

## REPORT TO THE SUPREME COURT OF NEVADA ON THE BUSINESS COURT

This report is submitted to the order entered October 2, 2006 in ADKT No. 398. The order provides:

The business court judges in the Second and Eighth Judicial District Courts shall submit a written report to this court no later than January 31, 2007, describing how those courts will: (i) provide or maintain effective case management, including early case conferences and settlement conferences for the business court docket in each district and (ii) cooperate, between districts, in the conduct of settlement conferences for business court cases.

### Background of the Business Court

The business court dockets in Nevada were created on the model of business courts in Maryland, Delaware, Pennsylvania and North Carolina.

The purpose of the business court docket is to identify certain classes of commercial litigation to be managed by one judge with these goals in mind: (1) early, comprehensive case management to avoid business interruption during the pendency of the litigation, (2) judicial activism in settlement to promote innovative case resolution; (3) close management of factually or legally complex commercial litigation and (4) consistency of decision to enable business planning.

In the Second Judicial District, the business court docket was created by WDCR 2.1, effective November 20, 2000 and amended by order of the Nevada Supreme Court on October 2, 2006. In the Eighth Judicial District, the business court docket was created by EDCR 1.33, effective January 1, 2001 and amended October 2, 2006, and WDCR 1.61, effective January 1, 2001.

### Jurisdiction of the Business Court Docket

The specific case jurisdiction of the business court docket is set forth in WDCR 2.1(b) and EDCR 1.61(2). In addition, any dispute among business entities may be placed on the business court docket if the presiding judge determines that the case would benefit from enhanced case management.

Actions in which the primary claim alleges personal injury or products liability, damage of a consumer by a business, wrongful termination of employment, or actions arising from a landlord-tenant relationship are not included in the business court docket. See, WDCR 2.1; EDCR 1.61(3).

**EXHIBIT H- CHANCERY COURTS**  
**Meeting Date: 01-29-08**  
**Document consists of 4 pages.**  
**Entire Exhibit Provided.**

### Assignment of Cases to the Business Court Docket

Upon filing of the complaint, plaintiff's counsel may designate the business court docket and the case is automatically assigned by the clerk to a presiding judge of the business court docket. A party to an action assigned to another department of the court may request that the action be transferred to the business court docket. The request is reviewed by the business court docket presiding judge whose decision whether to accept or decline jurisdiction of the action is final. Although judges presiding over the business court docket also have a full caseload of other matters, business court cases receive calendar priority. In the Second Judicial District Court three judges are assigned to the business court docket and two judges in the Eighth Judicial District Court. These assignments enable prompt judicial management of business court matters even if one of the presiding business court judges is unavailable.

### Early and Comprehensive Case Management

Essential to the philosophy of the business court docket is the recognition that the unmanaged, traditional litigation process can have catastrophic consequences to the life of a business enterprise. Production and sales can be impaired. Start-up businesses can be destroyed. Business interruptions can cause serious losses to non-parties including employees, suppliers, creditors and other business entities. And, as in all cases, the cost and uncertainty of litigation can eclipse the legal issues in controversy.

Mindful of these considerations, the business court presiding judge assumes management of the case at the earliest possible moment, usually in a case conference attended by not only counsel, but also the parties themselves. Often corporate officers and executives participate in such conferences.

The presiding judge, counsel and parties deeply discuss not only the nature of the litigation and the anticipated legal process, but also the practical impacts of the litigation on the successful operation of the business. Settlement alternatives are explored in detail. Often the case is resolved at the first case conference.

If settlement at the first case conference is not feasible, all participants in the conference, under the guidance of the judge, create the most practical, efficient and cost-effective case management plan. This frequently entails discussions about the use of accountants and other experts, receivers, non-expert discovery, management of exhibits, and the setting of the trial and another settlement conference with the judge or a third party.

In business court matters special emphasis is given to the creation of an efficient, cost-effective schedule of litigation events. Careful control of the presiding judge's calendar assures that the schedule is meaningful and, in the absence of extraordinary, unforeseen circumstances, will not be altered. To avoid business disruption, attention is given to the scheduling and manner of on-site discovery (especially by accounting and

other experts), the use of electronically-formatted discovery to expedite fact finding without laborious interrogatories and requests for production, informal exchange of information and occasional status conferences with the court if necessary to provide close management of the litigation.

At the conclusion of the early case conference, counsel and parties are provided with a written order setting forth the agreed-upon case management plan. As an additional cost-cutting measure, disputes which arise concerning implementation of the plan are resolved by the court in on-the-record conferences without the necessity of formal motion practice.

### Settlement Conferences

Settlement conferences conducted by the presiding judge of the business court docket are the most effective tool for the resolution of commercial disputes.

Parties and counsel are strongly encouraged to discuss settlement with the judge at the outside of every business court case. If settlement is not successful, another settlement conference with the presiding judge, another business court judge or a third party will be scheduled.

Experience in managing the business court docket demonstrates that, although commercial cases may often be more complex than other civil litigation matters, the parties are usually anxious to explore resolution and thereby avoid business disruption. They recognize that traditional methods of pendente litem business management, such as the appointment of receivers, can be extremely expensive and very cumbersome. Business owners and managers appreciate the active participation of the court to assist them in avoiding costs and risks. More often than not, even very early in the case, a settlement conference intelligently and patiently conducted by the judge will yield a negotiated settlement.

### Volume of Business Court Cases

In the Second Judicial District, there are 71 presently pending cases on the business court docket. 141 cases were filed in business court between July 1, 2006 and June 30, 2007. 62 cases have been transferred from other departments of the court. 97 case dispositions occurred from July 1, 2006 to June 30, 2007. The settlement rate in business court settlement conferences is over 90%.

The average filing-to-disposition time of a business court case is 238 days.



## Cooperation Between Districts

District Judge Mark R. Denton and District Judge Elizabeth Gonzalez were recently appointed as presiding judges of the business court docket in the Eighth Judicial District. District Judge Brent Adams has been the presiding judge of the business court docket in the Second Judicial District since its inception.

Judge Gonzalez and Judge Denton have enthusiastically embraced the concept of the business court. They are both well-respected trial judges who have substantial experience, as judges and also as practicing lawyers, in the litigation of commercial matters. They are deeply dedicated to achieving success in implementation of the policies and practices of the business court docket.

Judges Adams, Denton and Gonzalez conferred by telephone shortly after their selection as presiding judges of the business court docket. All have agreed that collegiality and cooperation by the business court judges in both districts will promote effective implementation of the business court docket, the timely and practical resolution of commercial disputes and will also enhance public respect for our legal system.

In November, 2006, Judge Gonzalez and Judge Denton attended the American College of Business Court Judges in Chicago, Illinois. Judge Gonzalez was elected secretary of the college, demonstrating Nevada's national leadership role in the business court movement. It is hoped that all Nevada business court presiding judges will be available to attend the conference in 2007.

One example of inter-district cooperation that can improve results in the business court is sharing responsibilities for settlement conferences. Litigants and lawyers may be reluctant to participate in a settlement conference with the judge presiding in their case. As the public esteem for the expertise of business court judges grows, settlement conferences conducted by a business court judge in one district may be effective in settling a case pending in another district.

Finally, communication between the districts assures that innovative case management techniques with demonstrated success will be shared and implemented in both districts.

## Conclusion

Essentially, the business court docket is a testing ground for case processing and resolution innovations which can be applied to a broad variety of civil cases. Judge Adams, Judge Denton and Judge Gonzalez look forward to working together on this important leadership responsibility.