



BUSINESS COURT DIVISION

2017
Annual Report



OVERVIEW

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



BUSINESS COURT JUDGES

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



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

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

Below are the Business Court Division Judges and their terms:



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

October 9, 2019

Chair through October 9, 2018



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

September 30, 2020



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

December 31, 2019



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

October 9, 2019



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

September 30, 2020



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

October 9, 2019



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

June 30, 2022

* *Appointed by Chief Justice Menis Ketchum by Administrative Order dated September 11, 2012.*

** *Appointed by Chief Justice Brent D. Benjamin by Administrative Order dated October 1, 2013.*

*** *Appointed by Chief Justice Margaret L. Workman by Administrative Order dated June 24, 2015.*

**** *Appointed by Chief Justice Menis E. Ketchum by Administrative Order dated February 12, 2016.*

***** *Appointed by Chief Justice Menis E. Ketchum by Administrative Order dated November 9, 2016.*

STAFF

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

PURPOSE

The Business Court efficiently manages and resolves litigation involving complex commercial issues and disputes between businesses. The division judges respond to discovery issues in a timely manner and offer various alternate dispute resolution throughout the pending case, making all reasonable efforts to conclude business litigation within ten (10) months from the date the case management order is entered. The informed decisions provide guidance to the parties and the expediency reduces litigation costs for the businesses and courts, creating an attractive forum for business litigation in the State of West Virginia. Since inception, approximately 270 businesses have been involved in litigation in the Business Court.

UPDATES AND HIGHLIGHTS

In 2017, Judge Wilkes was selected as one of three business court judges from across the country by the American Bar Association to serve as a Business Court Representative to the Business Law Section. He accepted this honor and his term began April 6. He attended Section Meetings in New Orleans, Louisiana; Chicago, Illinois; and Washington, D.C., where he had the opportunity to not only meet and learn from other business court judges, business lawyers, and business leaders, but also shared his perspective of the West Virginia Business Court. The meetings he attended covered topics such as Alternate Dispute Resolution, Valuations, Strategic Planning During Business Divorce, and ESI Protocols. His term will conclude in November of 2018. The American Bar Association Business Law Section paid all expenses.

As a member of the American College of Business Court Judges, Judge Wilkes had the opportunity in May to participate in the USAid Promoting the Rule of Law Project, US Study Tour, in Washington, DC. He met with the Justice of the Supreme Court of the Union of the Republic of Myanmar as well as several other diplomats to discuss and educate on the necessary steps to develop a specialized commercial and business court and the rationale for assigning specially trained judges to complex business and commercial cases.

Judge Farrell and Judge Wilkes attended the West Virginia State Bar's Advanced Mediation Training in Bridgeport, West Virginia in June of 2017.

Judge Tabit was one of four Kanawha Valley women honored by the YWCA as the 2017 Women of Achievement for outstanding personal and professional achievements and contributions to society.

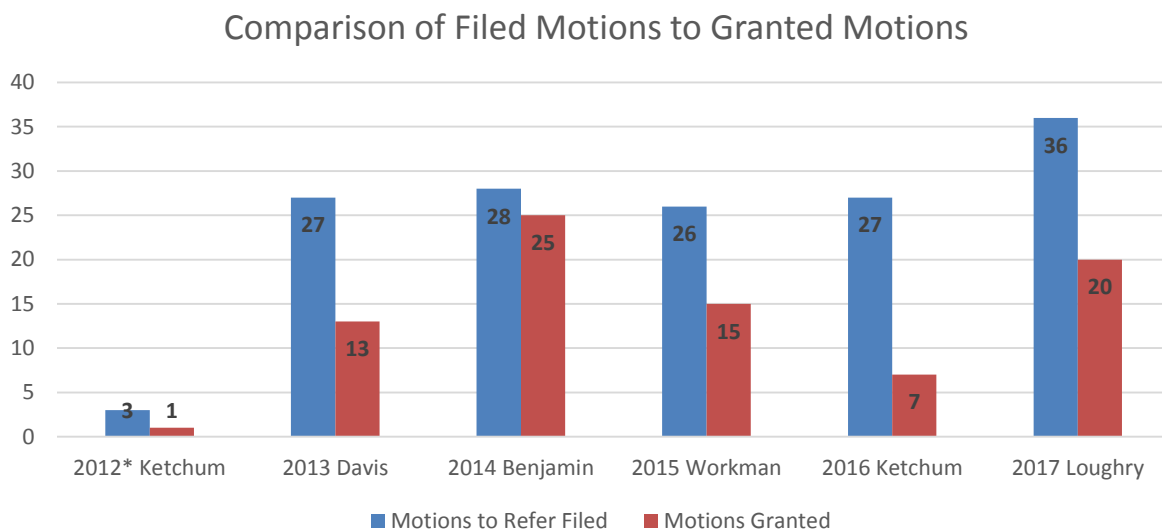
Russell Jessee, Esquire, and John Meadows, Esquire, with the Steptoe and Johnson Law Firm, presented on West Virginia’s Business Court Division at a CLE Luncheon hosted by the Harrison County Bar Association in January of 2017. The conclusion of their presentation focused on the timeline for cases in the Business Court and identified that one of the reasons to seek referral of a case to the Division is efficiency.

After inquiry from an interested law school student, the Division Judges agreed to host externs from the West Virginia University College of Law. The externs will work under the direction of the Division’s law clerk, Claire A. Watson, and will be able to attend hearings and participate in phone conferences with all of the Division Judges. Judge Clawges will host and provide office space to the externs in the Monongalia County Justice Center.

In 2017, Judge Wilkes, Judge Tabit, and Judge Farrell served on a three-judge arbitration panel at the joint request of all parties, reducing the time allotted for an anticipated four-week jury trial to three days of presentation before the panel.

BUSINESS COURT CASE ACTIVITY

Since inception, **147** motions to refer to the Business Court Division have been filed. Of those motions, **81** were granted and referred to the Business Court Division. Five of the filed motions did not require a ruling from the Chief Justice due to settlement or withdrawal.¹ The chart below shows a comparison of filed motions to granted motions and the Chief Justice at the time of the ruling.

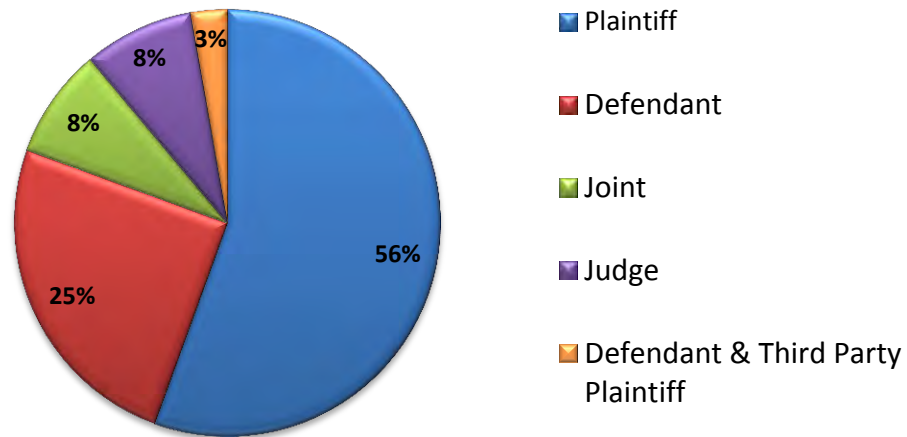


**Business Court was established October of 2012*

¹ Since these five cases did not require a ruling of the Chief Justice, they were not included on the online case management system. Statistics may be different from the 2013 Annual Report due to certain cases being consolidated. Consolidated cases will be counted as one case for the purposes of the Annual Report regardless of consolidation before or after referral.

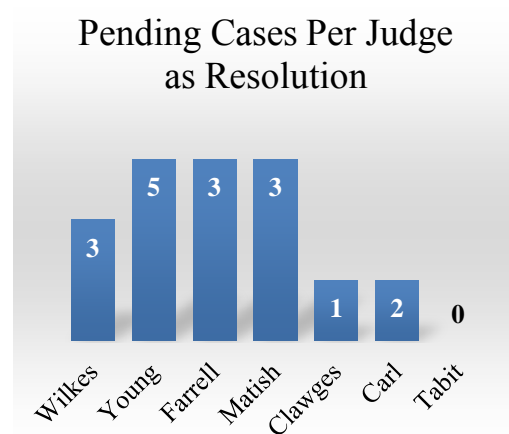
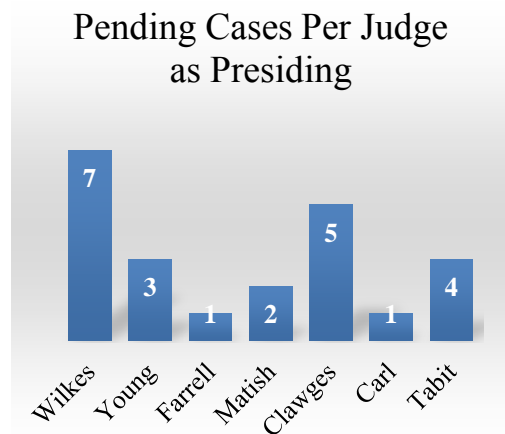
WHO FILED MOTIONS TO REFER IN 2017

Ninety-two percent of the motions to refer were filed by parties while only eight percent were filed by judges.



HOW CASES ARE ASSIGNED AND NUMBER OF PENDING CASES PER JUDGE

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

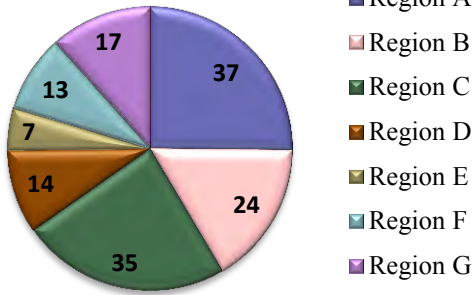


*Due to the number of parties and/or complexity, co-resolution judges may be assigned to cases.

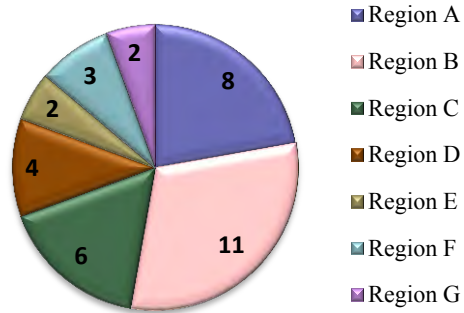
NUMBER OF MOTIONS TO REFER FILED IN BUSINESS COURT BY REGION/COUNTY

Total number of motions to refer filed since inception,

147

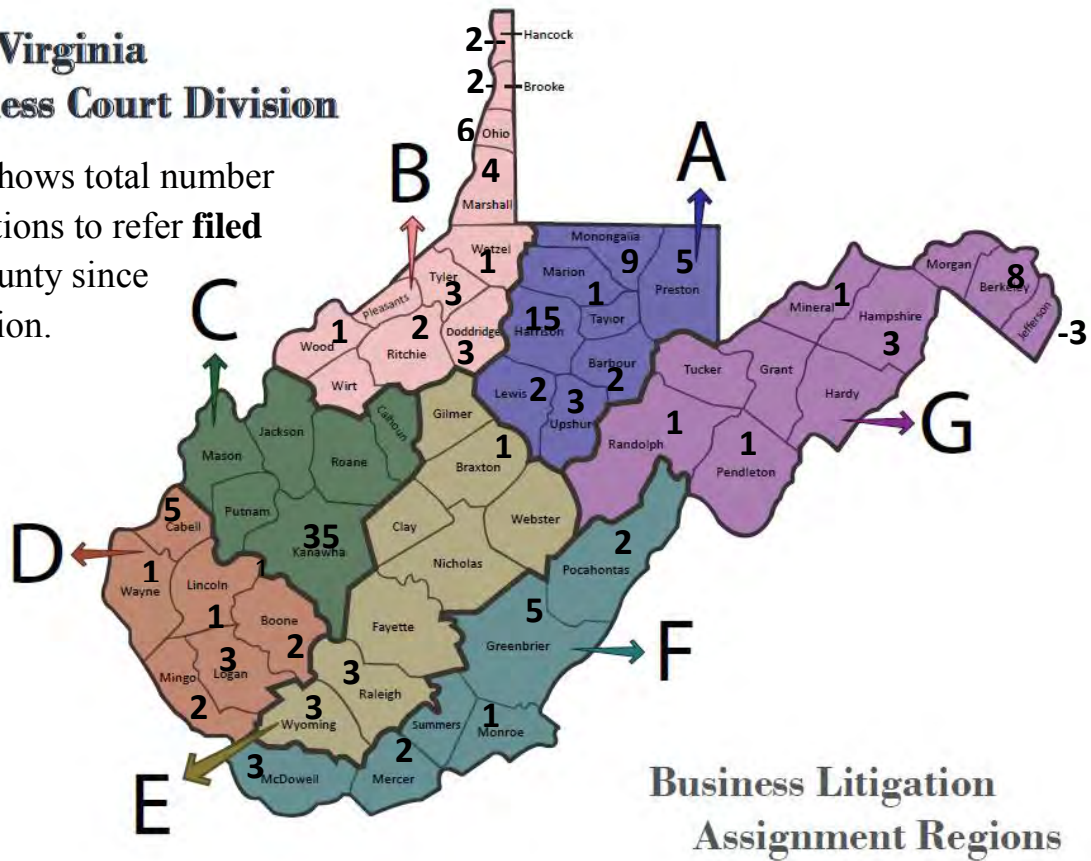


Motions to refer filed in 2017, 36



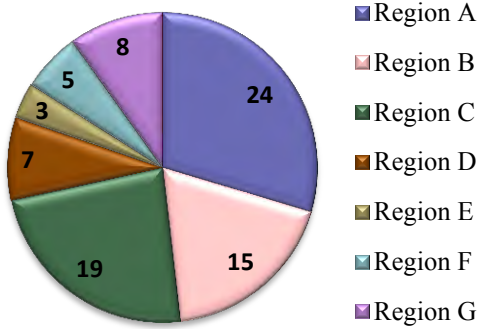
West Virginia Business Court Division

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

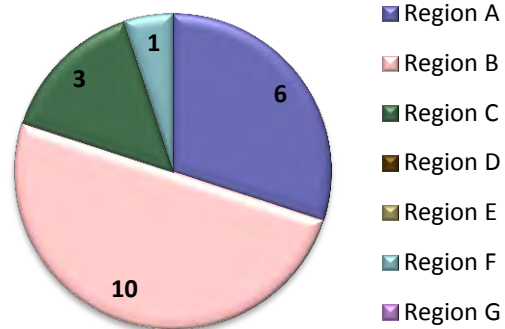


NUMBER OF MOTIONS TO REFER **GRANTED/REFERRED** TO BUSINESS COURT BY REGION/COUNTY

Total number of motions to refer that were granted since inception, **81**

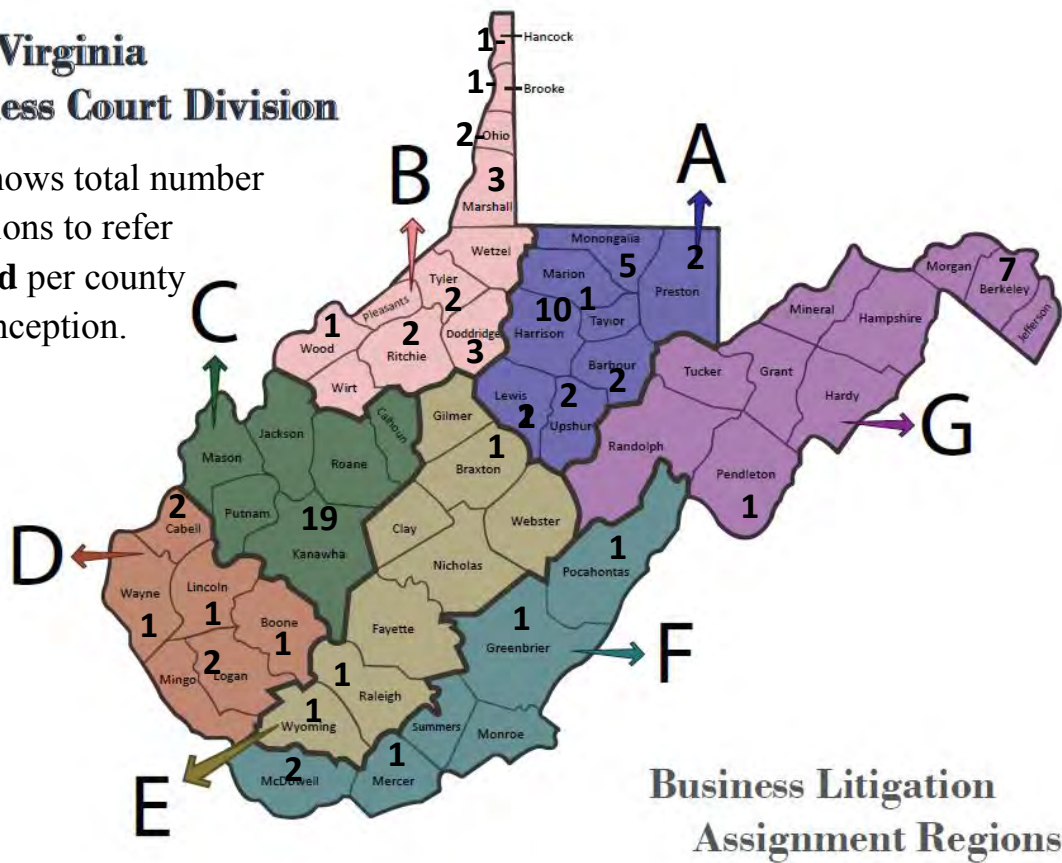


Motions to refer granted in 2017, **20**

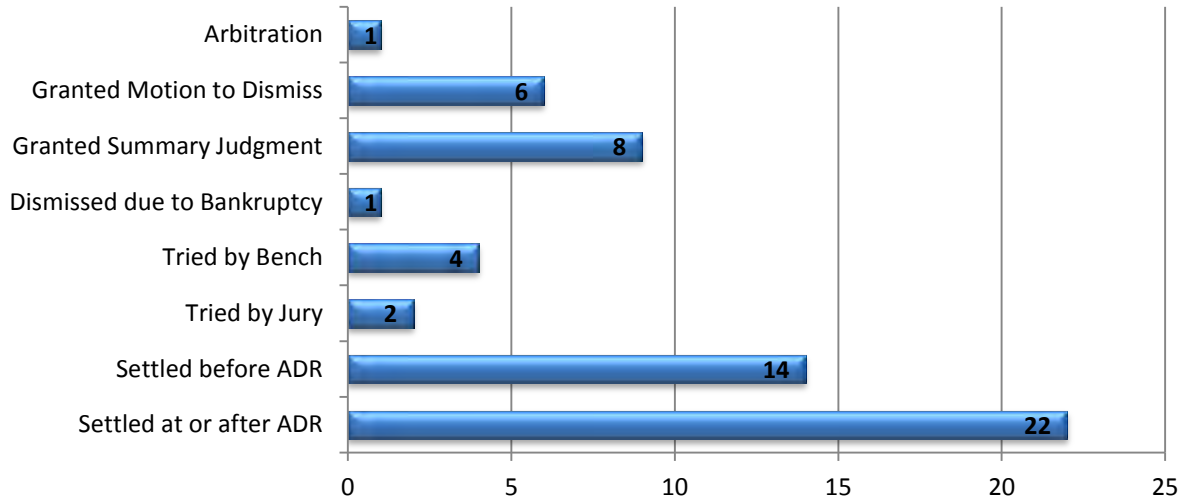


West Virginia Business Court Division

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



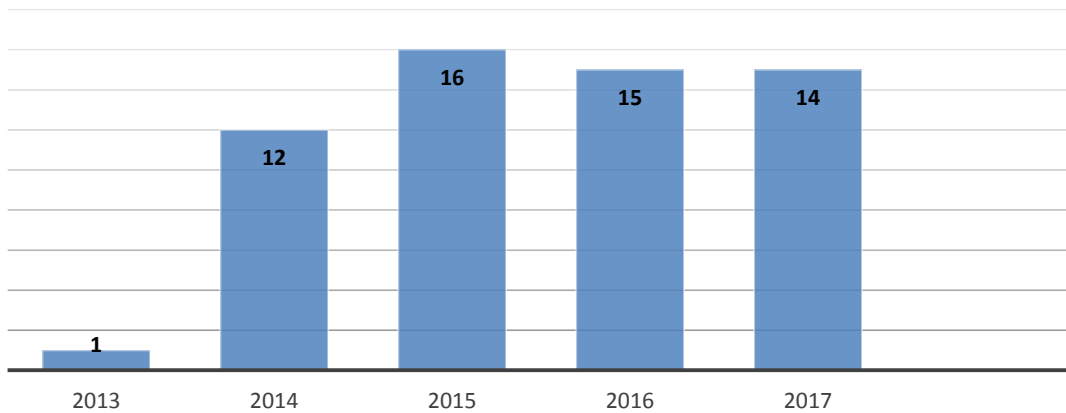
RESOLUTION OF CASES



The chart above shows that the majority of the **58** cases were resolved at or after some form of alternate dispute resolution and only six were adjudicated by bench or jury trial. Resolution judges have successfully aided in the settlement of numerous issues and cases.

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

Number of Cases Closed Per Year (2013-2017)



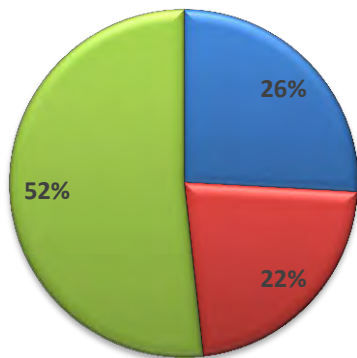
NATURE OF CASES REFERRED TO BUSINESS COURT

Of all cases referred to the Business Court since inception, approximately 60% involve contract disputes or alleged tortious business practices, approximately 20% involve complex tax appeals, and the remaining 20% involve other complex matters of significance to the transactions, operations or governance between business entities which include shareholder derivative actions, alleged monopolies, mismanagement of trusts, violations of the WV Unfair Trade Practices Act, and disputes regarding the scope of easements, right of ways, and restrictive covenants.

CASE AGE

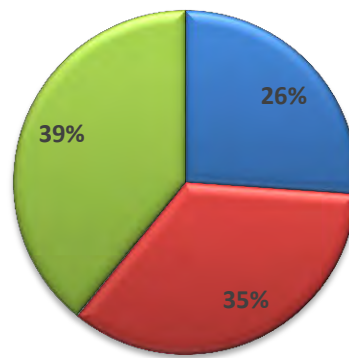
The average case age is over the 10-month anticipated adjudication goal as set out in Rule 29; however, the case age as calculated includes cases that were stayed.

Age Of Resolved Cases



■ 0-6 months ■ 6-12 months ■ 12+ months

Age Of Pending Cases



■ 0-6 months ■ 6-12 months ■ 12+ months

SUMMARY

Of the **142** motions considered by the presiding Chief Justice, **81** cases have been referred to the Business Court Division of which **58** have had final orders entered, leaving **23** pending cases. Of the **58** disposed cases, the average business court case age was **385** days. The Division Judges held approximately **27** hearings, **7** mediations, and **1** arbitration in 2017. The vast majority of hearings were by teleconference or in the judge's own county upon agreement of all parties.