilot Project. Letter dated Jan. 11, 2017 (copy at **Appendix J**). The Advisory Commission's cumulative recommendations are summarized as follows:

Continue the Business Court Pilot Project. The Advisory Commission remained strongly in favor of continuing the Pilot Project for a period of at least six months to continue evaluation of the Business Court Docket, how it might be improved, how to utilize more than one assignment judge, and to explore the potential for expanding the business court docket statewide.

Revise the Criteria for "Eligible Cases" and "Excluded Cases," and "Case Assignment." Due to the large volume of cases designated for transfer to the Business Court docket and based on continuing review of the eligibility criteria, the complexity of the commercial issues in the business cases being transferred to the Business Court docket, and the eligibility criteria utilized by other states with specialized business courts, the Advisory Commission recommended the following revisions to the criteria for eligible and excluded cases to help insure that the cases being transferred to the Business Court docket are sufficiently complex and that the volume of cases can be sustained using existing resources during the continuation of the Business Court Pilot Project:

1. Increase the dollar amount in controversy threshold from "\$50,000" to "\$250,000;"
2. Remove from current list of "Eligible Cases" and move to "Excluded Cases:"
  - (i) claims involving breach of contract, fraud, and/or misrepresentation unless pendent or incidental to other commercial claims that are sufficiently complex
  - (ii) commercial real property disputes
  - (iii) business claims between or among two or more business entities

- (iv) actions alleging violations of or interference with noncompete, nonsolicitation, or confidentiality agreements, unless pendent or incidental to other commercial claims that are sufficiently complex
  - (v) commercial construction contract disputes and/or commercial construction defect claims
3. Add to “Eligible Cases:”
    - (i) other cases that have sufficiently complex commercial issues that would have implications for larger business community as recommended by Business Court Judge and determined with Chief Justice discretion
  4. Add to “Excluded Cases:”
    - (i) cases in which the State of Tennessee or other government/government agency is a party;
    - (ii) cases involving violations of Tennessee Consumer Protection Act.
  5. Revise the Case Assignment provisions to reduce the time period for requesting designation from sixty (60) days to thirty (30) days.

Recognize Discretion by the Chief Justice in Assigning Cases. The Advisory Commission recommended that the Chief Justice exercise discretion to determine whether a business case for which designation is sought and otherwise meets the eligibility criteria (as that criteria may be revised), is sufficiently complex and would benefit from proactive case management and expedited disposition so as to warrant transfer to Business Court docket.

Study and Evaluate the Weighting of Business Court Docket Caseload. The transfer ratio from the regular Chancery Court docket to the Business Court docket was implemented on the basis of a one-to-one ratio, per administrative order of Davidson County Chancery Court. The

Advisory Commission recommended that there is a need to study and evaluate the proper caseload weighting for cases that are transferred to the Business Court docket to ensure the sustainability of the Business Court docket caseload during the continuation of the Pilot Project.

Suggest a Sustainable Number of New Business Court Docket Cases. The Advisory Commission suggested that during the continuation phase of the Pilot Project a sustainable number of business court docket cases for a single judge, in addition to a regular caseload and using existing resources, appears to be in the range of 3-4 new cases per month, with a target maximum caseload of 36 cases. The Advisory Commission further suggested, however, that the total number of new cases designated for the Business Court docket that otherwise meet the eligibility criteria, as may be revised, should be left to the discretion of the Chief Justice during remainder of Pilot Project.

Designate Additional Assignment Judges/Settlement Judges. The Advisory Commission recommended that the Chief Justice designate one or more sitting Davidson County Chancellors, Davidson County Circuit Court Judges, and/or Senior Judges as additional Business Court docket assignment judges to hear and decided Business Court docket cases on an as needed basis to manage the Business Court docket caseload for the remainder of the Pilot Project. In addition, the Advisory Commission recommended that an alternate assignment judge is needed in the event of a recusal situation and/or to serve as a settlement conference judge for cases designated as Business Court docket cases.

Establish a Staff Attorney Position and Additional Administrative Staff Dedicated to Business Court Docket. The Advisory Commission recommended that given the additional research and writing activities necessitated by Business Court docket cases, one staff attorney

position and additional administrative staff support should be dedicated to the Business Court docket assignment judges during the continuation of the Pilot Project.

Invite Professor Joan Heminway to Serve as an Advisor/Recorder. Professor Joan Heminway, Professor of Law at the University of Tennessee College of Law, volunteered to work with the Advisory Commission and previously assisted the Evaluation Survey working group in reviewing the evaluation survey sent to participating attorneys. The Advisory Commission recognized the value and benefit of having an academician serve as an advisor and recorder to the Commission. The Advisory Commission recommended that Professor Heminway be invited to serve in that role as a non-voting member of the Advisory Commission.

Future Work of Commission. The Advisory Commission recommended that the name of the Advisory Commission be changed to the “Business Court Docket Advisory Commission to better reflect the purpose and objectives of the Advisory Commission. The Commission also recommended that it be authorized to establish internal governance or by-laws, such as terms of service on the Commission and method of selecting the chairperson, subject to approval by the Supreme Court. Finally, the Advisory Commission offered its continued support and assistance to the Supreme Court with the Business Court Pilot Project.

### **III. REPORT ON THE BUSINESS COURT DOCKET PILOT PROJECT, PHASE 2**

The Supreme Court launched Phase 2 of the Business Court Pilot Project by Order on April 4, 2017. Order No. ADM2017-00638 (copy at **Appendix K**). The Court continued the existing Business Court Pilot Project with several changes. The Supreme Court revised the criteria for eligible cases as recommended by the Advisory Commission. The amount in controversy was increased to \$250,000, and certain causes of action were specifically included or excluded from the list of eligible cases. *Id.* at 2-3. The Court also adjusted the timing for filing a Request for Designation from sixty (60) to thirty (30) days. *Id.* at 3. Phase 2 of the Pilot Project

continued to designate Davidson County Chancery Court, Part III, the Honorable Ellen Lyle, as the Business Court Docket. Finally, the Supreme Court specified that Phase 2 of the Pilot Project would be effective through December 31, 2017. *Id.* at 1.

**A. August 11, 2017 Recommendations by the Advisory Commission.**

With the April launch of Phase 2 of the Pilot Project, Chief Justice Bivins requested the Advisory Commission to continue working on recommendations for the future of the Business Court Pilot Project. The Advisory Commission continued to study and review the Business Court Docket Pilot Project; received and reviewed evaluation survey results; and reviewed periodic reports regarding the number and types of business cases transferred to the Business Court docket as prepared by Mr. Seamon. The Advisory Commission also studied the expansion and progression of business courts in other states with specialized business court dockets, specifically including North Carolina. The Commission members participated in a telephonic meeting with Business Court Judges from North Carolina, the Honorable James L. Gale, Chief Judge of the North Carolina Business Court, and the Honorable Louis A. Bledsoe, III, Special Superior Court Judge for Complex Business Cases. The North Carolina Judges shared the growth and development of the North Carolina Business Court model, which began with a single business court and judge and now has grown to five regional locations across North Carolina.

After evaluating the overwhelming success of and demand for the Business Court Pilot Project in Davidson County and its review of successful expansion of business court dockets in other states, the Advisory Commission approved additional recommendations to the Supreme Court that were submitted to Chief Justice Bivins in August 2017. Letter dated Aug. 11, 2017 (copy at **Appendix L**). The Commission strongly recommended that the Davidson County Pilot Project be made permanent and that a Phase 3 of the Pilot Project be established to expand the Business Court Docket statewide. The Commission recommended that the Business Court

Docket establish locations in each Grand Division of Tennessee, with trials to be conducted in the counties of venue. The Commission felt that with at least three Business Court Docket judges strategically located across the State, the Business Court Docket would be well positioned to meet the demand for and needs of the business community to effectively and expeditiously handle the growing number of complex business cases in Tennessee, similar to the development and regional expansion of the North Carolina Business Court.

The Advisory Commission also emphasized the critical importance of selecting judges to serve as Business Court Docket Judges that are well-qualified and experienced in complex business litigation. The Commission recognized that the key to the success and effectiveness of the Business Court Docket is dependent upon the knowledge and experience of the Business Court Judge. The Commission suggested that further study of methods for selecting qualified judges is needed.

**B. Report on Phase 2 as of November 2017.**

As of November 2017, a total of 129 requests for designation to the Business Court Pilot Project have been received. Monthly Business Court Pilot Project Report – November 2017 (copy at **Appendix M**). Of those requests, 100 cases were transferred to the Business Court docket. As of November 2017, sixty-nine (69) cases are closed, and thirty-one (31) cases remain pending.

Through an appropriation by the General Assembly during its 2017 session, the Administrative Office of the Courts received ongoing funding to hire a Business Court Docket staff attorney. Similar to other states, this position is designed to assist the Advisory Commission, as well as provide additional research and writing, administrative support, outreach program support, and other activities as needed by the Business Court Docket Pilot Project. Mr. Charles Baldwin has been hired to serve as the Business Court Docket staff attorney.

Also through the coordination of the Administrative Office of the Courts, The University of Tennessee College of Law established a Fellow position, under the supervision of UT College of Law Professor Paula Schaefer, which is dedicated to assisting the Business Court Docket Pilot Project with the further study and advancement of the Business Court Docket.

Evaluation survey results continued to be collected and summarized and the results were, again, overwhelmingly positive. As of November 2017, 81 attorneys and 2 litigants in concluded cases responded to the survey. Significant highlights of the survey results are as follows (with percentages rounded):

- 86% of survey participants responded that the Business Court Docket was a cost-effective way to resolve their dispute (Question 11);
- 77% of survey participants responded that the Business Court Docket's handling of their case was quicker than a regular court's docket (Question 14);
- 92% of survey participants responded that there was a proper amount of judicial involvement in their case (Question 15);
- 93% of survey participants responded that there was a proper amount of case management in their case (Question 16);
- 95% of survey participants responded that they would use the Business Court Docket again given the opportunity (Question 17); and
- 87% of survey participants responded that they were completely satisfied or very satisfied (combining scale levels 4 and 5) with their Business Court Docket experience (Question 26).

On behalf of the Advisory Commission, Chair Moskal shared the cumulative results, in summary form to preserve anonymity of the respondents, with Chancellor Lyle and Mr. Seamon,

and with Chief Justice Bivins and the members of the Supreme Court. *See* Letter dated December 4, 2017, with enclosed Evaluation Survey Results (December 2015 – November 2017) (copy at **Appendix N**).

The survey results are extremely positive and have been consistent throughout both phases of the Pilot Project. The Commission believes that these results demonstrate the remarkable success of the Pilot Project and confirm that the specialized business court concept is highly effective in meeting the needs of business litigants in Tennessee. The implementation of this concept has been readily embraced by both the legal and business communities. The demand for the continuation of the business court docket and the future expansion of the project is strong.

**C. The Advisory Commission’s December 5, 2017 Comments.**

Shortly after the Advisory Commission’s submitted recommendations to the Supreme Court in August 2017, the Commission learned that the 21<sup>st</sup> Judicial District had adopted a new Local Rule of Practice, Rule 9.04, creating a separate, specialized “Complex Commercial Dispute Docket” in Williamson County. The Advisory Commission considered this development to be a positive affirmation of the success of the Business Court Pilot Project and the increasing demand for business court dockets across the State. At the same time, this development raised concerns about the need for uniformity and consistency of Business Court Docket practices across the State and the desire to avoid variations in business court dockets across different judicial districts, particularly in terms of eligibility criteria and case management procedures. After robust discussion of these issues, the Advisory Commission submitted a comment letter to Chief Justice Bivins on December 5, 2017 for the Supreme Court’s consideration. Letter dated Dec. 5, 2017 (copy at **Appendix O**).

The Advisory Commission's primary concern was the importance of uniformity in business court dockets statewide. The Commission noted that with the potential for organic growth of business courts on a judicial district by judicial district basis, without some standardization, a patchwork quilt of business court dockets could develop and could lead to forum shopping or judge shopping by litigants. The Advisory Commission also discussed its concern that a multiplicity of business court dockets could defeat the original and important objectives of the Business Court Pilot Project in achieving uniformity, consistency, continuity, and predictability of outcomes. Further, the Advisory Commission reiterated its recommendation that the Pilot Project be continued in Davidson County beyond December 31, 2017 without interruption and expanded to a statewide docket. Finally, the Commission again commented on the importance of establishing a method for the designation of future qualified business court judges and the possibility of seeking legislative change to the Senior Judge Enabling Act that would ease the restrictions on judicial appointments.

#### **IV. CUMULATIVE RECOMMENDATIONS OF THE ADVISORY COMMISSION**

To summarize, the Advisory Commission has made the following recommendations to the Supreme Court:

##### **A. Establish the Davidson County Business Court Docket as a Permanent Docket.**

The Advisory Commission recommends that the Supreme Court establish a permanent Business Court Docket in Nashville. The purposes of the Business Court Docket would continue to include the following:

- 1) gather data and monitor the utilization of the Business Court Docket,
- 2) conduct surveys of and performance evaluations by attorneys and litigants in concluded Business Court Docket cases to evaluate the effectiveness and

efficiencies of the Business Court Docket and gather suggestions for improvements,

- 3) continue developing, implementing and evaluating uniform best practices, case management procedures and guidelines to be implemented statewide to provide for more efficient handling and expedited resolution of cases,
- 4) remove complex and time-consuming business cases from the general civil dockets in the judicial districts in Middle Tennessee,
- 5) continue developing a body of jurisprudence for the Business Court Docket, and
- 6) instill confidence with the business and legal communities.

**B. Establish Phase 3 of the Pilot Project for Statewide Expansion.**

The Advisory Commission recommends establishing Phase 3 of the Pilot Project to expand the Business Court Dockets statewide, providing equal access to a specialized business court docket available to all businesses and citizens in Tennessee. The Commission suggested establishing a location in Knoxville to serve East Tennessee and in Memphis to serve West Tennessee, with trials to be conducted in the counties of venue. The purposes of Phase 3 of the Pilot Project would include:

- 1) Gather data and assess the statewide demand for the Business Court Docket,
- 2) Explore, evaluate and identify the necessary qualifications and method of selecting and designating qualified Business Court Judges experienced in complex business litigation,
- 3) Conduct surveys of and performance evaluations by attorneys and litigants in concluded Business Court Docket Phase 3 cases to evaluate the effectiveness

and efficiencies of the Business Court Docket and gather suggestions for improvements,

- 4) Participate in the continued development, implementation and evaluation of uniform best practices, case management procedures and guidelines to be implemented statewide to provide for more efficient handling and expedited resolution of cases,
- 5) Remove complex and time-consuming business cases from the general civil dockets in the judicial districts in East and West Tennessee, and
- 6) Continue developing a body of jurisprudence for the Business Court Docket.

**C. Explore Options for Designating Qualified Business Court Judges.**

The Commission recommends that the Supreme Court should designate qualified Business Court Judges with the necessary experience in complex, business litigation cases to hear and decide Business Court Cases from each of the three grand divisions of the State. The Advisory Commission encourages the Supreme Court to consider any feasible legislative changes that would enhance the ability of the Supreme Court to designate future business court docket judges with the requisite complex business litigation experience and ease the current statutory requirements.

**D. Explore Opportunities to Promote Uniformity.**

The Commission suggests that the Supreme Court consider adopting, by Supreme Court Rule or otherwise, statewide minimum standards for complex business court dockets, addressing eligible case criteria, excluded cases, case management guidelines, and other requirements, such as electronic filing. For those judicial districts that do not have the demand or resources to create a specialized business court docket, the expansion of the Pilot Project on a statewide basis would provide the overlay for designation and assignment of those cases. For those judicial districts

that opt to establish a specialized complex business or commercial dispute docket, the Supreme Court could establish minimum standards to foster the important goals of statewide uniformity and predictability and consistency of results for the benefit of the business and legal communities.

**E. Conduct Statewide Outreach.**

The Advisory Commission suggests conducting a statewide outreach program or listening tour to meet with interested business and legal communities across the State. This effort would focus on gathering ideas, suggestions, recommendations, and support for the future development of the Business Court Dockets across the state.

**F. Continue the Business Court Docket Advisory Commission.**

The Advisory Commission recommends that it continue with its study and review of the progress and development of the Business Court Docket, including any future phases of the Pilot Project. Regarding the future composition and governance of the Advisory Commission, the full Commission approved the following governance proposal and is pleased to recommend that it be established by the Supreme Court:

1. Advisory Commission Members.
  - a. There shall be a nine (9) member Advisory Commission appointed by the Chief Justice of the Tennessee Supreme Court.
  - b. Each Grand division will have three (3) members (East, Middle, and West).
  - c. Members will be current, active members of the Tennessee Bar, licensed by the State of Tennessee, and have extensive experience in commercial litigation or transactions or have in-house counsel experience with a major corporation doing business in Tennessee.
2. Terms of Commission Members
  - a. Each year in December, the Chief Justice of the Tennessee Supreme Court shall appoint three new members, one from each Grand Division.

- b. Each member shall serve a three (3) year term, with no limit to serving consecutive terms.
  - c. Terms shall commence in December 2018.
- 3. Election of Chair of the Advisory Commission
  - a. The Commission shall elect a Chair-Elect each December to serve a one year term, thus insuring continuity of leadership
  - b. There shall be no term limits for Chair-elect/Chair.
  - c. From time to time, the Commission may decide to establish additional officers.

*See* Advisory Commission's Governance Proposal (copy at **Appendix P**).

## **V. CONCLUSION**

The members of the Advisory Commission are honored to have been appointed and appreciate the opportunity to serve on the Commission and advise the Supreme Court on this historic Business Court initiative for the State of Tennessee. We are pleased to submit this Report regarding the Business Court Pilot Project.

We extend our appreciation to Judge Neal McBrayer for his leadership and service as Chair of the Advisory Commission during the important first year of the Commission's work. We extend our gratitude to Director Deborah Taylor Tate and her staff for their hard work and ongoing support of the work of the Advisory Commission. We extend our thanks and commend Chancellor Ellen Hobbs Lyle and Clerk & Master Maria Salas and their dedicated employees, particularly Justin Seamon, Phyllis Hobson, and Christy Smith, for their enthusiasm, hard work, and commitment to making the Business Court Pilot Project such a success for our judiciary, the business and legal communities, and the State of Tennessee.

The Advisory Commission looks forward to being of assistance to the Supreme Court in the future and to the continued success of the Business Court Pilot Project.

BUSINESS COURT DOCKET ADVISORY COMMISSION

Patricia Head Moskal, Chair

Scott Carey

Jef Feibelman

David Golden

Celeste Herbert

Bill Tate

Charles Tuggle

Tim Warnock

cc: Hon. Jeffrey S. Bivins  
Hon. Cornelia A. Clark  
Hon. Sharon G. Lee  
Hon. Holly Kirby  
Hon. Roger Page  
Hon. Ellen Hobbs Lyle  
AOC Director Deborah Taylor Tate  
Business Court Rules Advisory Commission Members

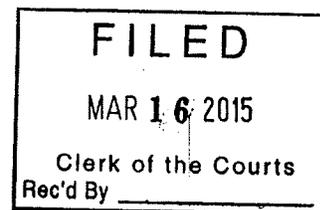
APPENDIX A

Supreme Court Order No. ADM2015-00467

March 16, 2015

**IN THE SUPREME COURT OF TENNESSEE**

**No. ADM2015-00467**



**ORDER ESTABLISHING  
THE DAVIDSON COUNTY BUSINESS COURT PILOT PROJECT**

Pursuant to the inherent power of this Court, and in performing its duty to provide for the orderly administration of justice in accordance with Tennessee Code Annotated section 16-3-502 and Supreme Court Rule 11(I), the Court hereby creates the Davidson County Business Court Pilot Project (“Business Court”) to meet the litigation needs of existing and future businesses in this State.

A number of specialized trial courts, such as probate, domestic, juvenile, and criminal, have been created in Tennessee. The interests of business litigants, however, have not been adequately addressed. Creation of the Business Court, dedicated to handling complex business cases, fills this gap. In taking this step, Tennessee joins some twenty-six other states, including Alabama, Florida, Georgia, North Carolina, South Carolina and West Virginia, where creation of specialized business courts has proven an effective tool for business retention, economic development, and enhanced effectiveness of the judicial system.

This order creates a specialized trial court to provide expedited resolution of business cases by a judge who is experienced and has expertise in handling complex business and commercial disputes, and who will provide proactive, hands-on case

management with realistic, meaningful deadlines and procedures adapted to the needs of each case for customized, quality outcomes. The Business Court will develop a body of rulings from which lawyers and litigants can better predict and assess outcomes in business cases. Non-business case dockets, as well, will benefit from the removal of complex and time-consuming business cases from the general docket.

To launch this initiative, the Tennessee Supreme Court designates the existing Davidson County Chancery Court Part III to serve as the Business Court; to gather data and information; and to identify best practices for development of potential future Tennessee Business Courts.

The Business Court is established as follows:

1. Eligible Cases – The criteria for assignment or transfer to the Business Court are these:
  - a. Civil cases filed on or after May 1, 2015, and
  - b. Cases in which at least \$50,000 compensatory damages are alleged, or claims seeking primarily injunctive or declaratory relief, and
  - c. Cases which satisfy one or more of the following:
    - i. relate to the internal affairs of businesses (i.e., corporations, limited liability companies, general partnerships, limited liability partnerships, sole proprietorships, professional associations, real estate investment trusts, and joint ventures), including the rights or obligations between or among shareholders, partners, and

- members, or the liability or indemnity of officers, directors, managers, trustees or partners;
- ii. involve claims of breach of contract, fraud, misrepresentation, breach of fiduciary duty or statutory violations between businesses arising out of business transactions or relationships;
  - iii. constitute a shareholder derivative or commercial class action;
  - iv. involve commercial real property disputes other than residential landlord-tenant disputes and foreclosures;
  - v. involve business claims between or among two or more business entities or individuals as to their business or investment activities relating to contracts, transactions, or relationships between or among them;
  - vi. arise from technology licensing agreements, including software and biotechnology licensing agreements, or any agreement involving the licensing of any intellectual property right, including patent rights;
  - vii. constitute an action alleging violations of a noncompete, non-solicitation, or confidentiality agreement, or an antitrust, trade secret, or securities-related action;
  - viii. commercial construction contract disputes and/or commercial construction defect claims.

2. Excluded Cases – The following cases are excluded from the Business Court:

- a. personal injury or wrongful death;
- b. professional malpractice claims, other than those brought in connection with the rendering of professional services to a business enterprise;
- c. residential landlord-tenant matters, including residential foreclosure actions;
- d. employee/employer disputes, except where pendent or incidental to the matters listed in Section 2 above;
- e. health care liability;
- f. the sole claim is a professional fee dispute;
- g. where the State of Tennessee is a party;
- h. administrative appeals from a State or County Agency, including tax and zoning matters.

3. Case Assignment

a. Request for Designation to the Business Court

- i. Within 60 days of the date of service of a complaint on a defendant, any party may file with the Business Court a *Request for Designation* of the case to the Business Court. Upon the recommendation of the Business Court Judge, the Chief Justice shall determine whether a case meets the eligibility criteria set forth above. If the case meets the eligibility criteria, the Chief Justice may transfer the case to the Business Court. All

objections to assignment of the case to the Business Court, except eligibility, must be filed with the Chief Justice within 30 days of the entry of the order transferring the case to the Business Court.

ii. The filing of a *Request for Designation* certifies that the case meets the criteria for assignment to the Business Court provided above in Sections 1 and 2 and shall be in a form approved by this Court.

b. Cases Outside of Davidson County – In addition to Section 3(a), cases filed in any other county in Tennessee on or after May 1, 2015 may be transferred at the discretion of the Chief Justice to the Business Court if all parties file with the Chief Justice: (1) a motion to transfer the case to the Business Court and (2) a *Joint Consent and Waiver of Venue Form* in a form approved by this Court.

#### 4. Rules and Procedures

The Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence shall apply to the Business Court. In addition, the Business Court shall have broad discretion to establish Rules of the Business Court, consistent with Rule 18, Rules of the Supreme Court, and to develop case management procedures to allow for more efficient handling of cases and produce quicker resolutions with reduced litigation pursuant to Rule 16 of the Tennessee Rules of Civil Procedure.

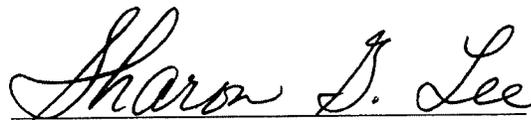
5. Technology

Technology, particularly electronic filing and video conferencing, as it becomes available in Davidson County Chancery Court, shall be used in the Business Court. Noteworthy and informative Business Court decisions shall be posted on the website of the Davidson County Clerk and Master's Office to assist lawyers and litigants in assessing and predicting outcomes in business issues.

6. Performance Evaluations

In an effort to more effectively meet the litigation needs of existing and future businesses in this State, this Court shall create performance evaluation forms to be completed by the attorneys and litigants in the Business Court for submission to the Administrative Office of the Courts, which shall report the results thereof to the Tennessee Supreme Court. These performance evaluations shall serve as a valuable tool to evaluate and identify the effectiveness, efficiency, and best practices of the Business Court.

It is so Ordered.

  
SHARON G. LEE, CHIEF JUSTICE

## APPENDIX B

### List of Advisory Commission Members

# SUPREME COURT LAUNCHES RULES COMMISSION FOR BUSINESS COURT

July 7, 2015

A newly established advisory commission of eight leading attorneys from across Tennessee and an appellate court judge will provide input for processes and procedures for the state's Business Court Pilot Project.

Members of the Commission are:

**Judge Neal McBrayer, Chairperson**  
Court of Appeals, Middle Section  
Nashville

**Celeste H. Herbert**  
Jones, Meadows & Wall  
Knoxville

**David A. Golden**  
Eastman Chemical Company  
Kingsport

**Tim Warnock**  
Riley, Warnock & Jacobson  
Nashville

**Pat Moskal**  
Bradley Arant Boult Cummings LLP  
Nashville

**Scott Carey**  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
Nashville

**Bill Tate**  
Howard Tate Sowell Wilson Leathers & Johnson PLLC  
Nashville

**Jef Feibelman**  
Burch, Porter & Johnson PLLC  
Memphis

**Charles Tuggle**  
First Horizon National Corporation  
Memphis

"We are committed to the success of the Business Court and will continue to monitor it carefully so that we can make any necessary adjustments along the way," Chief Justice Lee said. "The members of this Commission, who have graciously agreed to serve, have the specialized skills and knowledge needed to assist in guiding the Business Court."

The Business Court Pilot Project was established in March by the Supreme Court in Davidson County Chancery Court, Part III and Chancellor Ellen Lyle was designated as the judge. The Supreme Court created this court to handle the special litigation needs of existing and future businesses in Tennessee by providing expedited resolution of business cases by a judge who is experienced and has expertise in handling complex commercial cases.

The court began taking cases in May of this year. More information about the Business Court can be found [here](#).



*From left, Scott Carey, Pat Moskal, Bill Tate, Judge Neal McBrayer, Tim Warnock, and Celeste H. Herbert are members of the Business Court Rules Commission. Not pictured: Jef Feibelman, David A. Golden, and Charles Tuggle.*

## APPENDIX C

Advisory Commission's March 14, 2016 Letter



## COURT OF APPEALS

CHAMBERS OF  
W. NEAL McBRAYER  
JUDGE

STATE OF TENNESSEE  
MIDDLE SECTION

203 SUPREME COURT BUILDING  
401 SEVENTH AVENUE, NORTH  
NASHVILLE, TENNESSEE 37219-1407  
(615) 741-2063 FAX: (615) 741-9880

March 14, 2016

VIA ELECTRONIC AND  
FIRST CLASS MAIL

The Honorable Sharon G. Lee  
Chief Justice of the Supreme Court of Tennessee  
P.O. Box 444  
Knoxville, TN 37901-0444

Re: Report from the Business Court Rules Advisory Commission

Dear Madam Chief Justice:

At the February meeting, the Business Court Rules Advisory Commission voted in favor of reporting to you on the work of the Commission to date and particularly on recommendations concerning the eligibility requirements for cases placed on the business case docket. This letter is intended to serve as the Commission's report, but of course, I would be happy to discuss any topic covered below in further detail or any other matter of interest at your convenience.

Although the Commission has only met three times, we have been productive. In consultation with Chancellor Ellen Hobbs Lyle, the Commission set two initial objectives. First, the Commission desired to develop an evaluation survey for those with cases assigned or transferred to the business case docket. Second, the Commission desired to examine the case eligibility criteria to determine whether any adjustments might be beneficial. To accomplish these objectives, two working groups were formed and charged with pursuing each objective between Commission meetings and reporting on their progress. Both working groups have now completed their tasks, and the Commission has approved their respective reports.

As you know, the order establishing the Davidson County Business Court Pilot Project directed the creation of "performance evaluation forms to be completed by the attorneys and litigants in the Business Court for submission to the Administrative Office of the Courts, which shall report the results thereof to the Tennessee Supreme Court." The evaluation survey working group, led by Celeste Herbert, developed survey questions, and the AOC placed the survey online. It is this online survey to which attorneys are directed once their cases are concluded.

As of February 26 of this year, we had twenty-one survey responses. We know from the monthly reports from the Business Court that thirteen cases assigned to the docket had been concluded as of the

Letter to The Honorable Sharon G. Lee

March 14, 2016

Page 2

end of February, so we seem to have good participation so far. All the responses have been from attorneys and not litigants, so if this proves to be a trend, the Commission may need to address how litigant participation in the survey can be encouraged going forward.

Although the population size is small, the survey responses are encouraging and suggest that the business court concept is meeting its objectives as outlined in the Supreme Court's order. I intend to review the responses in a summary fashion with Chancellor Lyle this week; as promised to the survey participants, the information will be presented in a manner that preserves confidentiality.

The eligibility criteria working group, led by Jef Feibelman, reviewed the case criteria set forth in the Supreme Court's order. The working group studied the criteria from the standpoint of whether the criteria would identify those cases that are truly "complex" and that would benefit from proactive, hands-on case management. After completing the study, the working group suggested several changes to the criteria, which the Commission approved for recommendation to the Supreme Court. The recommendations are as follows:

- Under the "Eligible Cases" language of the order, 1(b), revise the language to provide as follows: "Cases in which there is an allegation that at least \$100,000 in compensatory damages are at issue or cases seeking primarily injunctive or declaratory relief."
- Under the "Eligible Cases" language of the order, 1(c), delete current subparts iv and v.
- Under the "Excluded Cases" language of the order, (g), revise the language to provide as follows: "cases in which the State of Tennessee or any other government or governmental agency is a party."

The recommended change to the language of 1(b) is intended to encourage litigants to allege a specific damage amount if they seek assignment or transfer to the business case docket. Although the majority of the cases before the business court are eligible based on a request for injunctive or declaratory relief, the Commission believes the popularity of the business case docket justifies a higher damage threshold. A higher damage threshold might also serve to exclude cases that lack complexity.

The members of the working group and the Commission as a whole found subparts iv and v of 1(c) to be somewhat duplicative of other subparts. The additional language in (g) under "Excluded Cases" was a recommendation made by Chancellor Lyle and adopted by the working group.

The eligibility criteria working group also studied a potential change to the case assignment process, but the potential change has not yet been fully considered by the Commission. I bring it to your attention now only because the Supreme Court may want to consider the change if it elects to make further orders relative to the business case docket.

Currently under the Supreme Court's order, after a request for designation of a case, "[u]pon the recommendation of the Business Court Judge, the Chief Justice shall determine whether a case meets the eligibility criteria set forth above" and then may transfer the case to the business case docket. Given the difficulty in crafting criteria that would include all cases appropriate for the business case

Letter to The Honorable Sharon G. Lee

March 14, 2016

Page 3

docket and exclude inappropriate cases, the working group proposed that the business court judge make the initial determination of whether a case met the eligibility criteria and, if so, a recommendation to you that the case either be accepted or rejected for the business case docket. The idea behind such a change is that there may be cases that satisfy the eligibility criteria but nonetheless lack the complexity to justify assignment to a specialized docket. Of course, you would maintain the discretion to accept or reject the recommendation of the business court judge.

In closing this report, I must add that it has been an honor serving on the Commission and working with such a dedicated group of attorneys. I also wish to thank Director Tate and her staff for their support of the Commission and Chancellor Lyle and her staff, particularly Justin Seamon, for their hard work.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Neal McBrayer". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

W. Neal McBrayer

cc: AOC Director Deborah Taylor Tate  
Chancellor Ellen Hobbs Lyle

## APPENDIX D

### Tennessee Business Court Docket Evaluation Survey Form



9. Please explain why a non-suit was taken. \_\_\_\_\_  
\_\_\_\_\_

10. Was the case resolved in your favor?

- Yes
- No

11. Was the Business Court Docket a cost effective way to resolve your dispute?

- Yes
- No

12. What made it cost effective? \_\_\_\_\_  
\_\_\_\_\_

13. Do you have any suggestions on how to improve cost-effectiveness in the Business Court Docket? \_\_\_\_\_  
\_\_\_\_\_

14. The Business Court's handling of your case was,

- Quicker than the regular court.
- The same as the regular court.
- Slower than the regular court.

15. How would you rate the level of judicial involvement in your case?

- There was a proper amount of judicial involvement.
- More judicial involvement was needed.
- Less judicial involvement was needed.
- I am dissatisfied with the amount of judicial involvement.

16. How would you rate the level of case management in your case?

- There was a proper amount of case management.
- More case management was needed.
- Less case management was needed.
- I am dissatisfied with the amount of case management.

17. Given the opportunity, would you utilize the Business Court Docket again?

- Yes
- No

18. On a scale of 1 to 5 with 1 being completely dissatisfied and 5 being completely satisfied, rate your level of satisfaction with the way your motions are presented in the Business Court Docket.

1      2      3      4      5

Additional Comments \_\_\_\_\_  
\_\_\_\_\_

19. On a scale of 1 to 5 with 1 being completely dissatisfied and 5 being completely satisfied, rate your level of satisfaction with the way the court handled discovery in the Business Court Docket.

1      2      3      4      5       N/A

Additional Comments \_\_\_\_\_  
\_\_\_\_\_

20. Are you satisfied with the case criteria for assignment or transfer of cases to the Tennessee Business Court Docket?

- Yes
- No

21. Would it be beneficial for the case criteria for assignment or transfer to include cases with alleged compensatory damages under \$50,000?

- Yes
- No

Additional Comments \_\_\_\_\_  
\_\_\_\_\_

22. In the alternative, do you believe the criteria for assignment or transfer should include an alleged amount of compensatory damages higher than \$50,000?

- Yes
- No

Additional Comments \_\_\_\_\_  
\_\_\_\_\_

23. Are you willing to share the compensatory damages amount received, if any, by your client at the resolution of the case?

- Yes
- No
- No compensatory damages
- Not applicable

Additional Comments \_\_\_\_\_  
\_\_\_\_\_

24. What was the compensatory damages amount received? \_\_\_\_\_
25. Would you favor an option of selecting a specific case management track for your case such as (1) Business Expedited – goal of resolution between 7 to 10 months; (2) Business Standard – goal of resolution between 10 to 12 months; (3) Business Complex – goal of resolution between 12 to 15 months?
- Yes
  - No
  - No preference

26. On a scale of 1 to 5 with 1 being completely dissatisfied and 5 being completely satisfied, rate your level of satisfaction with your Business Court experience.
- 1      2      3      4      5

27. Please explain the basis of your answer to the prior question.
- \_\_\_\_\_
- \_\_\_\_\_

28. Based on your experience with the Tennessee Business Court, would you prefer:
- That the program be kept as is with no changes.
  - That the program be kept, but changes should be made.
  - That the pilot program be discontinued.

Comments on changes that should be made: \_\_\_\_\_  
\_\_\_\_\_

29. Would you be willing to discuss your Business Court experience with members of the Tennessee Business Court Rules Advisory Commission?
- Yes
  - No

If so, provide your contact information here: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

30. Feel free to share any other comments about your Business Court experience here:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

31. Do you give permission for the Administrative Office of the Courts to quote your comment(s) without attribution in future publications about the Business Court Pilot Project Docket?

- Yes
- No

## APPENDIX E

### Sample Letter To Pilot Project Participants



# *Supreme Court of Tennessee*

Administrative Office of the Courts  
Nashville City Center, Suite 600  
511 Union Street  
Nashville, Tennessee 37219  
615 / 741-2687 or 800 / 448-7970  
FAX 615 / 741-6285

DEBORAH TAYLOR TATE  
Director

May 11, 2016

Dear Participating Attorney(s)/Litigant,

We appreciate your participation in the Davidson County Business Court Pilot Project. The Davidson County Business Court docket was created by the Tennessee Supreme Court in March 2015 with the goal of expediting the resolution of complex business and commercial disputes. As an attorney and/or litigant who has participated in the process, we value your feedback and any suggestions you may have for improving the business court docket.

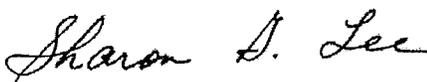
Pursuant to the Tennessee Supreme Court Order No. ADM2015-00467, the Administrative Office of the Courts has created an online performance evaluation form. We ask that you complete a separate evaluation form for each case resolved through the Business Court Pilot Project. To access the evaluation form, please click on the link provided in this email and follow the provided instructions.

Also, attached you will find the names and contact information of the Business Court Rules Advisory Commission members. If you would like to contact any of the members directly to share additional thoughts on the Business Court Pilot Project, feel free to do so.

The online performance evaluations are anonymous. Any identifying information will be kept confidential and will not be provided to Chancellor Lyle or her staff. The information and feedback that you provide will come directly to the Administrative Office of the Courts. Chancellor Lyle and her staff will only receive a compilation of the answers, suggestions, and corresponding statistics, which will be used to meet the needs of business/commercial litigants in the State of Tennessee in the most effective manner possible.

Thank you for contributing to the continued success of the Business Court docket.

Sincerely,

  
Sharon G. Lee  
Chief Justice  
Tennessee Supreme Court

  
Deborah Taylor Tate  
Director  
Administrative Office of the Courts

Enclosure



*Supreme Court of Tennessee*  
**BUSINESS COURT RULES ADVISORY COMMISSION EVALUATION  
CONTACT LIST**

**Celeste H. Herbert**  
Meadows & Wall, PLLC  
706 Walnut Street  
Knoxville, TN 37902  
Office: 865-540-8777  
[chh@jmwlaw.net](mailto:chh@jmwlaw.net)

**David A. Golden**  
Eastman Chemical Company  
200 South Wilcox Drive  
Kingsport, TN 37660  
Office: 423-229-2000  
[dgolden@eastman.com](mailto:dgolden@eastman.com)

**Tim L. Warnock**  
Riley, Warnock & Jacobson, PLC  
1906 West End Avenue  
Nashville, TN 37203  
Office: 615-320-3700 Ext. 115  
[TWarnock@rwjplc.com](mailto:TWarnock@rwjplc.com)

**Patricia Head Moskal**  
Bradley Arant Boult Cummings, LLP  
Roundabout Plaza  
1600 Division Street, Suite 700  
Nashville, TN 37203  
Office: 615-252-2369  
[pmoskal@babco.com](mailto:pmoskal@babco.com)

**Scott D. Carey**  
Baker, Donelson, Bearman, Caldwell &  
Berkowitz, PC  
Baker Donelson Center, Suite 800  
211 Commerce Street  
Nashville, TN 37201  
Office: 615-726-7379  
[scarey@bakerdonelson.com](mailto:scarey@bakerdonelson.com)

**William H. Tate**  
Howard Tate Sowell Wilson Leathers &  
Johnson, PLLC  
201 Fourth Avenue North, Suite 1900  
Nashville, TN 37219  
Office: 615-256-1125  
[whtate@howardtatelaw.com](mailto:whtate@howardtatelaw.com)

**Jef Feibelman**  
Burch, Porter & Johnson PLLC  
130 North Court Avenue  
Memphis, TN 38103  
Office: 901-524-5109  
[jfeibelman@bpilaw.com](mailto:jfeibelman@bpilaw.com)

**Charles T. Tuggle, Jr.**  
First Horizon National Corporation  
165 Madison Avenue  
Memphis, TN 38103  
Office: 901-523-4989  
[ctuggle@firsthorizon.com](mailto:ctuggle@firsthorizon.com)

## APPENDIX F

Advisory Commission's August 4, 2016 Letter



## COURT OF APPEALS

CHAMBERS OF  
W. NEAL McBRAYER  
JUDGE

STATE OF TENNESSEE  
MIDDLE SECTION

203 SUPREME COURT BUILDING  
401 SEVENTH AVENUE, NORTH  
NASHVILLE, TENNESSEE 37219-1407  
(615) 741-2063 FAX: (615) 741-9880

August 4, 2016

VIA ELECTRONIC AND  
FIRST CLASS MAIL

The Honorable Sharon G. Lee  
Chief Justice of the Supreme Court of Tennessee  
P.O. Box 444  
Knoxville, TN 37901-0444

Re: Recommendations from the Business Court Rules Advisory Commission

Dear Madam Chief Justice:

Over the past year, the Business Court Rules Advisory Commission has reviewed the operation of the business case docket in the Twentieth Judicial District, otherwise known as the Business Court Pilot Project. The Pilot Project has been a success, both in terms of the number of requests for designation to and the positive response of attorneys who have appeared on the business case docket. Although not many of the designated cases have reached final disposition, the evaluation responses show that nearly 73% of respondents found their experience with the business case docket to be better than their experience with the regular dockets of circuit and chancery courts in Tennessee.

In light of the Pilot Project's success and your invitation, the Commission respectfully submits the following recommendations to the Supreme Court regarding the Pilot Project. These recommendations can be broadly categorized as recommendations concerning the business case docket itself and recommendations concerning the work of the Commission.

### The Business Case Docket

The Commission recommends that the business case docket be continued as a pilot project in the Twentieth Judicial District, with a projected deadline for the pilot to conclude and at least three suggested goals. The first recommended goal would be to determine the appropriate weight to be given a business court case for purposes of managing a judge's overall workload. The Commission believes that the determination of the appropriate case weight is an essential first step to creating business case dockets in other judicial districts. Currently, Chancellor Ellen Hobbs Lyle is carrying out her responsibilities using a one-to-one ratio (i.e., assuming a business court case is just as labor intensive as any other case filed in chancery court). The Commission finds such an approach unsustainable if a business case docket is "to provide expedited resolution of business cases" and "proactive, hands-on case management."

Letter to The Honorable Sharon G. Lee  
August 4, 2016  
Page 2

There are several reasons why a business docket case should be treated as having more weight than a typical court case. First, as recognized by the Court's order, the business case docket is designed for complex business and commercial disputes that are "time-consuming." Second, to deliver the promise of expedited resolutions and "meaningful deadlines and procedures adapted to the needs of each case," more is required of the judge, particularly at the early stages of the case. Finally, the business case docket requires more of the judge administratively and substantively. For example, the judge is expected to "develop a body of rulings from which lawyers and litigants can better predict and assess outcomes in business cases." This requires well-researched, written opinions of sufficient detail and scholarship so that the bar and litigants can determine whether a factual situation is analogous to the previously decided matter.

The second recommended goal of the extended pilot would be determining how a business case docket might be managed with multiple judges hearing business cases. To reach this goal, the Court would assign a second judge to hear business court cases. The Commission believes that a second judge would be beneficial in several respects. First, as noted above, business cases are time-consuming, but the Pilot Project promises expedited resolutions. Having a second business court judge available would allow the workload to be shared and help in delivering expedited resolutions. Second, the addition of another judge will accommodate a single judge's recusal without barring litigants from continuing on the business case docket. Finally, the addition of another assignment judge will allow us to test how much of the success of the business case docket is tied to new procedures for dealing with business cases, as opposed to a preference of appearing before any one judge.

The third recommended goal of the extended pilot would be refining the eligibility criteria for business cases. As you know, in March of this year, the Commission recommended certain changes to the Court's order creating the Pilot Project. Specifically, the Commission proposed changes to the case eligibility criteria, including revisions to the lists of "Eligible Cases" and "Excluded Cases," and changes to the description of how cases are designated for the business case docket. An extended pilot would give the Court an opportunity to gauge how these changes might impact the volume of cases designated to the business case docket. The Commission continues to recommend its previously proposed changes to the case criteria.

The Commission also recommends that the Court consider funding a judicial law clerk position dedicated to the business case docket. The dedicated law clerk's primary function would be aiding the judges assigned to the business case docket in researching and drafting rulings. We would also envision the dedicated law clerk assisting with the business court webpage by organizing "noteworthy and informative Business Court decisions" by topic or topics.

#### The Work of the Commission

The Commission recommends that its role be further defined by the Court. The name "Business Court Rules Advisory Commission" is somewhat of a misnomer given the order creating the Pilot Project provided that the Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence apply to the Business Court. Although the Business Court was given discretion to establish "Rules of the Business Court," such rules have not appeared necessary, certainly at this early stage of the pilot. Instead of focusing on rules, the Commission has spent much of its time developing an evaluation survey for

Letter to The Honorable Sharon G. Lee  
August 4, 2016  
Page 3

attorneys and litigants, reviewing evaluation results, and studying the case eligibility criteria. Such a portfolio may have been intended by the Court, but if so, we have acted more as an "Advisory Commission" and less as a "Rules Advisory Commission."

One potential role for the Commission might be assisting with the preparation of a report to the Governor and Legislature on the Pilot Project. When the Commission was first formed, every member was contacted by Speaker of the House Beth Harwell about her interest in the Pilot Project, and the Commission believes the timing may be appropriate to make a formal report during the next legislative session.

In terms of membership, the Commission recommends that terms be established for members, particularly if the Court decides to extend the pilot. If the pilot expands to other judicial districts, the Commission might benefit from a broader makeup depending on where the pilot expands. The Commission also recommends increasing its membership to include an academician, who could serve the important role of reporter of evaluation results.

In closing, thank you for this opportunity to make recommendations on the future of the Pilot Project. The Commission looks forward to assisting with the project as the Court may direct.

Sincerely,



W. Neal McBrayer

cc: Hon. Cornelia A. Clark (via email)  
Hon. Jeffrey S. Bivins (via email)  
Hon. Holly Kirby (via email)  
Hon. Roger A. Page (via email)  
Hon. Ellen Hobbs Lyle (via email)  
AOC Director Deborah Taylor Tate (via email)  
Business Court Rules Advisory Commission (via email)

## APPENDIX G

Monthly Business Court Pilot Project Report  
October 2016

# Monthly Business Court Pilot Project Report – October 2016

## 1. Running Total for Requests for Designation to Business Court Pilot Project

(a) Number of Requests Filed Since Pilot Project Inception:	101
• Davidson County:	92
• Non-Davidson County:	9
(b) Number of Requests Granted Since Pilot Project Inception:	89
• Davidson County:	81
• Non-Davidson County:	8
(c) Number of Requests Denied Since Pilot Project Inception:	12
• Davidson County:	11
• Non-Davidson County:	1
(d) Number of Objections Filed with Chief Justice Since Pilot Project Inception:	2
• Davidson County:	2
• Non-Davidson County:	0
(e) Number of Objections Granted by Chief Justice Since Pilot Project Inception:	1
• Davidson County:	1
• Non-Davidson County:	0
(f) Number of Objections Denied by Chief Justice Since Pilot Project Inception:	1
• Davidson County:	1
• Non-Davidson County:	0
(g) Number of Pilot Project Cases Disposed Since Inception:	34
• Davidson County:	33
• Non-Davidson County:	1
(h) Total Number of Pending Pilot Project Cases:	55
• Davidson County:	48
• Non-Davidson County:	7

## 2. Average Requests For Designation Filed Per Month Overall –5.61 per month

- Average Requests For Designation Filed Per Month In 2015 – 5.12 per month
- Average Requests For Designation Filed Per Month In 2016 – 6.00 per month

- May 2015 – 3
- June 2015 – 3

- (c) July 2015 – 7
- (d) August 2015 – 6
- (e) September 2015 – 10
- (f) October 2015 – 0
- (g) November 2015 – 4
- (h) December 2015 – 8
- (i) January 2016 – 4
- (j) February 2016 – 8
- (k) March 2016 – 4
- (l) April 2016 – 8
- (m) May 2016 – 3
- (n) June 2016 – 9
- (o) July 2016 – 4
- (p) August 2016 – 13
- (q) September – 6
- (r) October – 1

**3. Monthly Totals for October 2016**

(a) Number of Requests Filed in October 2016:	1
• Davidson County:	1
• Non-Davidson County:	0
 (b) Number of Requests Granted in October 2016:	 1
• Davidson County:	1
• Non-Davidson County:	0
 (c) Number of Requests Denied in October 2016:	 0
• Davidson County:	0
• Non-Davidson County:	0
 (d) Number of Objections Filed with Chief Justice in October 2016:	 0
• Davidson County:	0
• Non-Davidson County:	0
 (e) Number of Objections Granted by Chief Justice in October 2016:	 0
• Davidson County:	0
• Non-Davidson County:	0
 (f) Number of Objections Denied by Chief Justice in October 2016:	 0
• Davidson County:	0
• Non-Davidson County:	0

- |   |   |
|---|---|
| (g) Number of Pilot Project Cases Disposed in October 2016: | 2 |
| • Davidson County:  | 2 |
| • Non-Davidson County:                                      | 0 |

4. **October 2016 Monthly Outreach**

- (a) Seamon updates spreadsheet to track Business Court Pilot Project cases in October 2016

5. **Total Money Spent**

- (a) October 2016: \$0  
(b) Year 2016: \$1,095.00  
(c) Mileage 2016: 128  
(d) Since Inception of Pilot Project: \$1,438.35  
(e) Mileage Since Inception of Pilot Project: 1,103 miles

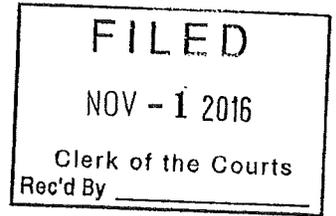
APPENDIX H

Supreme Court Supplemental Order  
November 1, 2016

**IN THE SUPREME COURT OF TENNESSEE**

**No. ADM2015-00467**

**SUPPLEMENTAL ORDER REGARDING  
THE BUSINESS COURT DOCKET PILOT PROJECT**



The Business Court Docket Pilot Project will continue with its existing caseload,  
pending further orders of the Court. It is so ordered.

  
\_\_\_\_\_  
JEFFREYS. BIVINS, CHIEF JUSTICE

## APPENDIX I

### Monthly Business Court Pilot Project Report January 2017

## Monthly Business Court Pilot Project Report – January 2017

### 1. Running Total for Requests for Designation to Business Court Pilot Project

(a) Number of Requests Filed Since Pilot Project Inception:	104
• Davidson County:	95
• Non-Davidson County:	9
(b) Number of Requests Granted Since Pilot Project Inception:	89
• Davidson County:	81
• Non-Davidson County:	8
(c) Number of Requests Denied Since Pilot Project Inception:	12
• Davidson County:	11
• Non-Davidson County:	1
(d) Number of Requests Deferred Since October 31, 2016:	3
• Davidson County:	3
• Non-Davidson County:	0
(e) Number of Objections Filed with Chief Justice Since Pilot Project Inception:	2
• Davidson County:	2
• Non-Davidson County:	0
(f) Number of Objections Granted by Chief Justice Since Pilot Project Inception:	1
• Davidson County:	1
• Non-Davidson County:	0
(g) Number of Objections Denied by Chief Justice Since Pilot Project Inception:	1
• Davidson County:	1
• Non-Davidson County:	0
(h) Number of Pilot Project Cases Disposed Since Inception:	48
• Davidson County:	46
• Non-Davidson County:	2
(i) Total Number of Pending Pilot Project Cases:	41
• Davidson County:	35
• Non-Davidson County:	6

2. **Average Requests For Designation Filed Per Month Overall –5.61 per month**  
 a. Average Requests For Designation Filed Per Month In 2015 – 5.12 per month  
 b. Average Requests For Designation Filed Per Month In 2016 – 6.00 per month

- (a) May 2015 – 3
- (b) June 2015 – 3
- (c) July 2015 – 7
- (d) August 2015 – 6
- (e) September 2015 – 10
- (f) October 2015 – 0
- (g) November 2015 – 4
- (h) December 2015 – 8
- (i) January 2016 – 4
- (j) February 2016 – 8
- (k) March 2016 – 4
- (l) April 2016 – 8
- (m) May 2016 – 3
- (n) June 2016 – 9
- (o) July 2016 – 4
- (p) August 2016 – 13
- (q) September 2016 – 6
- (r) October 2016 – 1

3. **Deferred Requests For Designation to Business Court Pilot Project**

- (a) November 2016 – 1
- (b) December 2016 – 1
- (c) January 2017 – 1

4. **Monthly Totals for January 2017**

- (a) Number of Requests Filed in January 2017: 1
  - Davidson County: 1
  - Non-Davidson County: 0
- (b) Number of Requests Granted in January 2017: 0
  - Davidson County: 0
  - Non-Davidson County: 0
- (c) Number of Requests Denied in January 2017: 0
  - Davidson County: 0
  - Non-Davidson County: 0

(d) Number of Objections Filed with Chief Justice in January 2017:	0
• Davidson County:	0
• Non-Davidson County:	0
(e) Number of Objections Granted by Chief Justice in January 2017:	0
• Davidson County:	0
• Non-Davidson County:	0
(f) Number of Objections Denied by Chief Justice in January 2017:	0
• Davidson County:	0
• Non-Davidson County:	0
(g) Number of Pilot Project Cases Disposed in January 2017:	4
• Davidson County:	4
• Non-Davidson County:	0

5. **January 2017 Monthly Outreach**

(a) Seamon updates spreadsheet to track Business Court Pilot Project cases in January 2017

6. **Total Money Spent**

- (a) January 2017: \$0
- (b) Year 2017: 0
- (c) Mileage 2017: 0
- (d) Since Inception of Pilot Project: \$1,438.35
- (e) Mileage Since Inception of Pilot Project: 1,117 miles

## APPENDIX J

Advisory Commission's January 11, 2017 Letter



Patricia Head Moskal  
Partner  
Direct: 615.252.2369  
pmoskal@bradley.com

January 11, 2017

*Via Electronic and U.S. Mail*

The Honorable Jeffrey S. Bivins  
Chief Justice of the Tennessee Supreme Court  
Supreme Court Building, Suite 321  
401 Seventh Avenue North  
Nashville, TN 37219-1407

Re: Recommendations from the Business Court Rules Advisory Commission

Dear Mr. Chief Justice:

On behalf of the Business Court Rules Advisory Commission and at your invitation, the Advisory Commission has continued to study the Davidson County Business Court Pilot Project and respectfully submits the following supplemental recommendations regarding the Pilot Project for the Supreme Court's consideration. In the interest of time, we are providing these recommendations to you by letter, to be followed by a more comprehensive report from the Advisory Commission in the near future. In the interim, we would welcome the opportunity to discuss these recommendations or any other matters with you at your convenience.

The following recommendations are cumulative, consisting of our current recommendations that build on the recommendations previously submitted by former Advisory Commission Chair, the Honorable W. Neal McBrayer, by letters dated March 14, 2016 and August 4, 2016, additional copies of which are attached for your reference.

A. Continue the Davidson County Business Court Pilot Project. The Advisory Commission remains strongly in favor of continuing the Pilot Project for a period of at least six months to continue evaluating the Business Court docket, how it might be improved, how to utilize more than one assignment judge, and to explore the potential for expanding the business court docket to other jurisdictions in the future.

B. Revise Criteria for "Eligible Cases," "Excluded Cases," and "Case Assignment." Due to the large volume of cases transferred to the Business Court docket and based on the Advisory Commission's continuing review of the eligibility criteria, the complexity of the business cases transferred, and the case criteria applied by other states with specialized business courts, the Advisory Commission recommends the following revisions to the eligibility criteria. These revisions are proposed with a view toward insuring that the issues presented in the cases being transferred are sufficiently complex to warrant transfer to the Business Court docket and that the volume of cases can be sustained during the continuation of the Business Court Pilot Project.

1. Increase the dollar amount in controversy threshold from “\$50,000” to “\$250,000;”
2. Remove from current list of “Eligible Cases” and move to “Excluded Cases:”
  - (i) claims involving breach of contract, fraud, and/or misrepresentation unless pendent or incidental to other commercial claims that are sufficiently complex
  - (ii) commercial real property disputes
  - (iii) business claims between or among two or more business entities
  - (iv) actions alleging violations of or interference with noncompete, nonsolicitation, or confidentiality agreements, unless pendent or incidental to other commercial claims that are sufficiently complex
  - (iv) commercial construction contract disputes and/or commercial construction defect claims
3. Add to “Eligible Cases:”
  - (vi) involve claims that present sufficiently complex commercial issues that would have implications for larger business community as recommended by Business Court Judge and determined within the discretion of the Chief Justice.
4. Add to “Excluded Cases:”
  - g. cases in which the State of Tennessee or other government or government agency is a party;
    1. cases involving violations of Tennessee Consumer Protection Act.
5. Revise the Case Assignment provisions to reduce the time period for requesting designation to the Business Court docket from sixty (60) to thirty (30) days and to provide for service of requests and transfer orders on all parties.

For ease of review, please note that we enclose a redlined version of excerpted portions of the Supreme Court’s Administrative Order of March 16, 2015, reflecting our specific recommendations for the Court’s consideration regarding “Eligible Cases,” “Excluded Cases” and “Case Assignment.”

C. Recognize Discretion by the Chief Justice in Transferring Cases. The Advisory Commission recommends that the Chief Justice exercise his discretion in determining whether a case for which business court transfer is sought is sufficiently complex and would benefit from proactive case management and expedited disposition so as to warrant transfer to Business Court docket.

D. Study and Evaluate the Weighting of Business Court Docket Caseload. Presently the transfer ratio from the regular Chancery Court docket to the Business Court docket is a one-to-one ratio, per administrative order of Davidson County Chancery Court. The Advisory Commission recommends that there is a need to study and evaluate the proper caseload weighting for cases that are transferred to the Business Court docket to ensure the sustainability of the Business Court docket caseload during the continuation of the Pilot Project.

E. Suggest a Sustainable Number of New Business Court Docket Cases. The Advisory Commission suggests that, during the continuation phase of the Pilot Project, a sustainable number of business court docket cases for a single judge, in addition to a regular caseload and using existing resources, appears to be in the range of 3-4 new cases per month, with a target maximum caseload of 36 cases. The Advisory Commission further suggests, however, that the total number of new cases designated for the Business Court docket that otherwise meet the eligibility criteria, as may be revised, should be left to the discretion of the Chief Justice during the remainder of the Pilot Project.

F. Designate Additional Assignment Judges and Settlement Judges. The Advisory Commission continues to recommend that the Chief Justice designate one or more sitting Davidson County Chancellors, Davidson County Circuit Court Judges, and/or Senior Judges as additional Business Court docket assignment judges to hear and decide Business Court docket cases on an as needed basis to facilitate management of the Business Court docket during the remainder of the Pilot Project. In addition, the Advisory Commission finds and recommends that at least one alternate assignment judge is needed in the event of a recusal situation and/or to serve as a settlement conference judge for Business Court docket cases.

G. Establish a Staff Attorney Position and Additional Administrative Staff Dedicated to Business Court Docket. The Advisory Commission continues to recommend that given the significant research and writing activities necessitated by Business Court docket cases, one staff attorney position and additional administrative staff support should be dedicated to the Business Court docket assignment judges during the continuation of the Pilot Project.

H. Invite Professor Joan Heminway to Serve as an Advisor/Recorder to the Advisory Commission. Professor Joan Heminway at the University of Tennessee College of Law previously volunteered and worked with the Advisory Commission to review and make recommendations regarding the evaluation survey sent to participating attorneys. The Advisory Commission recognizes the value and benefit of having an academician serve as an advisor and recorder to the Commission. The Advisory Commission recommends that Professor Heminway, who has extensive corporate practice experience in addition to her academic expertise, be invited to serve in that voluntary role as a non-voting member of the Advisory Commission. The website link to her bio and curriculum vitae is <http://law.utk.edu/people/joan-heminway>.

The Honorable Jeffrey S. Bivins  
January 11, 2017  
Page 4

I. Future Work of Commission. The Advisory Commission continues to recommend that the name of the Advisory Commission be changed to the "Business Court Docket Advisory Commission" to better reflect the purpose and objectives of the Advisory Commission. We also recommend that the Commission be authorized to establish its internal governance or by-laws, such as establishing terms of service on the Commission and method of selecting the chairperson, subject to approval by the Supreme Court. Finally, the Advisory Commission is available to assist the Supreme Court with preparing such reports as may be appropriate regarding the Business Court Pilot Project.

Thank you for the opportunity to submit these recommendations regarding the next phase of the Business Court Pilot Project. The Advisory Commission looks forward to being of further assistance to the Supreme Court as the Court may direct and to the continued success of the Business Court Pilot Project.

Sincerely,



Patricia Head Moskal, Interim Chair  
Business Court Rules Advisory Commission

PHM/sc  
Enclosures

cc: Hon. Cornelia A. Clark (via email w/enclosures)  
Hon. Sharon G. Lee (via email w/enclosures)  
Hon. Holly Kirby (via email w/enclosures)  
Hon. Roger A. Page (via email w/enclosures)  
Hon. Ellen Hobbs Lyle (via email w/enclosures)  
AOC Director Deborah Taylor Tate (via email w/enclosures)  
Business Court Rules Advisory Commission Members (via email w/enclosures)



## COURT OF APPEALS

STATE OF TENNESSEE

MIDDLE SECTION

CHAMBERS OF  
W. NEAL McBRAYER  
JUDGE

203 SUPREME COURT BUILDING  
401 SEVENTH AVENUE, NORTH  
NASHVILLE, TENNESSEE 37219-1407  
(615) 741-2063 FAX: (615) 741-9880

March 14, 2016

VIA ELECTRONIC AND  
FIRST CLASS MAIL

The Honorable Sharon G. Lee  
Chief Justice of the Supreme Court of Tennessee  
P.O. Box 444  
Knoxville, TN 37901-0444

Re: Report from the Business Court Rules Advisory Commission

Dear Madam Chief Justice:

At the February meeting, the Business Court Rules Advisory Commission voted in favor of reporting to you on the work of the Commission to date and particularly on recommendations concerning the eligibility requirements for cases placed on the business case docket. This letter is intended to serve as the Commission's report, but of course, I would be happy to discuss any topic covered below in further detail or any other matter of interest at your convenience.

Although the Commission has only met three times, we have been productive. In consultation with Chancellor Ellen Hobbs Lyle, the Commission set two initial objectives. First, the Commission desired to develop an evaluation survey for those with cases assigned or transferred to the business case docket. Second, the Commission desired to examine the case eligibility criteria to determine whether any adjustments might be beneficial. To accomplish these objectives, two working groups were formed and charged with pursuing each objective between Commission meetings and reporting on their progress. Both working groups have now completed their tasks, and the Commission has approved their respective reports.

As you know, the order establishing the Davidson County Business Court Pilot Project directed the creation of "performance evaluation forms to be completed by the attorneys and litigants in the Business Court for submission to the Administrative Office of the Courts, which shall report the results thereof to the Tennessee Supreme Court." The evaluation survey working group, led by Celeste Herbert, developed survey questions, and the AOC placed the survey online. It is this online survey to which attorneys are directed once their cases are concluded.

As of February 26 of this year, we had twenty-one survey responses. We know from the monthly reports from the Business Court that thirteen cases assigned to the docket had been concluded as of the

Letter to The Honorable Sharon G. Lee  
March 14, 2016  
Page 2

end of February, so we seem to have good participation so far. All the responses have been from attorneys and not litigants, so if this proves to be a trend, the Commission may need to address how litigant participation in the survey can be encouraged going forward.

Although the population size is small, the survey responses are encouraging and suggest that the business court concept is meeting its objectives as outlined in the Supreme Court's order. I intend to review the responses in a summary fashion with Chancellor Lyle this week; as promised to the survey participants, the information will be presented in a manner that preserves confidentiality.

The eligibility criteria working group, led by Jef Feibelman, reviewed the case criteria set forth in the Supreme Court's order. The working group studied the criteria from the standpoint of whether the criteria would identify those cases that are truly "complex" and that would benefit from proactive, hands-on case management. After completing the study, the working group suggested several changes to the criteria, which the Commission approved for recommendation to the Supreme Court. The recommendations are as follows:

- Under the "Eligible Cases" language of the order, 1(b), revise the language to provide as follows: "Cases in which there is an allegation that at least \$100,000 in compensatory damages are at issue or cases seeking primarily injunctive or declaratory relief."
- Under the "Eligible Cases" language of the order, 1(c), delete current subparts iv and v.
- Under the "Excluded Cases" language of the order, (g), revise the language to provide as follows: "cases in which the State of Tennessee or any other government or governmental agency is a party."

The recommended change to the language of 1(b) is intended to encourage litigants to allege a specific damage amount if they seek assignment or transfer to the business case docket. Although the majority of the cases before the business court are eligible based on a request for injunctive or declaratory relief, the Commission believes the popularity of the business case docket justifies a higher damage threshold. A higher damage threshold might also serve to exclude cases that lack complexity.

The members of the working group and the Commission as a whole found subparts iv and v of 1(c) to be somewhat duplicative of other subparts. The additional language in (g) under "Excluded Cases" was a recommendation made by Chancellor Lyle and adopted by the working group.

The eligibility criteria working group also studied a potential change to the case assignment process, but the potential change has not yet been fully considered by the Commission. I bring it to your attention now only because the Supreme Court may want to consider the change if it elects to make further orders relative to the business case docket.

Currently under the Supreme Court's order, after a request for designation of a case, "[u]pon the recommendation of the Business Court Judge, the Chief Justice shall determine whether a case meets the eligibility criteria set forth above" and then may transfer the case to the business case docket. Given the difficulty in crafting criteria that would include all cases appropriate for the business case

Letter to The Honorable Sharon G. Lee

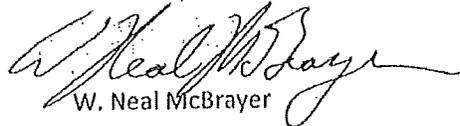
March 14, 2016

Page 3

docket and exclude inappropriate cases, the working group proposed that the business court judge make the initial determination of whether a case met the eligibility criteria and, if so, a recommendation to you that the case either be accepted or rejected for the business case docket. The idea behind such a change is that there may be cases that satisfy the eligibility criteria but nonetheless lack the complexity to justify assignment to a specialized docket. Of course, you would maintain the discretion to accept or reject the recommendation of the business court judge.

In closing this report, I must add that it has been an honor serving on the Commission and working with such a dedicated group of attorneys. I also wish to thank Director Tate and her staff for their support of the Commission and Chancellor Lyle and her staff, particularly Justin Seamon, for their hard work.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Neal McBrayer". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

W. Neal McBrayer

cc: AOC Director Deborah Taylor Tate  
Chancellor Ellen Hobbs Lyle



## COURT OF APPEALS

CHAMBERS OF  
W. NEAL McBRAYER  
JUDGE

STATE OF TENNESSEE  
MIDDLE SECTION

203 SUPREME COURT BUILDING  
401 SEVENTH AVENUE, NORTH  
NASHVILLE, TENNESSEE 37219-1407  
(615) 741-2003 FAX: (615) 741-0880

August 4, 2016

VIA ELECTRONIC AND  
FIRST CLASS MAIL

The Honorable Sharon G. Lee  
Chief Justice of the Supreme Court of Tennessee  
P.O. Box 444  
Knoxville, TN 37901-0444

Re: Recommendations from the Business Court Rules Advisory Commission

Dear Madam Chief Justice:

Over the past year, the Business Court Rules Advisory Commission has reviewed the operation of the business case docket in the Twentieth Judicial District, otherwise known as the Business Court Pilot Project. The Pilot Project has been a success, both in terms of the number of requests for designation to and the positive response of attorneys who have appeared on the business case docket. Although not many of the designated cases have reached final disposition, the evaluation responses show that nearly 73% of respondents found their experience with the business case docket to be better than their experience with the regular dockets of circuit and chancery courts in Tennessee.

In light of the Pilot Project's success and your invitation, the Commission respectfully submits the following recommendations to the Supreme Court regarding the Pilot Project. These recommendations can be broadly categorized as recommendations concerning the business case docket itself and recommendations concerning the work of the Commission.

### The Business Case Docket

The Commission recommends that the business case docket be continued as a pilot project in the Twentieth Judicial District, with a projected deadline for the pilot to conclude and at least three suggested goals. The first recommended goal would be to determine the appropriate weight to be given a business court case for purposes of managing a judge's overall workload. The Commission believes that the determination of the appropriate case weight is an essential first step to creating business case dockets in other judicial districts. Currently, Chancellor Ellen Hobbs Lyle is carrying out her responsibilities using a one-to-one ratio (i.e. assuming a business court case is just as labor intensive as any other case filed in chancery court). The Commission finds such an approach unsustainable if a business case docket is "to provide expedited resolution of business cases" and "proactive, hands-on case management."

Letter to The Honorable Sharon G. Lee  
August 4, 2016  
Page 2

There are several reasons why a business docket case should be treated as having more weight than a typical court case. First, as recognized by the Court's order, the business case docket is designed for complex business and commercial disputes that are "time-consuming." Second, to deliver the promise of expedited resolutions and "meaningful deadlines and procedures adapted to the needs of each case," more is required of the judge, particularly at the early stages of the case. Finally, the business case docket requires more of the judge administratively and substantively. For example, the judge is expected to "develop a body of rulings from which lawyers and litigants can better predict and assess outcomes in business cases." This requires well-researched, written opinions of sufficient detail and scholarship so that the bar and litigants can determine whether a factual situation is analogous to the previously decided matter.

The second recommended goal of the extended pilot would be determining how a business case docket might be managed with multiple judges hearing business cases. To reach this goal, the Court would assign a second judge to hear business court cases. The Commission believes that a second judge would be beneficial in several respects. First, as noted above, business cases are time-consuming, but the Pilot Project promises expedited resolutions. Having a second business court judge available would allow the workload to be shared and help in delivering expedited resolutions. Second, the addition of another judge will accommodate a single judge's recusal without barring litigants from continuing on the business case docket. Finally, the addition of another assignment judge will allow us to test how much of the success of the business case docket is tied to new procedures for dealing with business cases, as opposed to a preference of appearing before any one judge.

The third recommended goal of the extended pilot would be refining the eligibility criteria for business cases. As you know, in March of this year, the Commission recommended certain changes to the Court's order creating the Pilot Project. Specifically, the Commission proposed changes to the case eligibility criteria, including revisions to the lists of "Eligible Cases" and "Excluded Cases," and changes to the description of how cases are designated for the business case docket. An extended pilot would give the Court an opportunity to gauge how these changes might impact the volume of cases designated to the business case docket. The Commission continues to recommend its previously proposed changes to the case criteria.

The Commission also recommends that the Court consider funding a judicial law clerk position dedicated to the business case docket. The dedicated law clerk's primary function would be aiding the judges assigned to the business case docket in researching and drafting rulings. We would also envision the dedicated law clerk assisting with the business court webpage by organizing "noteworthy and informative Business Court decisions" by topic or topics.

#### The Work of the Commission

The Commission recommends that its role be further defined by the Court. The name "Business Court Rules Advisory Commission" is somewhat of a misnomer given the order creating the Pilot Project provided that the Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence apply to the Business Court. Although the Business Court was given discretion to establish "Rules of the Business Court," such rules have not appeared necessary, certainly at this early stage of the pilot. Instead of focusing on rules, the Commission has spent much of its time developing an evaluation survey for

Letter to The Honorable Sharon G. Lee  
August 4, 2016  
Page 3

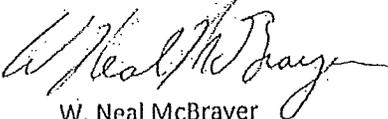
attorneys and litigants, reviewing evaluation results, and studying the case eligibility criteria. Such a portfolio may have been intended by the Court, but if so, we have acted more as an "Advisory Commission" and less as a "Rules Advisory Commission."

One potential role for the Commission might be assisting with the preparation of a report to the Governor and Legislature on the Pilot Project. When the Commission was first formed, every member was contacted by Speaker of the House Beth Harwell about her interest in the Pilot Project, and the Commission believes the timing may be appropriate to make a formal report during the next legislative session.

In terms of membership, the Commission recommends that terms be established for members, particularly if the Court decides to extend the pilot. If the pilot expands to other judicial districts, the Commission might benefit from a broader makeup depending on where the pilot expands. The Commission also recommends increasing its membership to include an academician, who could serve the important role of reporter of evaluation results.

In closing, thank you for this opportunity to make recommendations on the future of the Pilot Project. The Commission looks forward to assisting with the project as the Court may direct.

Sincerely,



W. Neal McBrayer

cc: Hon. Cornelia A. Clark (via email)  
Hon. Jeffrey S. Bivins (via email)  
Hon. Holly Kirby (via email)  
Hon. Roger A. Page (via email)  
Hon. Ellen Hobbs Lyle (via email)  
AOC Director Deborah Taylor Tate (via email)  
Business Court Rules Advisory Commission (via email)

## BUSINESS COURT RULES ADVISORY COMMISSION

### Proposed Changes to Supreme Court's Administrative Order of March 16, 2015 Regarding Eligible Cases, Excluded Cases, and Case Assignment

1. Eligible Cases – The criteria for assignment or transfer to the Business Court Pilot

Project docket are these:

- a. Civil cases filed on or after May 1, 2015 \_\_\_\_\_, and
- b. Cases in which at least ~~\$50,000~~250,000 compensatory damages are alleged; or ~~claims seeking~~ primarily injunctive or declaratory relief, and

~~\_\_\_\_\_~~ c. ~~Cases~~ which also satisfy one or more of the following criteria:

- i. relate to the governance or internal affairs of businesses (i.e., corporations, limited liability companies, general partnerships, limited liability partnerships, sole proprietorships, professional associations, real estate investment trusts, and joint ventures), including the rights or obligations of between or among shareholders, officers, directors, partners, and members, or the liability or indemnity of officers, directors, managers, trustees or partners;
- ii. involve claims of ~~breach of contract, fraud, misrepresentation or~~ breach of fiduciary duty or statutory violations between businesses arising out of business transactions or relationships;
- iii. ~~constitute a shareholder derivative or~~ involve a commercial class action;
- ~~iv. involve commercial real property disputes other than residential landlord-tenant disputes and foreclosures;~~

~~v. involve business claims between or among two or more business entities or individuals as to their business or investment activities relating to contracts, transaction, or relationships between or among them;~~

~~viiiv.~~ arise from technology licensing agreements, including software and biotechnology licensing agreements, or any agreement involving the licensing of any intellectual property right, including patent rights;

~~viiiv.~~ ~~constitute an action alleging violations of noncompete, non-solicitation, or confidentiality agreement, or an~~ claims involving antitrust, trade secrets, or securities-related actions; or

~~viii.~~ ~~commercial construction contract disputes and/or commercial construction defect claims.~~

~~vi.~~ involve claims that present sufficiently complex commercial issues that would have significant implications for the larger business community as recommended by the Business Court Judge and as determined within the discretion of the Chief Justice.

2. Excluded Cases – The following cases are excluded from the Business Court docket:

- a. personal injury or wrongful death;
- b. professional malpractice claims, ~~other than those brought in connection with the rendering of professional services to a business enterprise;~~

- c. commercial property disputes. residential landlord-tenant matters, and including residential foreclosures;
- d. employee/employer disputes, except when pendent or incidental to the matters listed in Section 21 above and sufficiently complex business issues are presented;
- e. health care liability;
- f. the sole claim is a professional fee dispute;
- g. where the State of Tennessee or any other government or governmental agency is a party;
- h. administrative appeals from a State or County Agency, including tax and zoning matters;
- i. claims involving breach of contract, fraud or misrepresentation, except when pendent or incidental to matters listed in Section 1 above and sufficiently complex business issues are presented;
- j. actions for violations of or interference with noncompete, nonsolicitation and/or confidentiality agreements, except when pendent or incidental to matters listed in Section 1 above and sufficiently complex business issues are presented;
- k. commercial or residential contract construction disputes and/or commercial or residential construction defect claims; and
- l. cases involving violations of the Tennessee Consumer Protection Act.

3. Case Assignment

- a. Request for Designation to the Business Court Docket

- i. Within 60/30 days of the date of service of a complaint on a defendant, any party may file with the Business Court a *Request for Designation* of the case to the Business Court docket, with a copy served on all parties. Upon the recommendation of the Business Court Judge as to eligibility, the Chief Justice shall determine whether a case meets the eligibility criteria set forth above and whether, in the discretion of the Chief Justice, the case is sufficiently complex to warrant transfer to the Business Court docket. If the case meets the eligibility criteria, Upon making that determination, the Chief Justice may transfer the case to the Business Court docket. All objections to assignment of the case to the Business Court docket, except eligibility, must be filed with the Chief Justice within 30 days of the entry of the order transferring the case to the Business Court docket, with a copy served on all parties.
- ii. The filing of a *Request for Designation* certifies that the case meets the criteria for assignment to the Business Court docket provided in Sections 1 and 2 above and shall be in a form approved by this Court.
- iii. The Chief Justice may designate one or more sitting Davidson County Chancellors, Davidson County Circuit Court Judges, or Senior Judges to hear and decide cases assigned to the Business

Court docket and/or serve as settlement conference judges, as needed.

- b. Cases Outside of Davidson County – In addition to Section 3(a).a., cases filed in any other county in Tennessee ~~on or after May 1, 2015~~ that otherwise meet the eligibility criteria provided in Sections 1 and 2 above may be transferred pursuant to Tenn. Code Ann. § 16-11-201 and at the discretion of the Chief Justice to the Business Court docket in Davidson County if all parties file with the Chief Justice: (1) a motion to transfer the case to the Business Court docket and (2) a *Joint Consent and Waiver of Venue Form* in a form approved by this Court.

APPENDIX K

Supreme Court Order No. ADM2017-00638

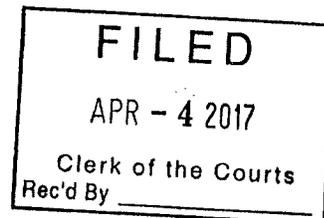
April 4, 2017

**IN THE SUPREME COURT OF TENNESSEE**

---

**ADM2017-00638**

---



**ORDER ESTABLISHING THE DAVIDSON COUNTY  
BUSINESS COURT DOCKET PILOT PROJECT - PHASE 2**

Pursuant to the inherent power of this Court, and in performing its duty to take necessary action to ensure the orderly administration of justice in accordance with Tennessee Code Annotated section 16-3-501 and 502 and Supreme Court Rule 11(I), the Court hereby establishes Phase 2 of the Business Court Docket Pilot Project (“Business Court Docket”), originally established by previous Order of this Court on March 16, 2015, to meet the litigation needs of existing and future businesses in this State effective through December 31, 2017.

This order continues the already established specialized docket to provide expedited resolution of business matters by a judge who is experienced and has expertise in handling complex business and commercial disputes, and who will continue to provide proactive, hands-on case management with realistic, meaningful deadlines and procedures adapted to the needs of each case for customized, quality outcomes. Phase 2 will continue to develop a body of rulings from which lawyers and litigants can better predict and assess outcomes in business cases. Non-business case dockets, as well, will benefit from the removal of complex and time-consuming business cases from the general docket. This Business Court Docket Pilot Project Phase 2 Order supersedes the previous Order with respect to any modifications reflected in the designation, composition, criteria, or procedure of this Business Court Docket.

For Phase 2 of the Business Court Docket, the Tennessee Supreme Court hereby assigns the business court docket to the existing Davidson County Chancery Court Part III, which will gather data and information and identify best practices for development of potential future Tennessee Business Courts. The Supreme Court, in its discretion and as necessary, shall designate special judges to preside over particular cases or to preside over judicial settlement conferences.

The Business Court Docket shall proceed as follows:

1. Eligible Cases – The criteria for assignment or transfer to the Business Court Docket are these:

- a. Civil cases filed on or after May 1, 2017, and
- b. Cases in which at least \$250,000 compensatory damages are alleged or cases seeking primarily injunctive or declaratory relief, and which also satisfy one or more of the following criteria:
  - i. relate to the governance or internal affairs of businesses (i.e., corporations, limited liability companies, general partnerships, limited liability partnerships, sole proprietorships, professional associations, real estate investment trusts, and joint ventures), including the rights or obligations of shareholders, officers, directors, partners, and members, or the liability or indemnity of officers, directors, managers, trustees, or partners;
  - ii. involve claims of breach of fiduciary duty or statutory violations between businesses arising out of business transactions or relationships;
  - iii. involve a commercial class action;
  - iv. arise from technology licensing agreements, including software and biotechnology licensing agreements, or any agreement involving the licensing of any intellectual property right, including patent rights;
  - v. claims involving antitrust, trade secrets, trademark law, or securities-related actions;
  - vi. involve claims that present sufficiently complex commercial issues that would have significant implications for the larger business community, including but not limited to cases with subject matter that technically would render the case “Excluded” pursuant to Section 2, as recommended by the Business Court Docket Judge and as determined within the discretion of the Chief Justice.

2. Excluded Cases – The following cases are excluded from the Business Court Docket:

- a. personal injury or wrongful death;
- b. professional malpractice claims;
- c. commercial property disputes, residential landlord-tenant matters, and foreclosure actions;
- d. employee/employer disputes, except where pendent or incidental to the matters listed in Section 1 above and sufficiently complex business issues are presented;
- e. health care liability;
- f. the sole claim is a professional fee dispute;
- g. where the State of Tennessee or any other government or governmental agency is a party;
- h. administrative appeals from a State or County Agency, including tax and zoning matters;

- i. claims involving breach of contract, fraud, or misrepresentation, except when pendent or incidental to matters listed in Section 1 above and sufficiently complex business issues are presented;
- j. actions for violations of or interference with noncompete, nonsolicitation, and/or confidentiality agreements, except when pendent or incidental to matters listed in Section 1 above and sufficiently complex business issues are presented;
- k. commercial or residential contract construction disputes and/or commercial or residential construction defect claims; and
- l. cases involving violations of the Tennessee Consumer Protection Act.

### 3. Case Assignment

- a. Request for Designation to the Business Court Docket
  - i. Within 30 days of the date of service of a complaint on a defendant, any party may file with the Davidson County Chancery Court Part III a *Request for Designation* of the case to the Business Court Docket, with a copy served on all parties. Upon the recommendation of the Business Court Docket Judge as to eligibility, the Chief Justice shall determine whether a case meets the eligibility criteria set forth above and whether, in the discretion of the Chief Justice, the case is sufficiently complex to warrant transfer to the Business Court Docket. Upon making that determination, the Chief Justice may transfer the case to the Business Court Docket.
  - ii. The filing of a *Request for Designation* certifies that the case meets the criteria for assignment to the Business Court Docket provided above in Sections 1 and 2 and shall be in a form approved by this Court.
  - iii. The Chief Justice may designate one or more sitting Davidson County Chancellors, Davidson County Circuit Court Judges, or Senior Judges to hear and decide cases assigned to the Business Court Docket and/or serve as settlement conference judges, as needed.
- b. Cases Outside of Davidson County – In addition to Section 3a., cases filed in any other county in Tennessee that otherwise meet the eligibility criteria provided in Sections 1 and 2 above may be transferred pursuant to Tenn. Code Ann. § 16-11-201 at the discretion of the Chief Justice to the Business Court Docket in Davidson County if all parties file with the Davidson County Chancery Court Part III a *Request for Designation* of the case to the Business Court Docket that includes a joint consent and waiver of venue in a form approved by this Court.
- c. Objections to Transfer – All objections to assignment of the case to the Business Court Docket, except eligibility, must be filed with the Supreme Court, Appellate Court Clerk, Middle Section, Nashville, TN within 30

days of the entry of the order transferring the case to the Business Court Docket, with a copy served on all parties and the Business Court Docket judge.

- d. Recusal – Should recusal by a Business Court Docket judge be necessary, the case will be re-assigned to another Business Court Docket judge by the Chief Justice.

#### 4. Rules and Procedures

The Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence shall apply, and the Business Court Docket shall have broad discretion to establish appropriate Rules, consistent with Rule 18, Rules of the Supreme Court, and to develop case management procedures to allow for more efficient handling of cases and produce quicker resolutions with reduced litigation pursuant to Rule 16 of the Tennessee Rules of Civil Procedure.

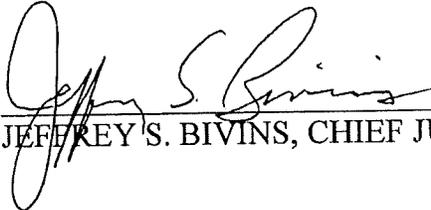
#### 5. Technology

Technology, particularly electronic filing and video conferencing, will be utilized and encouraged as it becomes available in Davidson County Chancery Court. Noteworthy and informative decisions shall be posted on the website of the Davidson County Clerk and Master's Office and the Administrative Office of the Courts to assist lawyers and litigants in assessing and predicting outcomes in business issues.

#### 6. Performance Evaluations

In an effort to more effectively meet the litigation needs of existing and future businesses in this State, this Court shall create performance evaluation forms to be completed by the attorneys and litigants who utilize the Business Court Docket for submission to the Administrative Office of the Courts, which shall report the results thereof to the Tennessee Supreme Court. These performance evaluations shall serve as a valuable tool to evaluate and identify the effectiveness, efficiency, and best practices of this Business Court Docket.

It is so ordered.

  
JEFFREY S. BIVINS, CHIEF JUSTICE

## APPENDIX L

Advisory Commission's August 11, 2017 Letter



**Patricia Head Moskal**  
Partner  
Direct: 615.252.2369  
pmoskal@bradley.com

August 11, 2017

*Via Electronic and U.S. Mail*

The Honorable Jeffrey S. Bivins  
Chief Justice of the Tennessee Supreme Court  
Supreme Court Building, Suite 321  
401 Seventh Avenue North  
Nashville, TN 37219-1407

Re: Preliminary Recommendations from the Business Court Rules Advisory  
Commission – August 2017

Dear Mr. Chief Justice:

On behalf of the Business Court Rules Advisory Commission, and with your direction, the Advisory Commission has continued to study, review and evaluate Phase 2 of the Davidson County Business Court Pilot Project. We have also studied the development of business courts in other states to help guide our review, and we recently participated in a telephonic discussion with two of the distinguished business court judges from North Carolina, the Honorable James L. Gale, Chief Judge of the North Carolina Business Court, and the Honorable Louis A. Bledsoe, III, Special Superior Court Judge for Complex Business Cases, to learn more about the North Carolina Business Court model. Their insights and experiences were extremely helpful as we consider the future development of Tennessee's Business Court Docket.

Based on our study and review thus far, we respectfully submit the following recommendations that reflect our preliminary thinking about the future development and expansion of the Business Court Docket in Tennessee. We will continue to refine our recommendations during the remainder of Phase 2 of the Pilot Project and supplement our recommendations, as appropriate. We also plan to prepare a more comprehensive report for the Court before the end of the year. As always, we welcome the opportunity to discuss our recommendations or any other matters with you at your convenience.

**I. Overview**

Following the Supreme Court's Order issued on April 4, 2017 establishing Phase 2 of the Business Court Pilot Project in Davidson County, the members of the Business Court Advisory Commission have met regularly to discuss and consider potential recommendations for the future development of Tennessee's Business Court Docket. Our discussions have been guided by the goals established by the Supreme Court's Orders for Phases 1 and 2 of Pilot Project in providing a specialized business court docket that is designed to meet the complex litigation needs of existing and future businesses in this State. Building on the successes of Phases 1 and 2 of the

The Honorable Jeffrey S. Bivins  
August 11, 2017  
Page 2

Pilot Project, the Commission offers the following preliminary recommendations for the Supreme Court's consideration at this time.

The Commission members agree and recommend that the Business Court Docket should be geographically expanded in Tennessee to establish a statewide Business Court Docket. We envision locations in each of the three grand divisions of the state where cases filed in any county that meet the eligibility criteria, as revised for Phase 2, may request designation and assignment to the Business Court Docket, with trials to be conducted in the counties of venue.

We believe that it is essential to the success of a statewide Business Court Docket that persons who are to be designated to serve as Business Court Judges, however they might be selected and assigned, must be well-qualified and experienced in complex, business litigation and committed to implementing the stated goals of the Business Court Docket. Methods for the selection and designation of qualified and experienced Business Court Judges is a key area that needs to be further studied and explored.

In light of the overwhelming success of Phases 1 and 2 of the Business Court Pilot Project in Davidson County and its proven high demand, we recommend that a permanent Business Court Docket be established in Nashville to serve Middle Tennessee upon conclusion of Phase 2 of the Pilot Project, with sufficient resources dedicated to support it, including assignment of a well-qualified judge dedicated to Business Court Docket cases. Even with the revised case eligibility criteria implemented as part of Phase 2 of the Pilot Project, we believe that the continued use of existing Davidson County judicial and other resources is not sustainable given the demand.

We recommend creating a third phase of the Pilot Project to geographically expand and establish dockets in East and West Tennessee, assess the demand for a statewide docket, and explore methods for selecting and assigning qualified judges to hear and decide Business Court Docket cases. The Commission members feel strongly that unless the dual goals of statewide geographic expansion of the Business Court Docket and the selection of qualified and experienced Business Court Judges can be accomplished, the Business Court Docket will not be able to meet the needs of Tennessee's business community or achieve the objectives that were established for the Business Court Pilot Project.

We also recommend that the Business Court Docket project be continued, without interruption, as it expands and develops statewide in order to gain and maintain the confidence and support of the business and legal communities.

## **II. Summary of Preliminary Recommendations**

- Expand the Business Court Docket geographically to a statewide program where cases filed in any county that meet the eligibility criteria may request designation and be assigned to a Business Court Docket.

The Honorable Jeffrey S. Bivins

August 11, 2017

Page 3

- The Chief Justice to select and designate qualified Business Court Judges with the necessary experience in complex, business litigation cases to hear and decide Business Court Docket cases from each of the three grand divisions of the State.
- Establish a permanent Business Court Docket in Nashville to serve Middle Tennessee, with trials to be conducted in the county of venue. The purposes of the Middle Tennessee Business Court Docket would continue to include the following:
  - (i) gather data and monitor the utilization of the Business Court Docket,
  - (ii) conduct surveys of and performance evaluations by attorneys and litigants in concluded Business Court Docket cases to evaluate the effectiveness and efficiencies of the Business Court Docket and gather suggestions for improvements,
  - (iii) continue developing, implementing and evaluating uniform best practices, case management procedures and guidelines to be implemented statewide to provide for more efficient handling and expedited resolution of cases,
  - (iv) remove complex and time-consuming business cases from the general civil dockets in the judicial districts in Middle Tennessee, and
  - (v) continue developing a body of jurisprudence for the Business Court Docket.
- Establish Phase 3 of the Pilot Project to expand the Business Court Dockets in Knoxville to serve East Tennessee and Memphis to serve West Tennessee, with trials to be conducted in the counties of venue. The purposes of Phase 3 of the Pilot Project would include:
  - (i) gather data and assess the statewide demand for the Business Court Docket,
  - (ii) explore, evaluate and identify the necessary qualifications and method of selecting and designating qualified Business Court Judges experienced in complex business litigation,
  - (iii) conduct surveys of and performance evaluations by attorneys and litigants in concluded Business Court Docket Phase 3 cases to evaluate the effectiveness and efficiencies of the Business Court Docket and gather suggestions for improvements,

The Honorable Jeffrey S. Bivins

August 11, 2017

Page 4

- (iv) participate in the continued development, implementation and evaluation of uniform best practices, case management procedures and guidelines to be implemented statewide to provide for more efficient handling and expedited resolution of cases,
  - (v) remove complex and time-consuming business cases from the general civil dockets in the judicial districts in East and West Tennessee, and
  - (vi) continue developing a body of jurisprudence for the Business Court Docket.
- Conduct statewide outreach or listening tour meetings with the business and legal communities across the state, through the Business Court Advisory Commission, to gather ideas, suggestions, recommendations, and support for the future development of the Business Court Dockets across the state and how to better meet the needs of the business community.
  - Fund the Business Court Docket locations and judges in each of the three locations, including judicial clerk(s), administrative staff, chamber and courtroom facilities, technology and equipment.
  - Explore partnerships with University of Tennessee-Knoxville College of Law and University of Memphis College of Law to support the Business Court Docket statewide.
  - Consider future legislative proposals for the funding of the Business Court Docket and/or selection and appointment of Business Court Judges.

### **III. Future Work and Governance of the Advisory Commission**

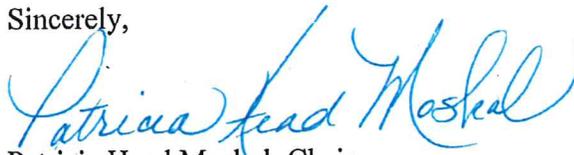
We expect to have more specific recommendations regarding the composition, governance structure, and future work of the Advisory Commission before the end of the year. In the interim, we recommend that the Advisory Commission continue its periodic review and evaluation of the progress of the Business Court Docket, including the current Phase 2 and any future phases of the Pilot Project, and continue to advise the Supreme Court as to future recommendations. We recommend that the Advisory Commission assist the Supreme Court in implementing any of the recommendations for future phases of the Pilot Project, including conducting any statewide outreach or listening tour meetings across the state and exploring partnerships with law schools. Generally, we expect to recommend that the Business Court Advisory Commission be expanded to have the same number of members from each grand division of the State with staggered terms of service, as well as a recommendation for selecting the chairperson for the Advisory Commission.

The Honorable Jeffrey S. Bivins  
August 11, 2017  
Page 5

I extend my personal thanks to each of the members of the Advisory Commission, Director Deborah Taylor Tate, Rachel Harmon, and Ceesha Lofton with the Administrative Office of the Courts, Kimberly McCall with the Tennessee Supreme Court, and Justin Seamon as the Business Court Pilot Project Liaison for all of their time, dedication and energy in preparing these recommendations. We met every two weeks during the months of June and July, in addition to the time spent preparing for those meetings, to discuss and debate this project. We also greatly appreciate the extraordinary dedication and tireless work of Chancellor Ellen Hobbs Lyle as our Davidson County Business Court Judge during both phases of the Pilot Project and her unending commitment to its overwhelming success.

The Advisory Commission looks forward to being of further assistance to the Supreme Court as it may direct and to the continued success of the Tennessee Business Court Docket.

Sincerely,



Patricia Head Moskal, Chair  
Business Court Docket Advisory Commission

PHM/sc

cc: Hon. Cornelia A. Clark (via email)  
Hon. Sharon G. Lee (via email)  
Hon. Holly Kirby (via email)  
Hon. Roger A. Page (via email)  
Hon. Ellen Hobbs Lyle (via email)  
Advisory Commission Members:  
Scott Carey, Esq. (via email)  
Jef Feibelman, Esq. (via email)  
David Golden, Esq. (via email)  
Celeste Herbert, Esq. (via email)  
William H. Tate, Esq. (via email)  
Charles Tuggle, Esq. (via email)  
Tim Warnock, Esq. (via email)  
AOC Director Deborah Taylor Tate (via email)  
Kimberly McCall, Tennessee Supreme Court (via email)  
Justin Seamon, Business Court Pilot Project Liaison (via email)

## APPENDIX M

Monthly Business Court Pilot Project Report  
November 2017

## Davidson County Business Court Docket Pilot Project – Phase 2 Monthly Report – November 2017

### 1. Pilot Project Overall Totals

(a) Number of Requests Filed Since Pilot Project Inception:	129
• Davidson County:	118
• Non-Davidson County:	11
(b) Number of Requests Granted Since Pilot Project Inception:	100 <sup>1</sup>
• Davidson County:	92
• Non-Davidson County:	8
(c) Number of Requests Denied Since Pilot Project Inception:	28
• Davidson County:	25
• Non-Davidson County:	3
(d) Number of Objections Filed with Chief Justice Since Pilot Project Inception:	2
• Davidson County:	2
• Non-Davidson County:	0
(e) Number of Objections Granted by Chief Justice Since Pilot Project Inception:	1
• Davidson County:	1
• Non-Davidson County:	0
(f) Number of Objections Denied by Chief Justice Since Pilot Project Inception:	1
• Davidson County:	1
• Non-Davidson County:	0
(g) Number of Pilot Project Cases Disposed Since Inception:	69
• Davidson County:	66
• Non-Davidson County:	3
(h) Total Number of Pending Pilot Project Cases:	31
• Davidson County:	26
• Non-Davidson County:	5

### 2. Phase 1 – May 1, 2015 to October 31, 2016

(a) Number of Requests Filed From May 1, 2015 to October 31, 2016:	101
--	-----

<sup>1</sup> A *Request For Designation* was filed on November 17, 2017 and has not yet been ruled upon by the Chief Justice.

• Davidson County:	92
• Non-Davidson County:	9
(b) Number of Requests Granted From May 1, 2015 to October 31, 2016:	89
• Davidson County:	81
• Non-Davidson County:	8
(c) Number of Requests Denied From May 1, 2015 to October 31, 2016:	12
• Davidson County:	11
• Non-Davidson County:	1
<b>3.     <u>Deferral Period – November 1, 2016 to April 30, 2017</u></b>	
(a) Number of Requests Deferred From October 31, 2016 to April 30, 2016:	8
• Davidson County:	7
• Non-Davidson County:	1
<b>4.     <u>Phase 2 – May 1, 2017 to Present</u></b>	
(a) Number of Requests Filed From May 1, 2017 to Present:	20
• Davidson County:	19
• Non-Davidson County:	1
(b) Number of Requests Granted From May 1, 2017 to Present:	11 <sup>2</sup>
• Davidson County:	11
• Non-Davidson County:	0
(c) Number of Requests Denied From May 1, 2017 to Present:	8
• Davidson County:	7
• Non-Davidson County:	1
<b>5.     <u>Phase 1 – Average Requests For Designation Filed – 5.61 per month</u></b>	
• Average Requests For Designation Filed Per Month In 2015 – 5.12 per month	
• Average Requests For Designation Filed Per Month In 2016 – 6.00 per month	
(a)     May 2015 – 3	
(b)     June 2015 – 3	
(c)     July 2015 – 7	
(d)     August 2015 – 6	
(e)     September 2015 – 10	

---

<sup>2</sup> A *Request For Designation* was filed on November 17, 2017 and has not yet been ruled upon by the Chief Justice.

- (f) October 2015 – 0
- (g) November 2015 – 4
- (h) December 2015 – 8
- (i) January 2016 – 4
- (j) February 2016 – 8
- (k) March 2016 – 4
- (l) April 2016 – 8
- (m) May 2016 – 3
- (n) June 2016 – 9
- (o) July 2016 – 4
- (p) August 2016 – 13
- (q) September 2016 – 6
- (r) October 2016 – 1

**6. Deferral Period – Average Requests For Designation Filed – 1.33 per month**

- (a) November 2016 – 1
- (b) December 2016 – 1
- (c) January 2017 – 1
- (d) February 2017 – 0
- (e) March 2017 – 3
- (f) April 2017 – 2

**7. Phase 2 – Average Requests For Designation Filed – 2.85 per month**

- (a) May 2017 – 1
- (b) June 2017 – 4
- (c) July 2017 – 3
- (d) August 2017 – 2
- (e) September 2017 – 4
- (f) October 2017 – 3
- (g) November – 3

**8. Monthly Totals for November 2017**

- |  |   |
|--|---|
| (a) Number of Requests Filed in November 2017:   | 3 |
| • Davidson County:                               | 3 |
| • Non-Davidson County:                           | 0 |
| (b) Number of Requests Granted in November 2017: | 1 |
| • Davidson County:                               | 1 |
| • Non-Davidson County:                           | 0 |

(c) Number of Requests Denied in November 2017:	2
• Davidson County:	2
• Non-Davidson County:	0
(d) Number of Objections Filed with Chief Justice in November 2017:	0
• Davidson County:	0
• Non-Davidson County:	0
(e) Number of Objections Granted by Chief Justice in November 2017:	0
• Davidson County:	0
• Non-Davidson County:	0
(f) Number of Objections Denied by Chief Justice in November 2017:	0
• Davidson County:	0
• Non-Davidson County:	0
(g) Number of Pilot Project Cases Disposed in November 2017:	3
• Davidson County:	3
• Non-Davidson County:	0

## APPENDIX N

Advisory Commission's December 4, 2017 Letter with  
Evaluation Survey Results (December 2015-November 2017)



**Patricia Head Moskal**  
Partner  
Direct: 615.252.2369  
pmoskal@bradley.com

December 4, 2017

*Via Electronic Mail and U.S. Mail*

The Honorable Jeffrey S. Bivins  
Chief Justice of the Tennessee Supreme Court  
Supreme Court Building, Suite 321  
401 Seventh Avenue North  
Nashville, TN 37219-1407

Re: Business Court Docket Advisory Commission – Evaluation Survey Results

Dear Mr. Chief Justice:

One of the initial objectives of the Business Court Advisory Commission under the Supreme Court's March 16, 2015 Order establishing the Business Court Docket Pilot Project was to develop an evaluation survey upon the conclusion of cases as a tool for gathering information to measure the Pilot Project's effectiveness and success. Under the leadership of our former chair, the Hon. Neal McBrayer, the Advisory Commission formed an evaluation survey working group that was led by Commission Member Celeste Herbert. This working group developed questions for the survey that were approved by the full Advisory Commission. Through the assistance of the Administrative Office of the Courts, the survey is made available online, and the Chief Justice and AOC Director Deborah Taylor Tate periodically send letters to Pilot Project participants after their cases are concluded inviting them to respond to the survey.

On behalf of the Advisory Commission, we are pleased to provide the Supreme Court with the enclosed results of our evaluation initiative. The results are a compilation of the surveys conducted during Phase 1 and Phase 2 and span the period from December 2015 through November 2017. Please note that in order to preserve the anonymity of those participating in the survey, we redacted the dates on which the survey responses were provided along the corresponding narrative comments to the questions.

The survey results are extremely positive and have been consistent throughout both phases of the Pilot Project. These results demonstrate the overwhelming success of the Pilot Project and confirm that the specialized business court concept is highly effective in meeting the needs of business litigants. The implementation of this concept has been readily embraced by the legal and business communities. The demand for the continuation of the business court docket and the future expansion of the project is strong.

The Honorable Jeffrey S. Bivins  
December 4, 2017  
Page 2

As of November 2017, 81 attorneys and 2 litigants in concluded cases responded to the survey. Significant highlights of the survey results are as follows (with percentages rounded):

- 86% of survey participants responded that the Business Court Docket was a cost-effective way to resolve their dispute (Question 11);
- 77% of survey participants responded that the Business Court Docket's handling of their case was quicker than a regular court's docket (Question 14);
- 92% of survey participants responded that there was a proper amount of judicial involvement in their case (Question 15);
- 93% of survey participants responded that there was a proper amount of case management in their case (Question 16);
- 95% of survey participants responded that they would use the Business Court Docket again given the opportunity (Question 17); and
- 87% of survey participants responded that they were completely satisfied or very satisfied (combining scale levels 4 and 5) with their Business Court Docket experience (Question 26).

On behalf of the Advisory Commission, I have provided a copy of the enclosed survey results to the Hon. Ellen Hobbs Lyle, Business Court Judge, and Justin Seamon, Business Court Pilot Project Liaison. I had hoped to deliver these results to you in person but, in the interest of time, I am providing a copy of the survey results to you via email and would welcome the opportunity to discuss these results with you at your convenience.

Please let us know if the Supreme Court Justices have questions or if we may provide additional information.

Sincerely,



Patricia Head Moskal, Chair  
Business Court Docket Advisory Commission

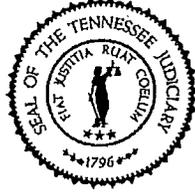
PHM/sc  
Enclosure

The Honorable Jeffrey S. Bivins

December 4, 2017

Page 3

cc: Hon. Cornelia A. Clark (w/enclosure via email)  
Hon. Sharon G. Lee (w/enclosure via email)  
Hon. Holly Kirby (w/enclosure via email)  
Hon. Roger A. Page (w/enclosure via email)  
Hon. Ellen Hobbs Lyle, Business Court Judge (w/enclosure via email)  
Advisory Commission Members (w/enclosure via email)  
AOC Director Deborah Taylor Tate (w/enclosure via email)  
Kimberly McCall, Tennessee Supreme Court (w/enclosure via email)  
Justin Seamon, Business Court Pilot Project Liaison (w/enclosure via email)



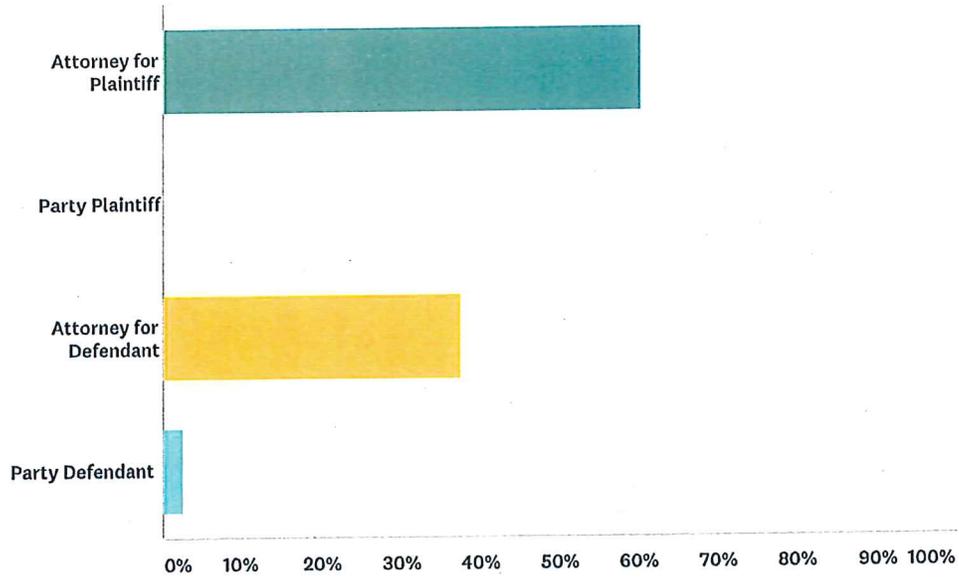
*Supreme Court of Tennessee*

**Business Court Docket Advisory Commission**

**Evaluation Survey Results**  
*December 2015 – November 2017*

### Q1 Are you:

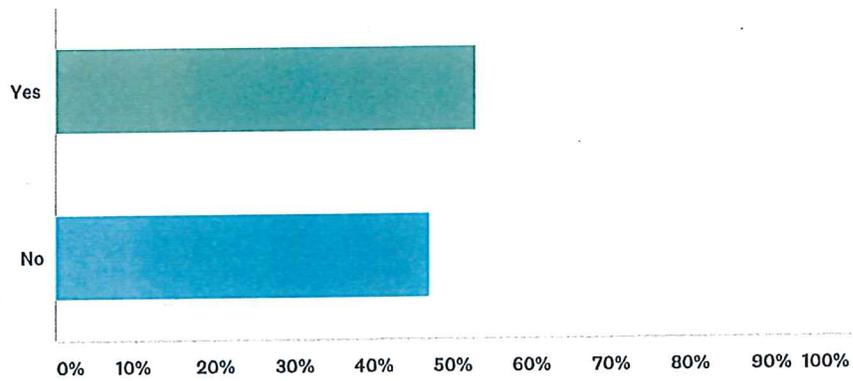
Answered: 83 Skipped: 0



ANSWER CHOICES	RESPONSES	
Attorney for Plaintiff	60.24%	50
Party Plaintiff	0.00%	0
Attorney for Defendant	37.35%	31
Party Defendant	2.41%	2
TOTAL		83

## Q2 Is this your first experience with the Business Court Docket in Tennessee?

Answered: 83 Skipped: 0



**ANSWER CHOICES**

Yes

No

TOTAL

**RESPONSES**

53.01%

46.99%

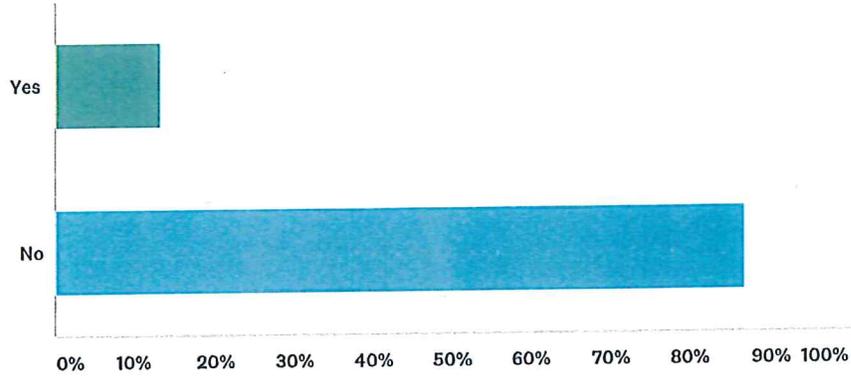
44

39

83

### Q3 Have you participated in a specialized Business Court in other states/countries?

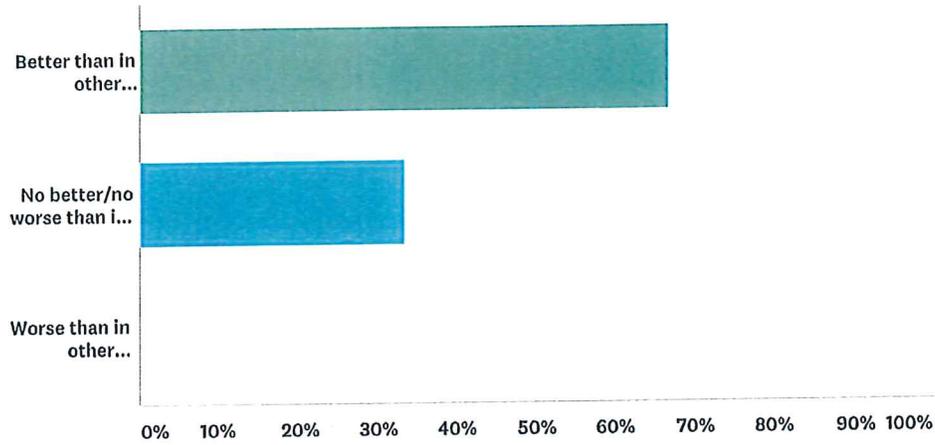
Answered: 83 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	13.25%	11
No	86.75%	72
TOTAL		83

### Q4 Your experience with the Business Court Docket in Tennessee was:

Answered: 9 Skipped: 74



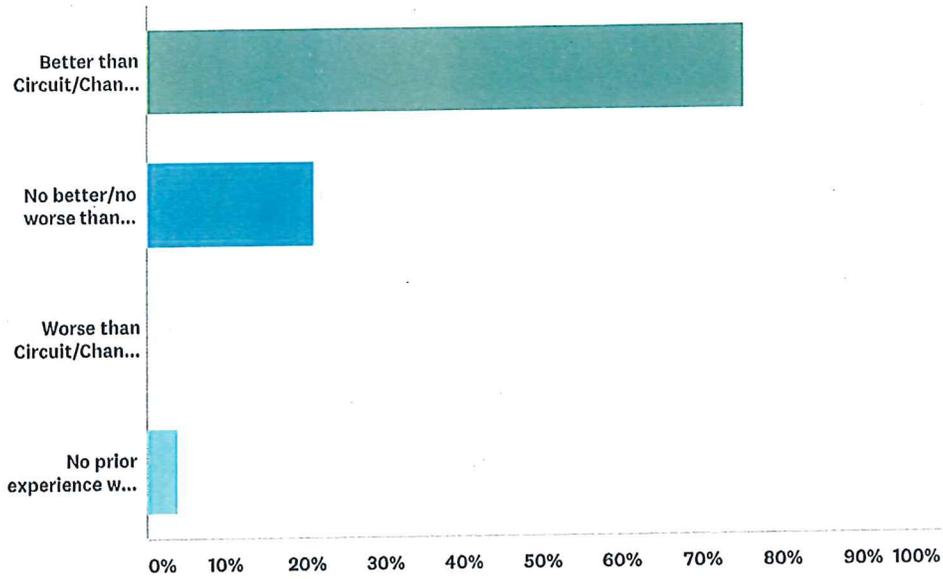
ANSWER CHOICES	RESPONSES	
Better than in other state(s)/countries.	66.67%	6
No better/no worse than in other state(s)/countries.	33.33%	3
Worse than in other state(s)/countries.	0.00%	0
TOTAL		9

Q5 How was your experience in the Business Court Docket in Tennessee different than in other states/countries?

Answered: 9 Skipped: 74

### Q6 Your experience with the Business Court Docket in Tennessee was:

Answered: 81 Skipped: 2



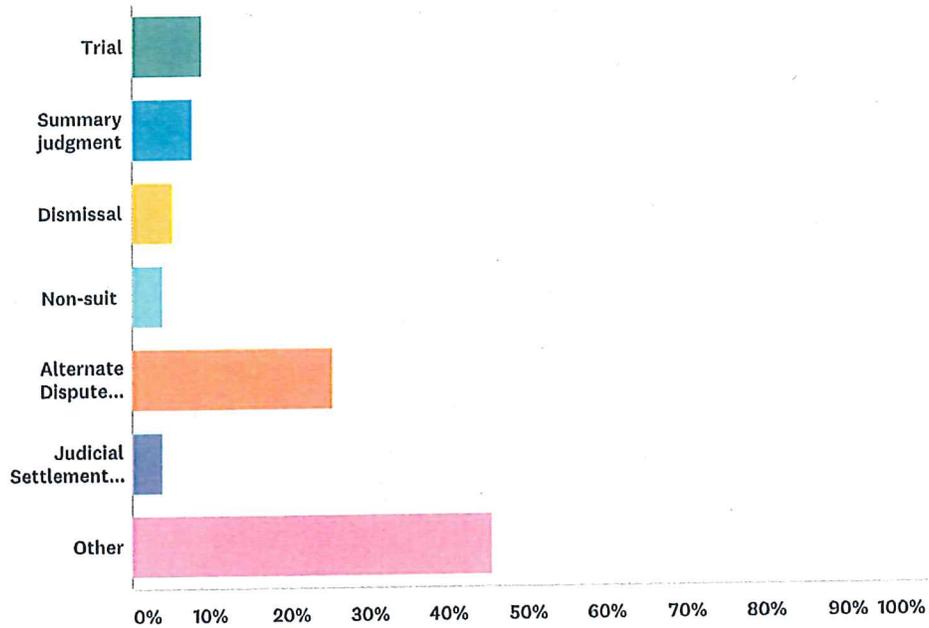
ANSWER CHOICES	RESPONSES	
Better than Circuit/Chancery Courts in Tennessee?	75.31%	61
No better/no worse than Circuit/Chancery Courts in Tennessee.	20.99%	17
Worse than Circuit/Chancery Courts in Tennessee.	0.00%	0
No prior experience with Circuit/Chancery Courts in Tennessee.	3.70%	3
<b>TOTAL</b>		<b>81</b>

**Q7 How was your experience with the Business Court Docket different from Circuit/Chancery Courts in Tennessee?**

Answered: 76 Skipped: 7

### Q8 How was your case resolved?

Answered: 79 Skipped: 4



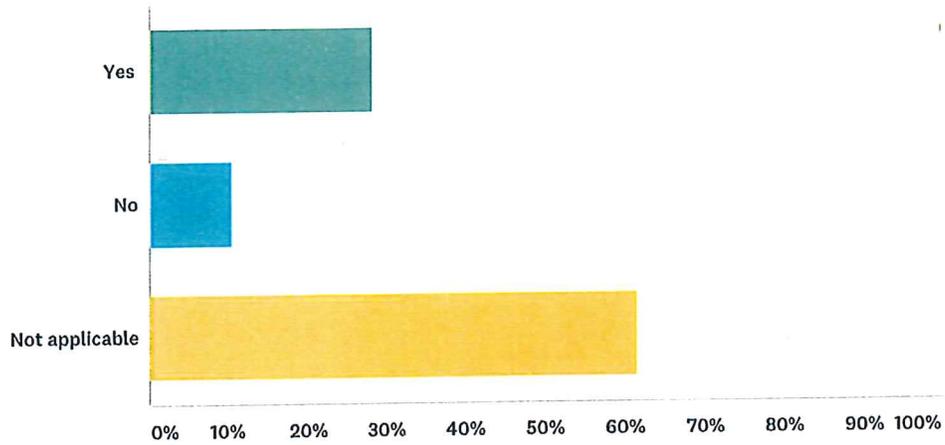
ANSWER CHOICES	RESPONSES	
Trial	8.86%	7
Summary judgment	7.59%	6
Dismissal	5.06%	4
Non-suit	3.80%	3
Alternate Dispute Resolution	25.32%	20
Judicial Settlement Conference	3.80%	3
Other	45.57%	36
TOTAL		79

## Q9 Please explain why a non-suit was taken.

Answered: 3 Skipped: 80

### Q10 Was the case resolved in your favor?

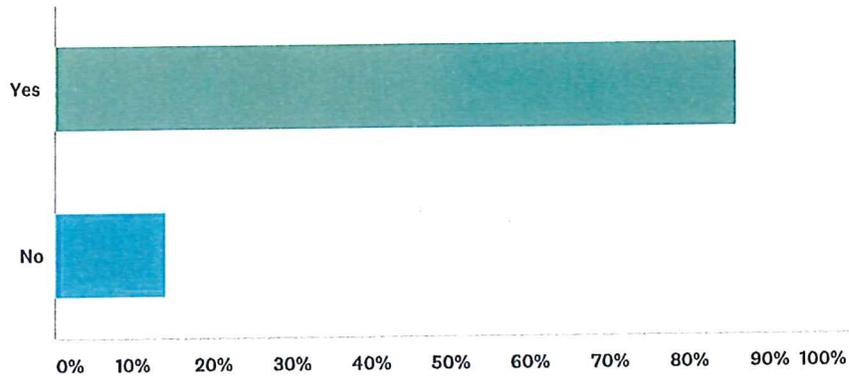
Answered: 78 Skipped: 5



ANSWER CHOICES	RESPONSES	
Yes	28.21%	22
No	10.26%	8
Not applicable	61.54%	48
TOTAL		78

### Q11 Was the Business Court Docket a cost effective way to resolve your dispute?

Answered: 78 Skipped: 5



ANSWER CHOICES	RESPONSES	
Yes	85.90%	67
No	14.10%	11
TOTAL		78

## Q12 What made it cost effective?

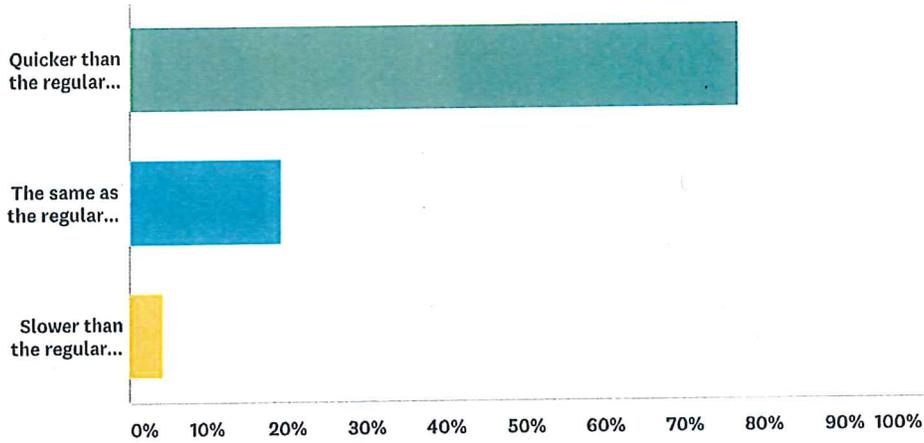
Answered: 62 Skipped: 21

**Q13 Do you have any suggestions on how to improve cost-effectiveness in the Business Court Docket?**

Answered: 73 Skipped: 10

### Q14 The Business Court's handling of your case was:

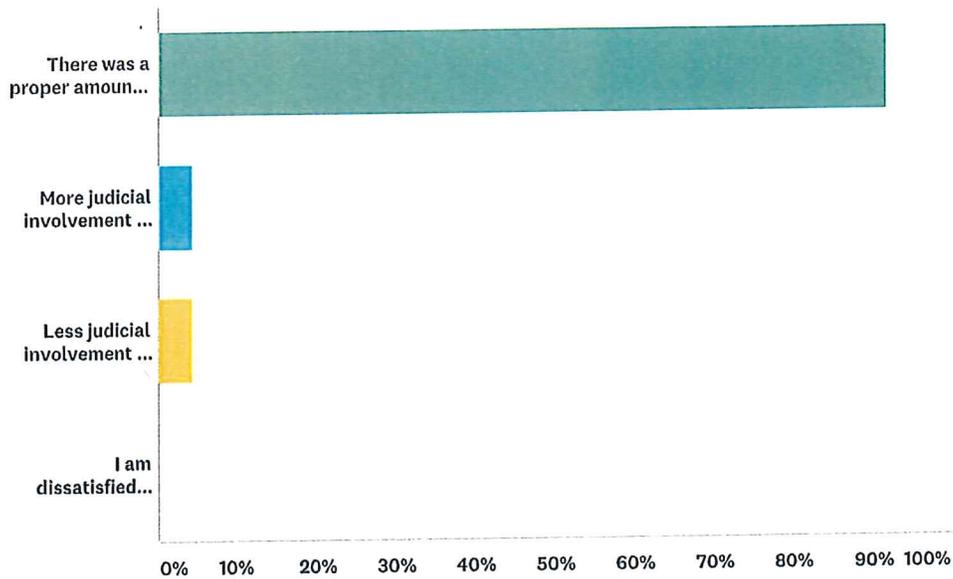
Answered: 73 Skipped: 10



ANSWER CHOICES	RESPONSES	
Quicker than the regular court.	76.71%	56
The same as the regular court.	19.18%	14
Slower than the regular court.	4.11%	3
TOTAL		73

### Q15 How would you rate the level of judicial involvement in your case?

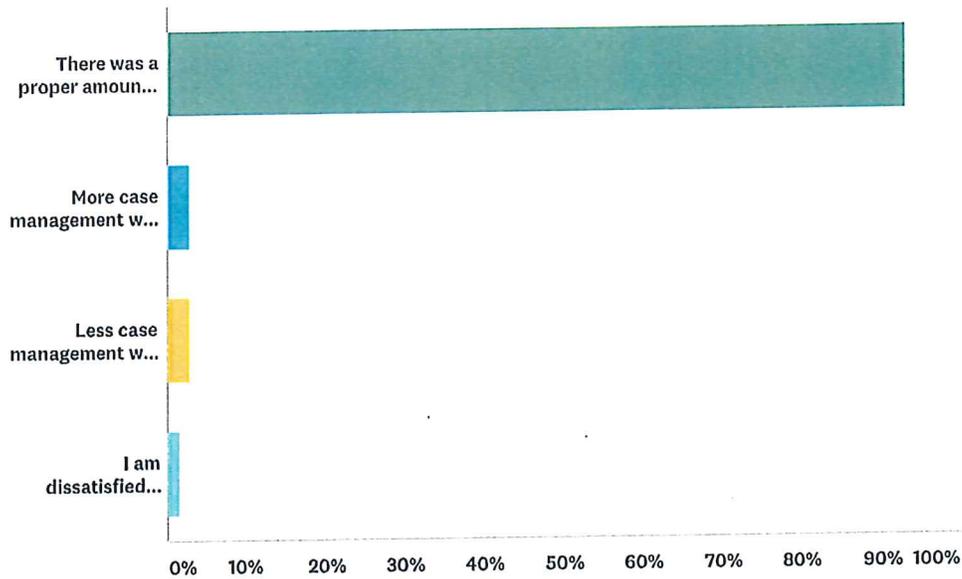
Answered: 73 Skipped: 10



ANSWER CHOICES	RESPONSES	
There was a proper amount of judicial involvement.	91.78%	67
More judicial involvement was needed.	4.11%	3
Less judicial involvement was needed.	4.11%	3
I am dissatisfied with the amount of judicial involvement.	0.00%	0
TOTAL		73

### Q16 How would you rate the level of case management in your case?

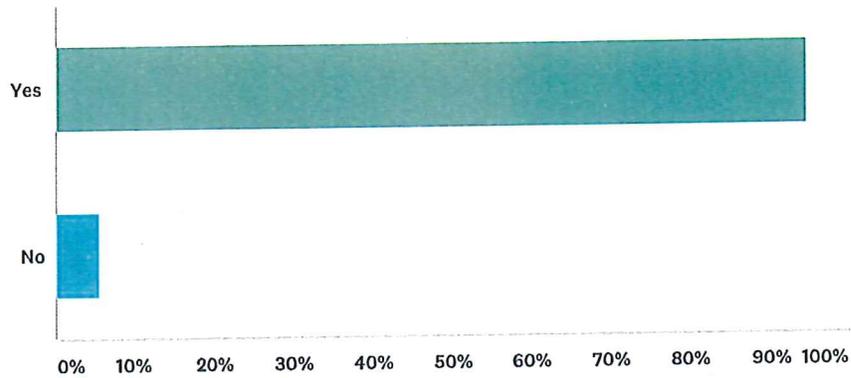
Answered: 73 Skipped: 10



ANSWER CHOICES	RESPONSES	
There was a proper amount of case management.	93.15%	68
More case management was needed.	2.74%	2
Less case management was needed.	2.74%	2
I am dissatisfied with the amount of case management.	1.37%	1
TOTAL		73

### Q17 Given the opportunity, would you utilize the Business Court Docket again?

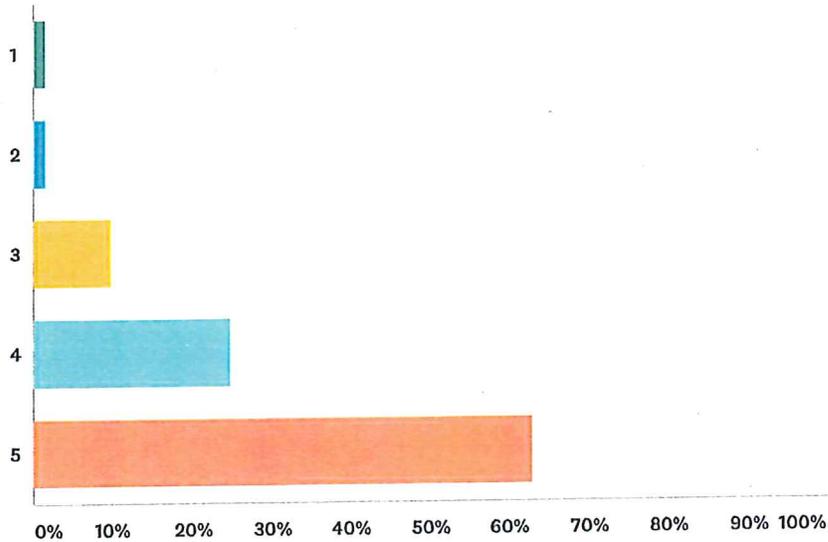
Answered: 73 Skipped: 10



ANSWER CHOICES	RESPONSES	
Yes	94.52%	69
No	5.48%	4
TOTAL		73

Q18 On a scale of 1 to 5 with 1 being completely dissatisfied and 5 being completely satisfied, rate your level of satisfaction with the way motions are presented in the Business Court Docket.

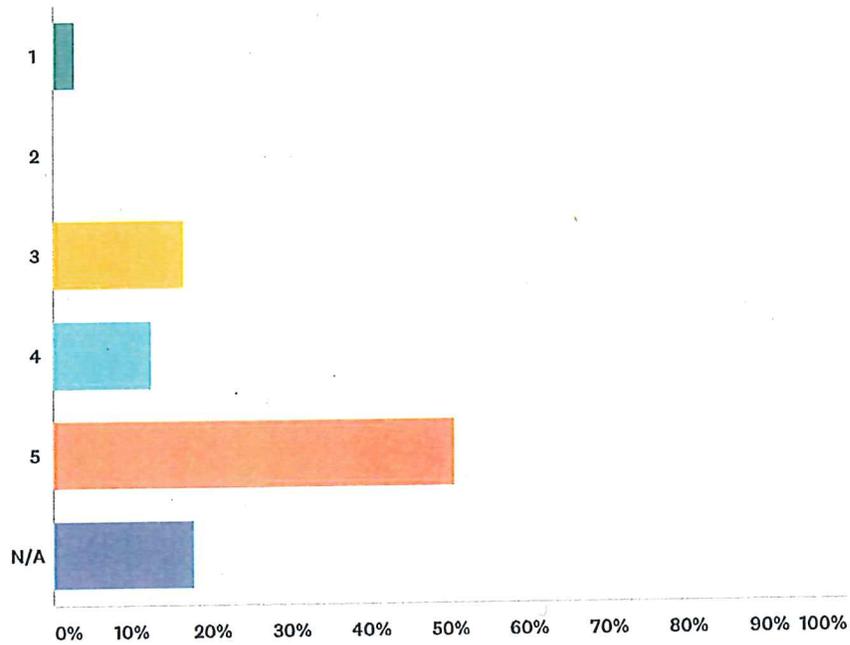
Answered: 73 Skipped: 10



ANSWER CHOICES	RESPONSES	
1	1.37%	1
2	1.37%	1
3	9.59%	7
4	24.66%	18
5	63.01%	46
TOTAL		73

Q19 On a scale of 1 to 5 with 1 being completely dissatisfied and 5 being completely satisfied, rate your level of satisfaction with the way the court handled discovery in the Business Court Docket.

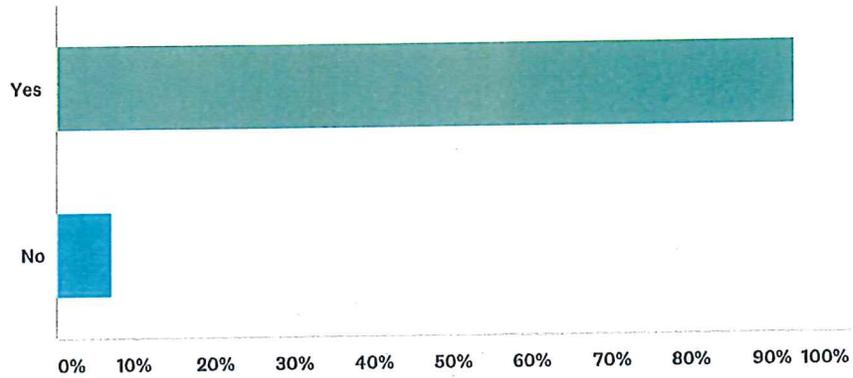
Answered: 73 Skipped: 10



ANSWER CHOICES	RESPONSES	
1	2.74%	2
2	0.00%	0
3	16.44%	12
4	12.33%	9
5	50.68%	37
N/A	17.81%	13
TOTAL		73

### Q20 Are you satisfied with the case criteria for assignment or transfer of cases to the Tennessee Business Court Docket?

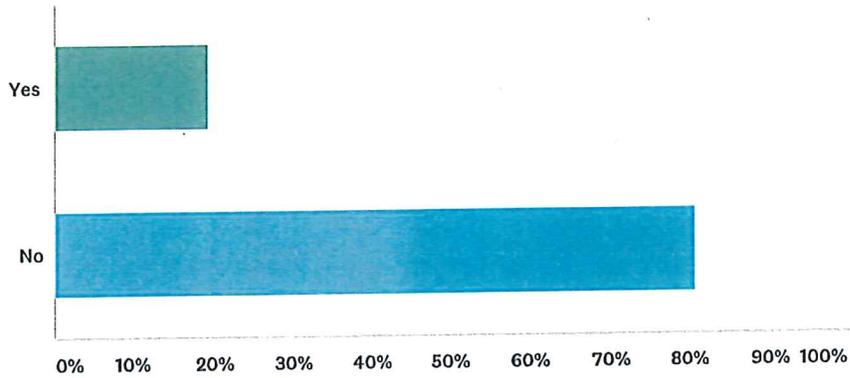
Answered: 73 Skipped: 10



ANSWER CHOICES	RESPONSES	
Yes	93.15%	68
No	6.85%	5
TOTAL		73

### Q21 Would it be beneficial for the case criteria for assignment or transfer to include cases with alleged compensatory damages under \$50,000?

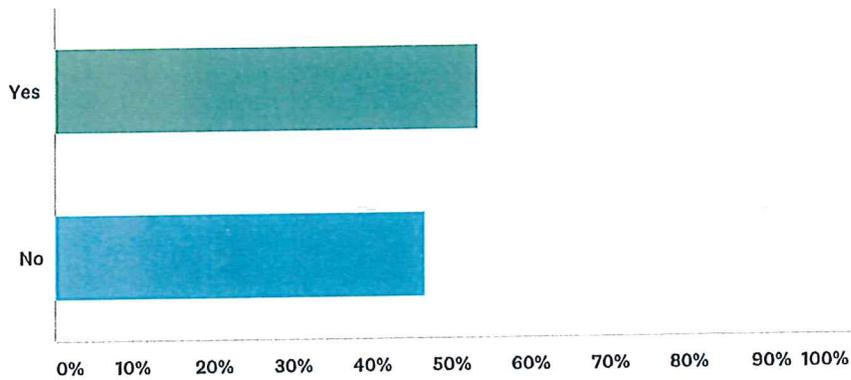
Answered: 73 Skipped: 10



ANSWER CHOICES	RESPONSES	
Yes	19.18%	14
No	80.82%	59
TOTAL		73

### Q22 In the alternative, do you believe the criteria for assignment or transfer should include an alleged amount of compensatory damages higher then \$50,000?

Answered: 73 Skipped: 10



**ANSWER CHOICES**

**RESPONSES**

Yes

53.42%

39

No

46.58%

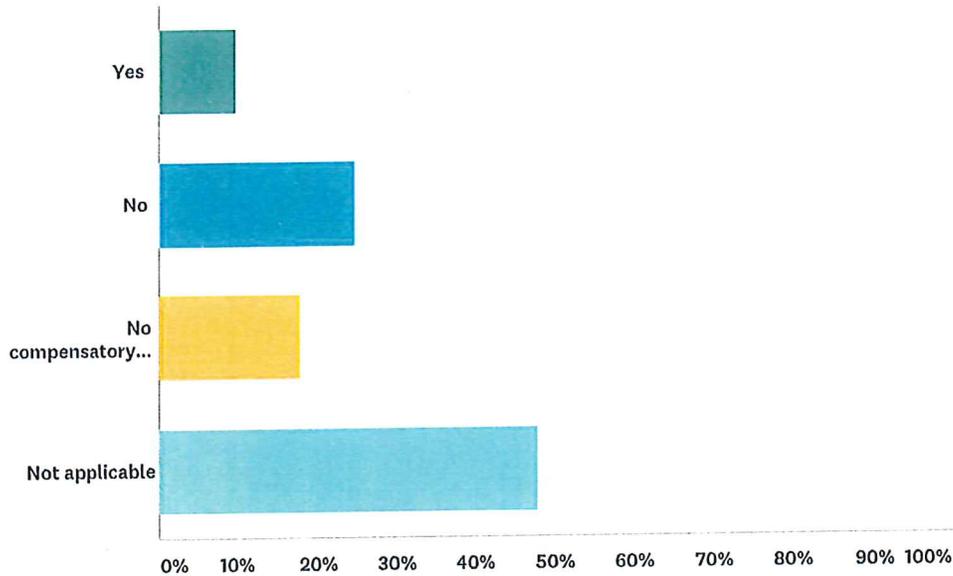
34

TOTAL

73

### Q23 Are you willing to share the compensatory damages amount received, if any, by your client at the resolution of the case?

Answered: 73 Skipped: 10



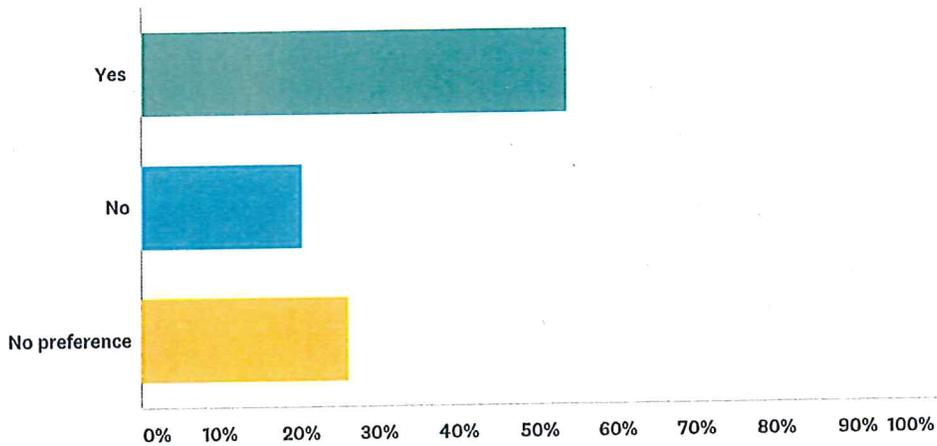
ANSWER CHOICES	RESPONSES	
Yes	9.59%	7
No	24.66%	18
No compensatory damages awarded.	17.81%	13
Not applicable	47.95%	35
TOTAL		73

## Q24 What was the compensatory damages amount received?

Answered: 7 Skipped: 76

Q25 Would you favor an option of selecting a specific case management track for your case such as (1) Business Expedited – goal of resolution between 7 to 10 months; (2) Business Standard – goal of resolution between 10 to 12 months; (3) Business Complex – goal of resolution between 12 to 15 months?

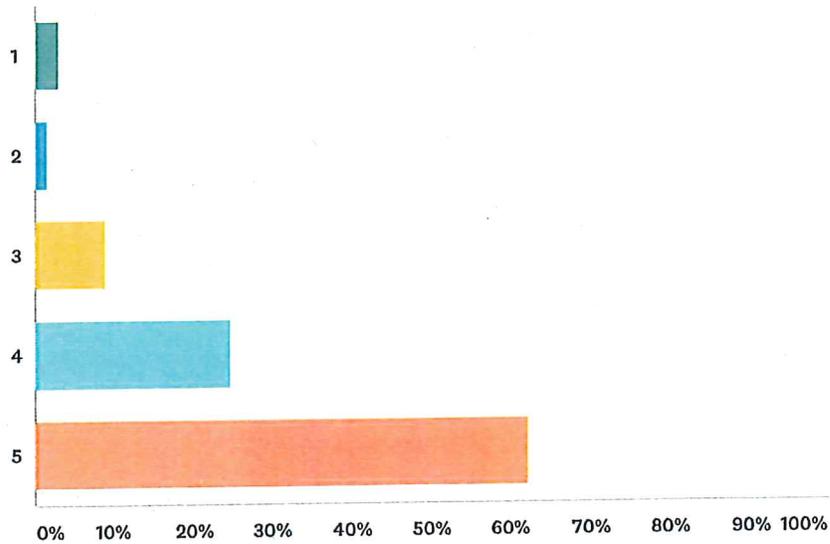
Answered: 69 Skipped: 14



ANSWER CHOICES	RESPONSES	
Yes	53.62%	37
No	20.29%	14
No preference	26.09%	18
TOTAL		69

Q26 On a scale of 1 to 5 with 1 being completely dissatisfied and 5 being completely satisfied, rate your level of satisfaction with your Business Court experience.

Answered: 69 Skipped: 14



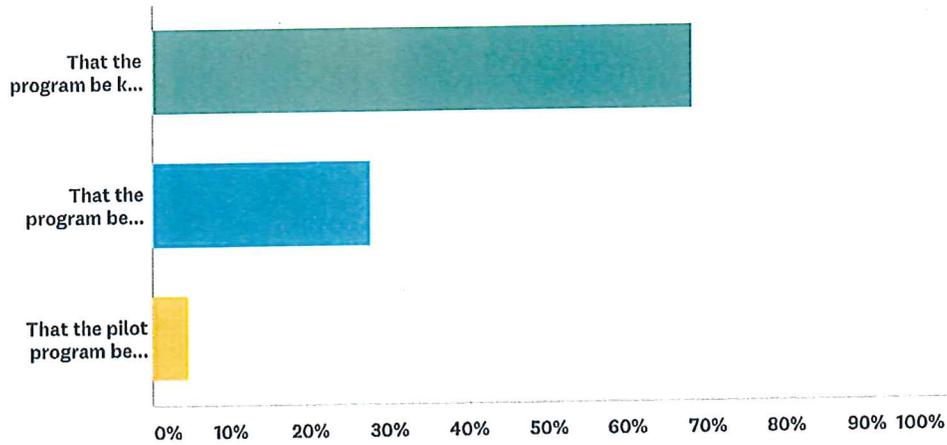
ANSWER CHOICES	RESPONSES	
1	2.90%	2
2	1.45%	1
3	8.70%	6
4	24.64%	17
5	62.32%	43
TOTAL		69

**Q27 Please explain the basis of your answer to the prior question.**

Answered: 69 Skipped: 14

## Q28 Based on your experience with the Tennessee Business Court Docket, would you prefer:

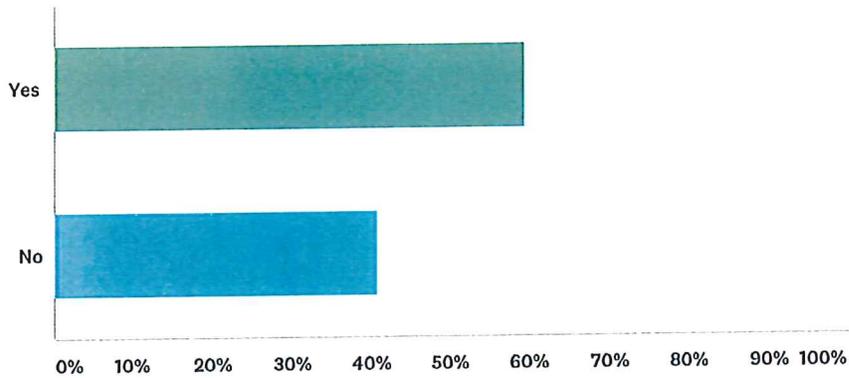
Answered: 69 Skipped: 14



ANSWER CHOICES	RESPONSES	
That the program be kept as is with no changes.	68.12%	47
That the program be kept, but changes should be made.	27.54%	19
That the pilot program be discontinued.	4.35%	3
TOTAL		69

### Q29 Would you be willing to discuss your Business Court Docket experience with members of the Tennessee Business Court Rules Advisory Commission?

Answered: 69 Skipped: 14



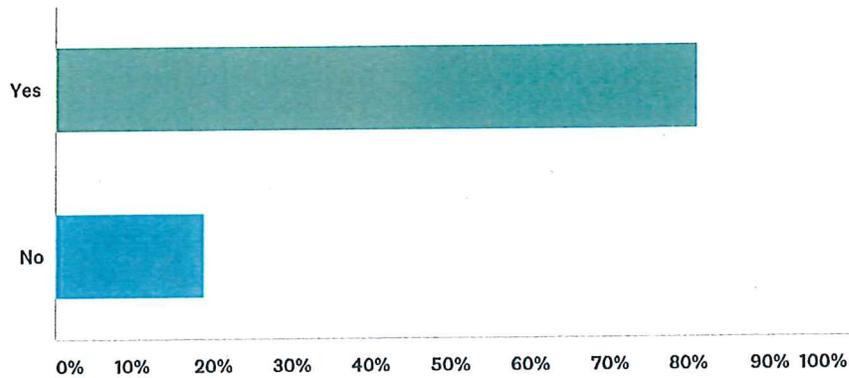
ANSWER CHOICES	RESPONSES	
Yes	59.42%	41
No	40.58%	28
TOTAL		69

**Q30 Feel free to share any other comments about your Business Court Docket experience here:**

Answered: 5 Skipped: 78

### Q31 Do you give permission for the Administrative Office of the Courts to quote your comment(s) without attribution in future publications about the Business Court Pilot Project docket?

Answered: 69 Skipped: 14



ANSWER CHOICES	RESPONSES	
Yes	81.16%	56
No	18.84%	13
TOTAL		69

## APPENDIX O

Advisory Commission's December 5, 2017 Letter



Patricia Head Moskal  
Partner  
Direct: 615.252.2369  
pmoskal@bradley.com

December 5, 2017

*Via Electronic Mail and U.S. Mail*

The Honorable Jeffrey S. Bivins  
Chief Justice of the Tennessee Supreme Court  
Supreme Court Building, Suite 321  
401 Seventh Avenue North  
Nashville, TN 37219-1407

Re: Business Court Docket Advisory Commission – Comments

Dear Mr. Chief Justice:

The Business Court Docket Advisory Commission provided our most recent set of recommendations to the Supreme Court by letter dated August 11, 2017 about the future development of the Business Court Docket in Tennessee. Included in our recommendations was the expansion of the Business Court Docket geographically to a statewide program where cases filed in any county that meet the eligibility criteria may request designation and transfer to the Business Court Docket. To that end, we recommended establishing a Phase 3 of the Pilot Project to expand the project to East and West Tennessee and establishing a permanent Business Court Docket in Davidson County to serve Middle Tennessee.

Since providing our August recommendations, the 21st Judicial District adopted a new Local Rule of Practice, Rule 9, creating a separate, specialized “Complex Commercial Dispute Docket” in Williamson County. We have discussed the significance of this development at the recent meetings of the Business Court Docket Advisory Commission. While we are not yet in a position to supplement our August recommendations to the Court in light of this development, we would like to offer some thoughts and comments about the impact of this development that we hope may be beneficial to the Court in your further consideration of the future development of the Business Court Docket.

The creation of a specialized complex commercial dispute docket by the 21st Judicial District through local rule, which includes eligibility criteria that closely tracks the Supreme Court’s Pilot Project, adopts customized case management, and provides for the designation of a single judge to preside over the case for purposes of continuity, is strong affirmation of the demand for and phenomenal success of the Business Court Docket Pilot Project in Davidson County.

At the same time, the creation of specialized business or commercial dispute dockets organically by individual judicial districts raises certain concerns about the ability to promote uniformity of eligibility criteria and case management practices and predictability and consistency of results, which are goals of the Business Court Docket Pilot Project and we believe

The Honorable Jeffrey S. Bivins

December 5, 2017

Page 2

are objectives that are highly valued by the business and legal communities. Such organic growth, without some standardization, will result in a patchwork quilt of specialized business court dockets and could create the potential for forum shopping or judge shopping.

First, and foremost, we continue to agree that the Business Court Docket concept and project should be continued and expanded beyond December 31, 2017. We have recommended that the Davidson County Business Court Docket be continued and made permanent; however, at this time, there is no mechanism for continued filing of eligible cases in Davidson County in 2018. We are concerned that another pause in the Davidson County Business Court Docket would be counterproductive and undermine the confidence that the business and legal communities have placed in the Pilot Project. We also recommended the need to expand the Pilot Project statewide to East and West Tennessee to allow the Pilot Project to continue to gather data and assess demand across other areas of the State. We believe all businesses and citizens in Tennessee should have equal access to a specialized business court.

Second, we have discussed that the developments in Williamson County may provide the Supreme Court with a prime window of opportunity to promote and facilitate the creation of uniform business dispute dockets across the State to the extent individual judicial districts opt to pursue that alternative. For example, the Supreme Court could consider adopting, by Supreme Court Rule or otherwise, statewide minimum standards for eligible case criteria, excluded cases, case management guidelines, and other requirements, such as electronic filing. Of course, for those judicial districts that do not have the demand or resources to create a specialized business court docket, the expansion of the Pilot Project on a statewide basis would provide the overlay for designation and assignment of those cases. By establishing minimum standards and working cooperatively with judicial districts that elect to create their own specialized dockets, the important goals of uniformity and predictability with specialized business court dockets in Tennessee could be fostered.

Third, we continue to strongly believe that it is essential that the judges who are designated to serve as Business Court Judges have the necessary knowledge and prior experience in complex, business litigation to hear cases across the State. We encourage the Supreme Court to consider any feasible legislative changes to the Senior Judge Enabling Act that might ease the current restrictions for senior judge eligibility and allow for appointments of senior judges that have the requisite complex business litigation experience.

We would welcome the opportunity to discuss our comments with you. Please let us know if the Supreme Court Justices have questions or if we may provide additional information.

The Honorable Jeffrey S. Bivins  
December 5, 2017  
Page 3

The Advisory Commission continues to look forward to being of further assistance to the Court as it may direct and to the continued success of the Tennessee Business Court Docket.

Sincerely,



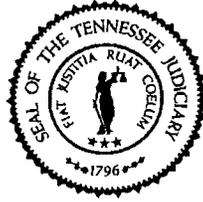
Patricia Head Moskal, Chair  
Business Court Docket Advisory Commission

PHM/sc  
Enclosure

cc: Hon. Cornelia A. Clark (via email)  
Hon. Sharon G. Lee (via email)  
Hon. Holly Kirby (via email)  
Hon. Roger A. Page (via email)  
Hon. Ellen Hobbs Lyle, Business Court Judge (via email)  
Advisory Commission Members (via email)  
AOC Director Deborah Taylor Tate (via email)  
Kimberly McCall, Tennessee Supreme Court (via email)  
Justin Seamon, Business Court Pilot Project Liaison (via email)

## APPENDIX P

### Advisory Commission's Governance Proposal



# *Supreme Court of Tennessee*

## **Business Court Docket Advisory Commission**

### **Administrative Office of the Courts**

#### **Governance Proposal**

##### 1. Commission Members

- a. There shall be a nine (9) member Commission appointed by the Chief Justice of the Tennessee Supreme Court.
- b. Each Grand division will have three (3) members (East, Middle, and West).
- c. Members will be current, active members of the Tennessee Bar, licensed by the State of Tennessee, and have extensive experience in commercial litigation or transactions or have in-house counsel experience with a major corporation doing business in Tennessee.

##### 2. Terms

- a. Each year in December, the Chief Justice of the Tennessee Supreme Court shall appoint three new members, one from each Grand Division.
- b. Each member shall serve a three (3) year term, with no limit to serving consecutive terms.
- c. Terms shall commence in December 2018.

##### 3. Officers

- a. The Commission shall elect a Chair-Elect each December to serve a one year term, thus insuring continuity of leadership
- b. There shall be no term limits for Chair-elect/Chair.
- c. From time to time, the Commission may decide to establish additional officers.