

2017

Metro Atlanta Business Court 2017 Annual Report



Fulton County Superior Court



Governing Rules

On June 3, 2005, the Supreme Court of Georgia promulgated Atlanta Judicial Circuit Rule 1004 governing the procedures of the Business Court (as amended on June 6, 2007, May 6, 2009, September 1, 2010, October 11, 2012, and July 14, 2016). The most recent amendment caused the Fulton County Superior Court Business Case Division to be renamed the “Metro Atlanta Business Case Division” and revised Rule 1004 to allow voluntarily participating metro Atlanta counties to adopt the Rule within its own circuit. Gwinnett County was the first to

adopt Rule 1004 as a pilot project in Gwinnett County State and Superior Courts. As a result, two active Gwinnett County Judges – Randy Rich and Joseph Iannazzone – joined the Business Court bench.



Purpose

The Business Court provides just, accurate, timely, and efficient resolution of complex commercial and business cases. Additionally, the Court serves to retain legal business in the State and aids in the development of a robust body of business case law in Georgia.

Over 600 businesses have chosen the Business Court to resolve their disputes



because of the expert judicial attention given to these complicated business cases by experienced

judges with specialized training in business law subjects. Litigants benefit from reduced resolution time through the utilization of various case management tools, including:

- Comprehensive scheduling orders addressing all aspects of a case, including electronic discovery;
- Responsiveness to discovery disputes;
- Prompt scheduling of oral arguments and written rulings on all substantive motions; and
- Special settings for hearings and trials so cases are not scheduled behind a general docket of criminal and civil cases.

Business Court Judges



Judge John Goger

There are a total of six judges across two counties who serve the Business Court and receive case assignments on a rotating basis. In Fulton County, there are three Senior Judges – Judge Long, Judge Bonner, and Judge Westmoreland – and one Active Judge – Judge Goger. Two Active Judges – Judge Iannazzone and Judge Rich – serve as the Business Court judges for cases arising in Gwinnett.



Senior Judge Elizabeth Long

The Chief Judge appoints the Business Court Bench for up to a two year term. With support staff, these Judges have the experience and time necessary to administer complex civil cases. Senior Judges are readily available to address any



Senior Judge Alice Bonner

discovery dispute or other emergencies that may arise during the course of a case. While the Active Judges still maintain a general docket, they devote blocks of time to the exclusive administration of Business Court cases.

A panel of seven Active Judges oversees the operations of the Business Court and vets the



Senior Judge Melvin Westmoreland

eligibility of cases seeking transfer to the Court by assessing the procedural and substantive complexity presented in the cases. Currently, the Business Court Committee is comprised of: Judge John Goger (Chief Business Case Division Judge), Judge Gail Tusan, Judge Belinda Edwards, Judge Todd Markle, Judge Kelly Ellerbe, Judge Joseph Iannazzone and Judge Randy Rich. Upon a majority vote of the Business Court Committee, a case will be transferred to



Judge Randy Rich

the Business Court and assigned to a Business Court Judge.



Judge Joseph Iannazzone

Additionally, the Business Case Division Judges and the staff attorney host a series of lectures coordinated with the assistance of the State Bar of Georgia. The lectures cover topics such as fiduciary duties, capitalization issues, corporate governance, derivative actions, and mergers and acquisitions, among other legal topics.

Business Court Highlights

Business Court Expansion Projects

In 2016, the Business Court supported an amendment to Rule 1004 which allows additional metro Atlanta counties to adopt Rule 1004 within their respective circuit. The amendment unanimously passed in a vote by the State Bar of Georgia Board of Governors and was approved by the Supreme Court of Georgia on July 14, 2016. Gwinnett County was the first to adopt Rule 1004 and has begun accepting Business Court cases. The Business Court anticipates that other counties will join in adopting Rule 1004. Under the amended Rule, the Fulton County Business Case Division was renamed the Metro Atlanta Business Case Division.

Court-Wide Programs

Area attorneys lead seminars hosted by the Business Court for the benefit of the Superior Court judges and staff attorneys, covering a variety of topics such as new developments in electronic discovery, restrictive covenants, mediation techniques, officer and director liability, and recent developments in business law.

Community Impact: Local Law Schools

The Business Court has also been active with local law schools, hosting externs from Emory University, Georgia State University, and University Of Georgia.

Business Court Impact

Case Selection

Cases that implicate the Georgia Securities Act of 1973, UCC, Georgia Business Corporation Code, Uniform Partnership Act, Uniform Limited Partnership Act, Georgia Revised Uniform Limited Partnership Act, or Georgia Limited Liability Company Act are eligible to be transferred to the Business Court. Additionally, any other action in which the amount in controversy exceeds \$1 million and warrants the attention of the Business Court, including large contract and business tort cases and other complex commercial litigation, may also be considered.

Cases involving personal injury, wrongful death, employment discrimination, or consumer claims in which each individual's claims are in the aggregate less than \$1 million are typically not eligible for transfer to the Business Court. However, exclusions may be waived with the consent of all parties.

Of the cases currently pending in the Business Court, approximately 70% involve contract disputes or allege tortious business practices such as mismanagement or misappropriation. The remaining cases include disputes regarding the management of trusts (10%), disputes as to alleged business ownership (10%), and shareholder derivative actions or cases alleging violations of securities laws (10%).

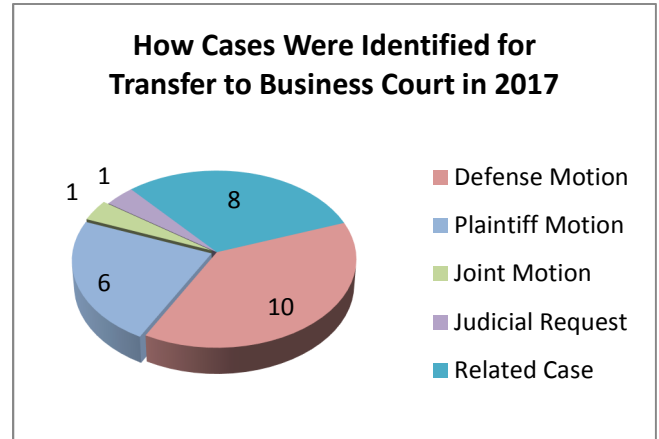
Method of Transfer to Business Court

Cases are identified for transfer to the Business Court upon the motion of one or more parties or by judicial request. The total number of transfers to the Business Court since the inception of the program is 260.

At the program's inception and as recently as 2013, the majority of transfer requests were made by judges. However, in 2017, like the previous year, the primary method of identification for cases transferred to the Business Court was by party request. In addition, there were more related cases transferred to the Business Court in 2017 than in any previous year. In 2017, 25 cases were considered for transfer on a party's request (including related cases). By contrast, only 1 case was considered for transfer by judicial request. Over the life of the program, party requests now significantly outnumber judicial requests.

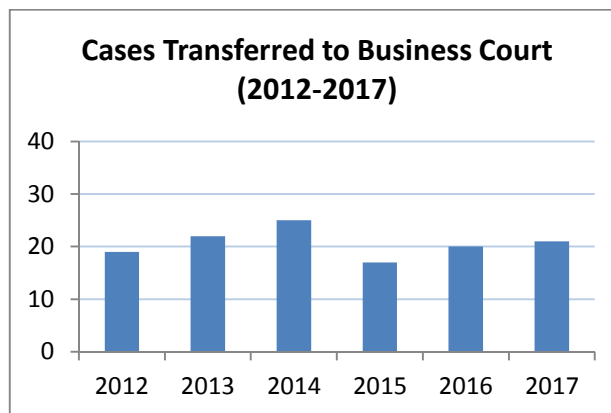
In 2017, five cases were denied transfer to the Business Court. As attorneys have become more familiar with the transfer criteria, the number of denied motions to transfer has declined.

The Business Court added a total of 21 new cases in 2017. Since its inception, the Business Court has considered 336 requests for transfer and has accepted a total of 260 cases.



Transfer Requests (2006 - 2017):

| | |
|-----------------------|------------|
| Requests by Party | 220 (66%) |
| Requests by Judge | 116 (34%) |
| TOTAL REQUESTS | 336 |
| Requests Declined | 72 |
| Requests Withdrawn | 4 |
| Requests Accepted | 260 |

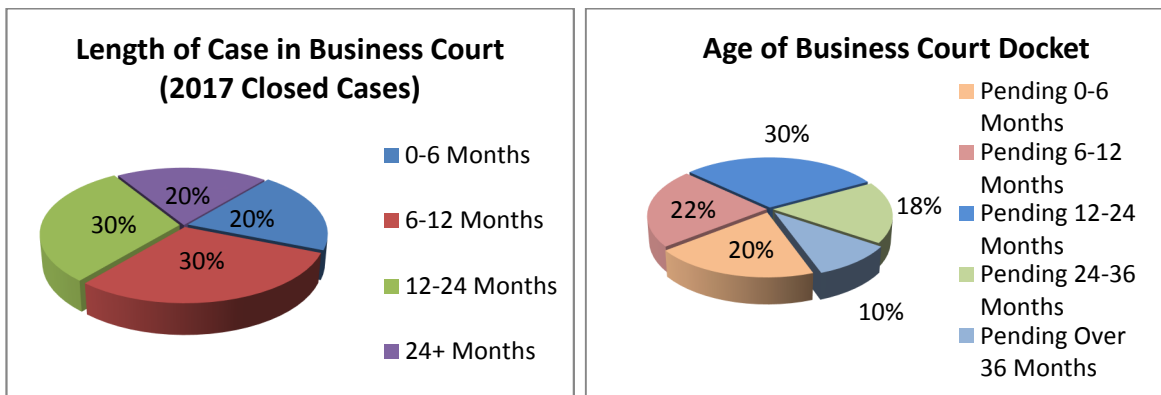


Case Management and Speed of Disposition

The Business Court utilizes early case management conferences (within 30 days of transfer) and ready availability to address discovery issues as they arise. All hearings and conferences are specially set. Together, these features comprise a program that is dedicated to the efficient, just, and timely resolution of complex commercial and business cases with an emphasis on providing superior service to litigants throughout the process.

The Business Court strives to issue an order on all pending motions within 30 days of the hearing or completion of briefing. The average time for the disposition of motions in 2017 was approximately 17 days. In 2017, on average the Business Court maintained a docket of approximately 40 cases. Of these, 10 were closed or settled. The Business Court held 59 specially set conferences or hearings and issued approximately 270 orders. Only 2 conferences were in person.

As of January 2018, the active cases pending had been in the Business Court on average 525 days. The average age of all cases closed in 2017 was 455 days. Of the 10 cases closed in 2017, 50% of the matters were disposed of within 12 months of transfer to the Business Court. One case that closed in 2017 had been pending in the court 1,157 days. Excluding this outlier, the average case closed in 2017 had been pending in the Business Court 377 days.

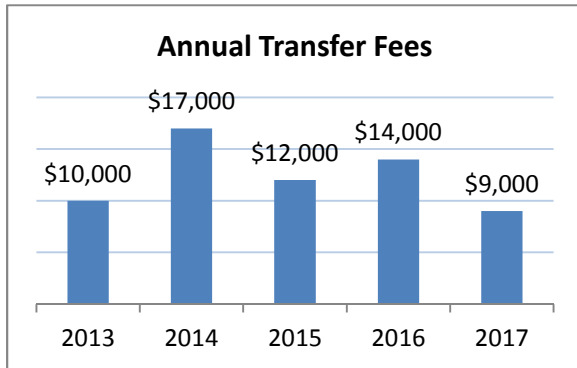


The majority of cases transferred to the Metro Atlanta Business Court are ultimately resolved by the parties through settlement. Very few cases go to trial.

Disposition of cases (2006 - 2017):

| | |
|-------------------------------------|-----|
| Dismissed with prejudice by parties | 106 |
| Dismissed without prejudice | 42 |
| Motion to Dismiss granted | 11 |
| Motion for Summary Judgment granted | 24 |
| Other (removal, arbitration, etc.) | 23 |
| Trial | 7 |

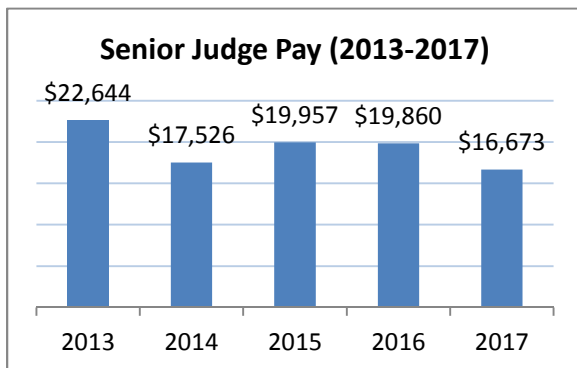
Collection of Transfer Fees



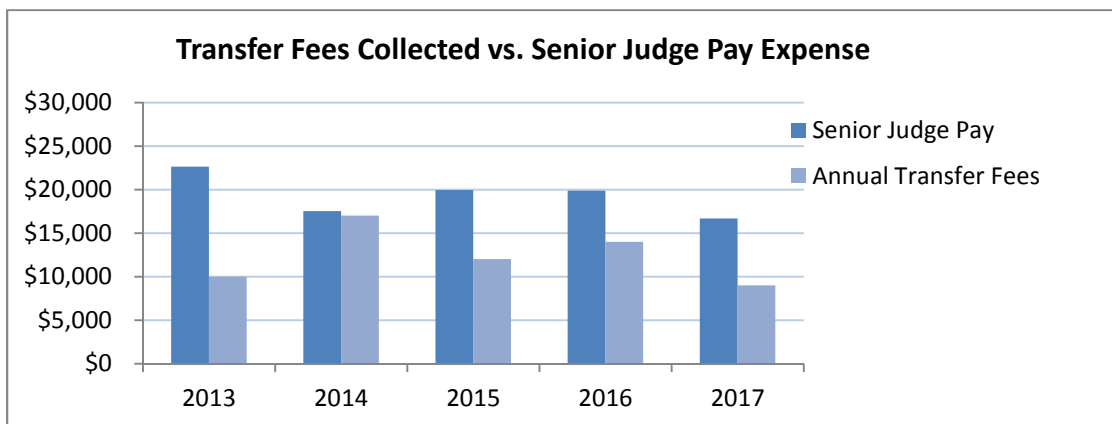
In Fulton County Superior Court, transfer fees are assessed against the moving party or parties once a case is accepted for transfer to

the Business Court. Cases accepted following a judicial request to transfer are not assessed a transfer fee. The transfer fee funds are used for Business Court operations and Senior Judge funding. Out of the 20 cases transferred to the Business Court in Fulton County in 2017, \$9,000 in transfer fees were collected. Fees were not collected for related cases that were transferred or transfers by judicial request. No fees were collected from transfers to the Business Court in Gwinnett State and Superior Courts as they do not currently assess a transfer fee.

Senior Judge Expense



Senior Judge pay for 2017 was the second lowest since 2009. Senior Judge usage is funded through general state or county senior judge allocations and the collection of transfer fees.



For more information about the Business Court, please contact Lynette Jimenez at (404) 613-3690 or lynette.jimenez@fultoncountyga.gov