

**THE MARYLAND BUSINESS AND TECHNOLOGY
CASE MANAGEMENT PROGRAM:
EVOLUTION AND CURRENT FUNCTIONING
REPORT BY
THE MSBA-UB BUSINESS LAW CLERKSHIP FELLOWS**

Fall 2014 – Fall 2016

(Under the Auspices of Barbara Ann White, Professor of Law)

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This Report is the result of a 2 ½ year project, beginning in the Fall of 2014, involving not only extensive research and observations into the functioning of Maryland's Business and Technology Case Management Program, but also in-depth interviews of numerous members of the Maryland legal community. The interviewees included various members of *Task Force on the Business and Technology Case Management Program*, the *Administrative Judges of each of the Maryland Circuits* (and the resources of their Administrative Assistants) as well as members of the *MSBA Business Law Section Council*.

A Questionnaire was developed as a result of preliminary rounds of interviews in order to capture the expressed interest and concerns of a broad range of members of the Business Law community. Those concerns were also addressed at the May 26, 2016 Symposium on the Business and Technology Case Management Program jointly sponsored by both the University of Maryland's and the University of Baltimore's Schools of Law. The Questionnaire is included in this report.

We would like to express particular appreciation for the time, input and insights from *Judges Audrey Carrion, Kathleen Cox, Daniel Long, Kenneth Long, Michael Mason, Thomas Ross, Ronald Silkworth and Sean Wallace*. Also *Doris Tamanini*, Judge Mason's Administrative Assistant was exceptionally helpful, digging up data and information long buried in the bowels of file drawers and ledgers as well as obscure digital information.

*Judges (ret.) Steven Platt and Albert Matricciani's* observations were particularly helpful. Judge Platt's time, attention and documents were especially useful in our understanding the motivation behind the Business and Technology Program as well as its actual evolution.

And finally, none of any of this product would have been as successful as it was without the guidance of *Professor Michelle Harner, Eric Orlinsky and William Krulak*.

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**Maryland Business and Technology Case Management Program  
("MD Bus & Tech CMP")**

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## **I. INTRODUCTION: Origins and Implementation of Maryland’s Business & Technology Case Management Program (“Bus & Tech CMP”)**

### **A. MD General Assembly Establishes a Bus & Tech Task Force’s and the Task Force’s Initial Evaluation**

The 2000 Session of the Maryland General Assembly passed House Bill 15<sup>1</sup>, which created a Business and Technology Task Force to study the “feasibility of establishing a specialized court function within Maryland’s circuit courts to adjudicate business and technology disputes.”<sup>2</sup> After considering the experience of other states and consulting with members of the Maryland business and legal community,<sup>3</sup> the Task Force concluded that there was both reason and desire for Maryland to establish an efficient, economical and hospitable forum within which to administer business and technology cases.<sup>4</sup>

At that time, no other state had created courts to address technology issues nor had any state developed a differentiated case management system such as the one already in place in Maryland.<sup>5</sup> Thus Maryland would be venturing into new territory.

The potential benefits from creating special procedures for Business and Technology cases seemed numerous.<sup>6</sup> Specialized training and education of judges would lead to greater efficiency

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<sup>1</sup> Memorandum from Judge Steven I. Platt, Chair of Circuit Judges Business/Technology Case Management Program to Hon. Robert M. Bell (May 10, 2006) (on file with the UB/MSBA Business Law Fellows) [hereinafter “Platt Memorandum”].

See also Wilbur D. Preston, Jr. and Hon. Steven I. Platt, *Maryland Business and Technology Court Task Force Created by House Bill 15 Chapter 10 of the Maryland Acts of 2000*, 8-10 [hereinafter “MD Bus & Tech CMP Task Force Report 2000”]. Available at:

[http://www.msba.org/uploadedFiles/MSBA/Member\\_Groups/Sections/Business\\_Law/Subcommittees/Courts\\_and\\_Litigation/MDBusandTechCourtTaskForceReport.PDF](http://www.msba.org/uploadedFiles/MSBA/Member_Groups/Sections/Business_Law/Subcommittees/Courts_and_Litigation/MDBusandTechCourtTaskForceReport.PDF).

<sup>2</sup> Platt Memorandum.

<sup>3</sup> Judge Steven I. Platt, Vice-Chairman, Business & Technology Court Task Force, *Remarks at the MSBA Litigation Section Meeting MARYLAND STATE BAR ASSOCIATION LITIGATION SECTION COUNCIL’S REGIONAL MEETING WITH THE ADMINISTRATIVE JUDGES OF THE CIRCUIT COURTS 1, 2* (Nov. 16, 2000) (on file with the UB/MSBA Business Law Fellows) [hereinafter “Platt”].

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

and efficacy in handling these complex cases. There would also likely be a higher rate of settlement, since both plaintiffs and defendants in business disputes typically have a mutual desire to end conflicts quickly.<sup>7</sup> The resulting expeditious dispositions of business and technology cases could free up the dockets, allowing for more efficient disposition of non-Business and Technology cases as well.<sup>8</sup>

Finally, the Task Force believed that implementing a specialized Business and Technology forum, with the concomitant increase in expertise and efficiency, would make Maryland a more attractive community to businesses overall. As a result, the Task Force unanimously recommended creating special procedures for Business and Technology cases.<sup>9</sup>

#### **B. Implementation of MD Bus & Tech CMP**

Concluding that it was impracticable to establish a separate Business and Technology (Bus & Tech) division in each of the eight Maryland Circuits, the Bus & Tech Task Force recommended, instead, one statewide Case Management Program through which each Circuit would offer the same coordinated resources. The hope was that this uniform statewide approach might not only create a more unified statewide body of caselaw but also encourage more businesses to come to Maryland and to settle throughout the state, seeing the whole state as sophisticated with respect to complex business issues.

To implement the Program, the Task Force recommended that the Chief Judge of the Court of Appeals, after consultations with members of the judiciary, be responsible for designating the judges who were to participate in the program. Those judges would then receive

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<sup>6</sup> Amelia Parsons and Brett Burka, Report on Business Courts, Recent Developments, and Related Issues (UM Carey Law Report on Existing Business Law Courts (May 2015).

<sup>7</sup> Judge Audrey Carrion, Director of 8<sup>th</sup> Circuit (Baltimore City) Business and Technology Program

<sup>8</sup> *Id.*, Platt, *supra* note 3

<sup>9</sup> *Id.*

specialized training as deemed appropriate. If any circuit did not have a designated judge, the Chief Judge would temporarily appoint one.

As to the assignment of cases to the Bus & Tech Program, the decision as which cases to assign would be based both on criteria as well as requests. Parties could opt into program and if there was a dispute, the administrative judge of the county would decide whether the case warranted Bus & Tech Case management. Among the criteria to be considered were: the number and diversity of interests of the parties, the amount and nature of pre-trial discovery and motions and whether the parties voluntarily agreed to waive venue for pre-trial motions. Also, to be considered would be the complexity of the evidentiary matters and legal issues involved, the extent business and technology issues predominate, and whether admitting the case to the program would promote efficient administration of justice.

Finally, in order to develop a cohesive body of Business and Technology caselaw, opinions were to be published and readily available to the community at large. To facilitate dissemination of the availability and advantages of this specialized forum, there was to be a Bus & Tech Program webpage on the judiciary's website accessing essential information.

### **C. Evolution of Bus & Tech CMP in Practice**

After receiving the Business and Technology Task Force's report and recommendations, Maryland's Chief Judge assigned responsibility for implementation to the Conference of Circuit Judges, which in turn created an Implementation Committee. Ultimately, the Implementation Committee proposed New Rule 16-205 and in 2003 the Business and Technology Case Management Program went into effect.<sup>10</sup>

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<sup>10</sup> The Maryland Courts Website, Maryland Business and Technology Case Management Program webpage: <http://www.courts.state.md.us/businessstech/>.

In order to get the program off the ground, however, several concessions and compromises had to be made. Probably the most significant change was that, instead of a centralized organizational structure through which each Circuit would participate - as the Task Force had urged - each Circuit administered their Program independently of each other under the auspices of each Circuit's Administrative Judge. Though the intention was to have a uniform program throughout the state, in fact with no central coordinating apparatus in place, each Administrative Judge was left to decide the particular implementation of the Bus & Tech Case Management Program in their Circuit that seemed best, given the demands on that Circuit and its available resources. Naturally, the lack of any coordinating organization led to considerable variation in implementation across circuits and these variations manifested themselves in virtually every aspect of the program and its goals.

When Bus & Tech Case Management Program first became operational in 2003, there was an expected initial surge in the program's implementation throughout the state. But over time, both lack of centralized coordination and variation among Administrative and other Circuit Court Judges as to the importance and validity of specialized Business and Technology Forums, has led much of the program's effectiveness to dissipate in many of the Circuits, sometimes even in the face of demand by litigants for these specialized services. This has also led, with limited exceptions, to an uneven development of a Maryland body of case law.

However, interviews conducted over the past year and participant commentary at the 2016 Business and Technology Case Management Program Symposium<sup>11</sup> indicate that the current leadership across the Circuits is in support of the Program and its goals. There has been a recent increase in implementing or re-implementing aspects of the B & T Case Management

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<sup>11</sup> Business and Technology Case Management Program Symposium: Taking Stock of Maryland's BTCMP and Business Courts around the Country" (May 26, 2016) [hereinafter "Symposium"]



Program among Circuits as it seems feasible. Nevertheless, despite this more general increase in overall enthusiasm, many of the issues yielding impediments to the Program's overall success since its inception still remain. And of course, the overarching hindrance due to the lack of centralized coordination pervades as well.

The current increased interest in the Bus & Tech Case Management Program across Circuits suggests that now - in the year 2017 - is an advantageous moment. This is an auspicious opportunity to both examine reflectively on all aspects of the Program as well as implement important changes where warranted.

## **II. CASE SELECTION for MD Bus & Tech CMP**

Based on recommendations from Task Force<sup>12</sup> created by House Bill 15 in 2000, the Court of Appeals adopted rule 16-308 (formerly 16-205).<sup>13</sup> Departing from those recommendations, though, cases are discretionarily selected for Bus & Tech CMP by the Administrative Judge. Once in, parties can request to opt-out as the Task Force recommended, but the assigned judge makes the final determination. Finally, judicial management of the case does not begin until the case is accepted into the Program.

### **A. Judicial Discretion for Admission to Bus & Tech CMP**

The 2000 Task Force recommended presumptive assignment<sup>14</sup> (and exclusion<sup>15</sup>) of cases based on issues presented, as well as \$50,000.00 amount in controversy requirement.<sup>16</sup> Bus &

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<sup>12</sup> MD Bus & Tech CMP Task Force Report 2000 at 8-10, *supra* note 1.

<sup>13</sup> Md. Rule 16-308. *See* APPENDIX C – REDLINE OF RULE 16-205 (NOW RULE 16-308).

<sup>14</sup> The presumption would include the following types of cases: Technology development, including software, maintenance, network, and website development and hosting agreements; technology licensing, including patents; internal business affairs; Breach of contracts from business dealings; Commercial bank transactions; class actions; shareholder derivative actions; trade secrets, non-competes, and confidentiality agreements; commercial real estate; Maryland uniform computer information transaction act; and professional malpractice if arising through professional services to a business; and antitrust. MD Bus & Tech CMP Task Force Report 2000 at 8.

Tech CMP as implemented, however, did not include presumptive case selection or an amount in controversy requirement. First, either party to the lawsuit requests Bus & Tech CMP, or the trial court makes the recommendation *sua sponte*.<sup>17</sup> The Plaintiff makes a request at the time of filing the action, the Defendant may make the request in her answer, or either party may make the request in a subsequent motion. The Bus & Tech CMP selection is located at the bottom of the second page of the Civil Non-Domestic Case Information Report sheet.<sup>18</sup>

Requests for access to Bus & Tech CMP are based entirely on judicial discretion in Maryland. Each case is considered by the Administrative Judge for appropriate designation. When considering the request for Bus & Tech CMP treatment, the administrative judge relies upon certain factors, including the type of case and the willingness to participate in ADR procedures.<sup>19</sup>

There is concern that the lack of a presumptive assignment to Bus & Tech CMP has created what some have described as inconsistencies for which cases get into the program.<sup>20</sup> As of 2014, only five jurisdictions have used Bus & Tech CMP.<sup>21</sup> Some have attributed some of the limited utilization of the Bus & Tech CMP program to geography and varying levels of enthusiasm and

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<sup>15</sup> The types of cases excluded would be: personal injury; medical malpractice; landlord/tenant issues; professional malpractice if not arising through professional services to a business; employer/employee matters; administrative, tax, and zoning matters; criminal matters; and enforcement of existing judgments. *Id.*

<sup>16</sup> The amount in controversy requirement would also “include consideration of potential future economic loss in cases where non-monetary relief is the primary relief being sought (*i.e.*, injunctive or declaratory relief.” *Id.*

<sup>17</sup> Md. Rule 16-308.

<sup>18</sup> See APPENDIX A - CC-DCM-002 (Rev. 11/2016). The most recent version of this form is available here: <http://www.courts.state.md.us/courtforms/circuit/ccdcm002.pdf>.

<sup>19</sup> The remaining factors are: the nature of the relief sought, the number of diverse interests of the parties; the anticipated nature and extent of pretrial discovery and motions; whether the parties agree to waive venue if assignment of the action to the program makes that necessary; and the degree of novelty and complexity of the factual, legal, or evidentiary issues presented. Md. Rule 16-308.

<sup>20</sup> “Business and Technology Case Management Program Symposium: Taking Stock of Maryland’s BTCMP and Business Courts around the Country” (May 26, 2016) [hereinafter “Symposium”].

<sup>21</sup> The jurisdictions are: Anne Arundel County, Baltimore City, Baltimore County, Montgomery County, and Prince George’s County. See Table 7, Administrative Office of the Courts, *Business and Technology Case Management Program, Report on Fiscal Year 2014 Cases* (Dec. 2014).

priority given to the program from Circuit to Circuit. Additionally, some have suggested that a lack of enthusiasm in some circuits has led to a limited number of judges and multiple assignment procedures impacting the efficiency and scale of the program from circuit to circuit.

### **B. Opportunity to Opt-out of Bus &Tech CMP Track Cases**

For cases assigned to Bus &Tech CMP, the 2000 Task Force recommended that both parties be allowed to opt out and that cases assigned be limited to cases involving business entities, with permissive access for individuals where appropriate.<sup>22</sup> The Task Force also recommended that selected cases should be those for which there is a need for “specialized knowledge or expertise” and that there should be an inclusion of an ADR option for both the standard and expedited tracks.

Baltimore City Circuit Court website describes the opt-out process as follows: once a case has been designated for Bus &Tech CMP, parties have ten days to file a written motion, stating the basis for any objection with a response to the motion due five days after service of the motion.<sup>23</sup> The court’s holding on any objections is final.

The core concept of the Bus & Tech CMP program was to facilitate that litigation involving sophisticated business, commercial, or technology matters be heard by judges with some expertise in the matter. Critics have noted that implementation has been inconsistent, perhaps due to decentralization of the program and discretion in the case selection process. Proponents of centralization have suggested that centralization would allow Bus &Tech CMP to enlarge and expand the judiciary’s role in the development of business law, and would further reduce the

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<sup>22</sup> MD Bus &Tech CMP Task Force Report 2000 at 8, *supra* note 1.

<sup>23</sup> This is per the [Baltimore City Circuit Court](#) website. Of the five jurisdictions hearing Bus &Tech CMP cases as of 2014, only Baltimore City’s Circuit Court site mentioned opting out of the Bus &Tech CMP program. It is understood here to be treated as any motions practice, with final judgment on staying in Bus &Tech CMP reserved to the assigned judge.

inconsistencies noted across the Circuits.<sup>24</sup> They have also suggested centralization would allow for better oversight, record keeping, and insight into the effectiveness of Bus & Tech CMP.<sup>25</sup>

### **C. Judge Assignments and Case Management**

Once a case is affirmatively selected for Bus & Tech CMP, the Program is designed for dedicated Bus & Tech CMP judge to manage the case. However, the amount of judicial management depends on when the case is discretionarily assigned to the Bus & Tech CMP track, which can occur at the filing stage or after discovery has begun. Some feel this has resulted in inconsistencies regarding how early disputes are handled.<sup>26</sup> Most business courts across the country assign a single judge from filing to resolution.<sup>27</sup>

### **D. Other Jurisdictions**

There are three ways for a state to assign a case to its Bus & Tech track: mandatory (presumptive) assignment, discretionary assignment, or a hybrid method.<sup>28</sup> These evolved into two basic models: the Delaware model<sup>29</sup> and the North Carolina model<sup>30</sup>. Under both model approaches, deciding whether to include a case in the Bus & Tech program was centralized for consistency.<sup>31</sup>

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<sup>24</sup> Symposium, Panel I at 38.

<sup>25</sup> Symposium, Panel II at 214–15.

<sup>26</sup> Symposium, Panel I at 51–52.

<sup>27</sup> *Id.*

<sup>28</sup> See APPENDIX D - CASE SELECTION IN OTHER JURISDICTIONS; see also Jennifer Bove and Christopher Stock, *Best Practices in Business Law Courts in the 23 States Listed by the ABA* (January 2016) [hereinafter “Best Practice Report”]; see also Amelia Parsons and Brett Burka, *Report on Business Courts, Recent Developments, and Related Issues* (UM Carey Law Report on Existing Business Law Courts (May 2015).

<sup>29</sup> Under the Delaware model, all cases that fit within Bus & Tech jurisdiction go to one or two courts within the state. Some states have Chancery Courts which have their own subject matter jurisdiction. Others have changed their rules regarding venue in order to allow statewide cases to be heard in one or two courts statewide.

<sup>30</sup> Under the North Carolina model, Bus & Tech judges are appointed and travel statewide to hear cases. When a party requests Bus & Tech treatment, the determination is made by the chief justice of the North Carolina Supreme Court. If the case is accepted, it is sent to the chief judge of the Bus & Tech court who assigns the case.

<sup>31</sup> APPENDIX D.

### **E. Summary of MD Bus &Tech CMP Case Selection Process**

As implemented, either party or the court can choose to request access to the program. Then, either party can submit a motion to opt out if their case has been selected, but the judge has the ultimate discretion if it is to stay in. This is counter to several recommendations made by the original Task Force, specifically that there should be presumptive inclusion of certain types of cases, and that any party should be able to opt out. It has been noted that inconsistencies have arisen because of these departures from the recommendations and from a lack of enthusiasm across the Circuits for the program. Most other jurisdictions apply a mandatory assignment or a hybrid thereof to make their state's programs more consistent.

### **III. SELECTION OF JUDGES**

As with most functions of the Maryland Bus &Tech CMP, selection of judges is administered at the circuit-level.<sup>32</sup> Each circuit court administrative judge has the ability to determine the number of judges assigned to Bus &Tech CMP, how to select those judges, what qualifications or attributes the potential judge should have and how long they will serve in the program.<sup>33</sup>

#### **A. Administrative Judges for Each Circuit Have Discretion to Decide How Judges Are Selected for Bus &Tech CMP**

Maryland Bus &Tech CMP judges are selected by the administrative judges of the circuit where they serve.<sup>34</sup> In some circuits the administrative judge has delegated management of the

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<sup>32</sup> Md. Rule 16-308.

<sup>33</sup> MSBA-UB Clerkship Fellows reached out to each circuit and interviewed administrative judges about the administration of Bus & Tech CMP in their respect to their circuit. Much of the information in this piece was gleaned from those interviewed. To maintain the confidentiality that was promised to the judges, information from the interviews will be cited hereinafter as "Interviews".

<sup>34</sup> Interviews.

program to another judge within the circuit and that judge assists in the selection process.<sup>35</sup> There are no guidelines on what attributes administrative judges should be looking for in a program judge - rather judges in each circuit have their own informal criteria for selecting the judges they feel will benefit the program.<sup>36</sup>

There are no official background or educational requirements for serving as a program judge. Some circuits allow anyone who is interested to serve as a Bus &Tech CMP judge without screening.<sup>37</sup> Other circuit administrative judges look most commonly to a background in business and complex litigation.<sup>38</sup> Further, the administrative judges evaluate how the judge has handled previous complex civil litigation cases that have come before them, in particular how closely they paid attention to the minute details encompassing the case.<sup>39</sup> Finally, they look to the judge's willingness to learn and their general interest in handling complex litigation on novel business issues.<sup>40</sup>

The factors that administrative judges use in selecting program judges are similar to those used in other programs across the country.<sup>41</sup> In Delaware, for instance, the President Judge selects judges based first on their interest in complex business cases and also looks at the experience of the judge when selecting who to appoint to the chancery.<sup>42</sup>

It is the opinion of many of the Circuits' Bus &Tech administrators that, though a business background may help a judge reach a baseline understanding of the issues in the case, a

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<sup>35</sup> Interviews.

<sup>36</sup> Interviews.

<sup>37</sup> Interviews.

<sup>38</sup> Interviews.

<sup>39</sup> Interviews.

<sup>40</sup> Interviews.

<sup>41</sup> *See, generally*, Symposium.

<sup>42</sup> Symposium, Panel II at 127 (statement of Vice Chancellor Parsons)

business background is not necessarily a prerequisite for success.<sup>43</sup> While a background in business may be helpful in overcoming the initial barrier of business knowledge, it is possible that interest in learning about complex and novel issues, attention to detail, and past experience working as a judge in complex litigation could be better indicators of success. Also, by drawing from those without business law backgrounds, the program might have more diverse viewpoints and experience to draw on.<sup>44</sup>

### **B. Determining Need for and Number of Bus &Tech CMP Judges in A Circuit**

Circuit administrative judges determine the number of judges assigned to the Bus &Tech CMP in the circuit. The rule provides no guidelines on how many judges should be assigned to each district, simply saying that the program is subject to “the availability of fiscal and human resources.”<sup>45</sup>

In some circuits, the number of judges reflects the number of judges who are interested in the program. Other circuits evaluate the need and increase the number of judges to reflect that.<sup>46</sup> The Seventh and Eighth Circuits have recently increased the number of program judges because of increased demand for Bus &Tech cases; whereas the Fifth Circuit added two program judges due to their interest in it.<sup>47</sup> Although the exact number of active program judges is difficult to count, there are at least 28 based on a tally from speaking with the circuit administrative judges.<sup>48</sup> The number of judges per circuit is included in the table below:

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<sup>43</sup> Interviews, see also Symposium, Panel III at 198 (statement of Mr. Bach regarding Judge Darnell Jones who used to sit on the Philadelphia Business Court bench.)

<sup>44</sup> Interviews.

<sup>45</sup> Md. Rule 16-308.

<sup>46</sup> Interviews.

<sup>47</sup> Interviews.

<sup>48</sup> Interviews.

| <b>Circuit</b>                                          | <b>Program Judges<sup>49</sup></b> |
|---------------------------------------------------------|------------------------------------|
| First (Dorchester, Somerset, Wicomico, Worcester)       | 4                                  |
| Second (Caroline, Cecil, Kent, Queen Anne's, Talbot)    | 1                                  |
| Third (Baltimore County, Harford)                       | 4                                  |
| Fourth (Allegany, Garrett, Washington)                  | 0                                  |
| Fifth (Anne Arundel, Carroll, Howard)                   | 4                                  |
| Sixth (Frederick, Montgomery)                           | 4                                  |
| Seventh (Calvert, Charles, Prince George's, St. Mary's) | 6                                  |
| Eighth (Baltimore City)                                 | 5                                  |
| <b>State Total:</b>                                     | <b>28</b>                          |

The number of Bus &Tech judges in Maryland is higher than many other jurisdictions. The number of Business Court judges in jurisdictions discussed at the Symposium ranged from four to seven state-wide.<sup>50</sup> Delaware, arguably the most respected business court in the world,<sup>51</sup> has just five judges on the Court of Chancery.<sup>52</sup>

One potential consequence of the high number of Bus &Tech CMP judges in Maryland is that no judge reaches the critical mass of business law cases which would allow them to hear only business law cases.<sup>53</sup> In Maryland, there are some circuits where there are four judges in the Bus &Tech CMP, but the circuits accept less than one Bus &Tech CMP case per year.<sup>54</sup> These judges have spent time undergoing training for the program, but may only practice a case once every four years. The positive aspect of having many Bus &Tech CMP judges is that it gives

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<sup>49</sup> Number of program judges is based on those identified as program judges by their administrative judge in the interviews. Some of those identified may never have had training or tried a Bus & Tech CMP case.

<sup>50</sup> North Carolina has 4 judges (Symposium, pg. 93), West Virginia has 7 judges (Symposium, pg. 189), Pennsylvania has 3 judges in Philadelphia and 2 judges in Pittsburgh (Symposium, pg. 207, 213).

<sup>51</sup> Symposium, Panel I at 36 (statements of Judge Platt).

<sup>52</sup> Symposium, Panel II at 87.

<sup>53</sup> Symposium, Panel IV at 213 (statement of Lee Applebaum), for further discussion of a dedicated vs. a mixed caseload see What Portion of a Judge's Docket is Bus & Tech CMP?, section II, subsection D, *infra*.

<sup>54</sup> Interviews.



more judges access to cases that may be considered more interesting and stimulating than their standard docket.<sup>55</sup>

### **C. Length of Term**

Judges in all circuits are appointed for open-ended terms.<sup>56</sup> Judges typically stay with the program until they retire from the bench.<sup>57</sup> This practice is different from several other states where judges have term limits. In North Carolina, judges serve a 5 year term.<sup>58</sup> In Delaware, judges are appointed for 12 years.<sup>59</sup> One potential positive aspect of having an open-ended term is that judges will stay with the program for a longer period of time and gain practical experience by trying Bus &Tech CMP cases. The negative might be that there is little recourse for terminating a judge who is not fulfilling his duties as Bus & Tech CMP Judge. There may also be a lack of understanding or recognition of changing business and technology by judges who have been on the bench for a long period of time.

### **D. What Portion of a Program Judge's Docket Are Bus &Tech CMP Cases?**

All Bus &Tech CMP judges in Maryland are assigned to a regular docket of cases which includes Bus &Tech CMP. A Bus &Tech CMP case is assigned as part of the judge's normal docket in four circuits. In the three busiest circuits for Bus &Tech CMP cases, cases are assigned on top of a judge's existing workload.<sup>60</sup> Judges working in the Maryland Bus &Tech CMP are taking on cases which require tremendous amounts of reading, document review, meetings with counsel, hearings, and administration<sup>61</sup> and adding them on top of the same full docket that any

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<sup>55</sup> Interviews.

<sup>56</sup> Interviews.

<sup>57</sup> Interviews.

<sup>58</sup> Symposium, Panel IV at 212.

<sup>59</sup> Symposium, Panel II at 88.

<sup>60</sup> Interviews.

<sup>61</sup> Symposium generally.

other Circuit judge in Maryland has. This means that judges must hear Bus &Tech CMP cases on *top* of a full docket of drug, felony murder, and other cases coming through a metropolitan courthouse.<sup>62</sup> As a result, many judges hearing Bus &Tech CMP cases do not have the time necessary to immerse themselves in the material,<sup>63</sup> seek out educational opportunities,<sup>64</sup> or write opinions.<sup>65</sup>

The inability to write opinions is one of the chief concerns when considering the busy caseload of judges. Propagation of written opinions is almost universally seen to foster the goals of efficiency and consistency at the heart of the Bus &Tech program.<sup>66</sup> Judges with a dedicated docket of business or technology cases in other jurisdictions have the time necessary to consider and draft opinions as it is built into their schedule. Similarly, having dedicated judges might allow greater flexibility to attend educational programming. Finally, dedicated dockets mean that judges are hearing more business law cases, immersing themselves in that body law, learning how to effectively manage the docket, and overall increasing the efficiency and consistency of the program.<sup>67</sup>

The chief barrier to having dedicated judges in Maryland is administration of the program at the circuit level. In most circuits it would be impractical to have a dedicated Bus &Tech CMP judge as there are not nearly enough cases to support even one dedicated judge.<sup>68</sup> In Pennsylvania, New York, Delaware, Chicago, North Carolina, Boston, Rhode Island and other jurisdictions, judges in the business court program are dedicated to hearing business law cases

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<sup>62</sup> Symposium, Panel I at 41 (statement of Judge Platt), Symposium, Panel II, pg. 83 (statement of Judge Carrion).

<sup>63</sup> Symposium, Panel II at 102 (statement of Judge Carrion).

<sup>64</sup> Symposium, Panel IV at 195 (statement of Judge Rubin).

<sup>65</sup> Symposium, Panel III at 181 (statement of Judge Rubin).

<sup>66</sup> Interviews.

<sup>67</sup> See, generally, Symposium.

<sup>68</sup> Symposium, Panel IV at 207 (statement of Judge Cox).

alone.<sup>69</sup> In West Virginia, judges still have to attend to a regular docket, but their business cases get priority.<sup>70</sup> These judges typically serve multiple jurisdictions in their role, or have state-wide authority to hear cases. These judges have more time and flexibility to work through the difficult aspects of each case, more time to attend trainings, and more time to write opinions.<sup>71</sup>

#### **IV. WRITING AND PUBLICATION OF BUS & TECH CMP OPINIONS**

This section will discuss (a) the purpose of writing Bus & Tech CMP opinions; (b) the challenges to writing Opinions; (c) the process of selection of Opinions for publication; and (d) the accessibility of Opinions, once they are published.

##### **A. Purpose of Writing Opinions: Consistency and Predictability**

The Maryland Bus & Tech CMP Implementation Committee recommended the creation of an “Opinion Database” to “provide lawyers and litigants with a growing body of predictive information at the trial court level to advise clients on likely rulings” and to “encourage collegiality and consistency among the judges.”<sup>72</sup> Since its implementation in 2003, 108 Bus & Tech CMP opinions have been published.<sup>73</sup>

According to Maryland Rule 1-104, unreported opinions of the Court of Appeals and the Court of Special Appeals cannot be cited to in any paper, brief, motion, or other document filed

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<sup>69</sup> See Best Practices Report; see also Symposium, generally.

<sup>70</sup> Symposium, Panel II at 125.

<sup>71</sup> Symposium, Panel I at 37 (statement of Judge Platt).

<sup>72</sup> From the “Protocol” page of the Bus & TechCMP website:  
<http://www.mdcourts.gov/businessstech/protocol.html#procedures>.

<sup>73</sup> All of these opinions can be found under the “Published Opinions” page of Bus & TechCMP’s website:  
[http://homeslandcountrypropertyforsale.com/log-homes/?sfid=16832&sft\\_property\\_county\\_state=va&sfm\\_property\\_price=0+100000&sfm\\_lot-size-ac=0+10000](http://homeslandcountrypropertyforsale.com/log-homes/?sfid=16832&sft_property_county_state=va&sfm_property_price=0+100000&sfm_lot-size-ac=0+10000).  
Opinions published from 2003-2008 are in the “Published Opinions Archive,” while opinions from 2004 to the present are listed individually on the Published Opinions page.

in any Maryland court, either as precedent or persuasive authority.<sup>74</sup> Maryland Rule 1-104 does not directly apply to unreported opinions of the Bus &Tech Panel, but because the opinions are “unreported,” they are not considered to be precedent and the Bus &Tech CMP website makes this clear.<sup>75</sup> However, there is still some uncertainty as to whether the opinions can or should be used as *persuasive* authority.<sup>76</sup>

Maryland litigants have expressed that what they desire to gain from the published opinions is predictability in the *process*, as opposed to predictability in the overall outcome of a case.<sup>77</sup> Attorneys want to be able to tell their clients, at the very least, whether a case will get into Bus &Tech CMP. Beyond that, attorneys would like predictability in, for example, how certain motions will be handled and how the case will progress over time. On the other hand, it might be frustrating for judges when parties see a certain Bus &Tech CMP opinion and expect their own case to have the same outcome.<sup>78</sup> Allowing reliance on unreported Bus &Tech CMP opinions for procedural predictability, as opposed to predictability in the overall disposition of a case, might be a fair balance between these competing interests. Without some sort of compromise, publication is futile; a published opinion will not be useful to parties or judges if it has no persuasive or predictive value.

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<sup>74</sup> There are limited exceptions to this rule. In any court *other than* the Court of Appeals or the Court of Special Appeals, “an unreported opinion of either Court may be cited only (1) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent.” Md. Rule 1-104(b).

<sup>75</sup> “These trial court opinions are not considered to be precedent.”

<http://www.mdcourts.gov/businessstech/opinions.html>.

<sup>76</sup> At the Business and Technology Case Management Program Symposium, one judge expressed that he does not encourage litigants to cite to unreported Bus & Tech opinions, but that “they really are of significant benefit when determining . . . whether or not an argument is persuasive . . . .” Symposium, Panel I, p. 56 (statement of Judge Berger).

<sup>77</sup> Attorneys and clients do not want “predictability in the end game decisions but predictability in the process . . . .” Symposium, Panel II, p. 112-113 (statement of Eric Orlinky).

<sup>78</sup> This frustration was expressed at the Symposium by a New York judge. Symposium, Panel III, p. 179-180 (statement of Justice Driscoll) (“The difficult thing is with the ubiquity of decisions being online is that – this happened to me and I’m sure it has happened to all my brother and sister judges here – is your own words get tossed back at you very, very quickly.”).

## B. Challenges to Writing Opinions

There are issues with the use of Bus &Tech CMP opinions, but there are also challenges that judges face in authoring those opinions. Once an opinion is published it is relatively accessible if the researcher knows what he or she is looking for.<sup>79</sup> Oftentimes, however, Bus &Tech CMP opinions are *not* published, even in instances where publication would greatly serve one of the original purpose for implementing the Opinion Database: to “provide lawyers and litigants with a growing body of predictive information at the trial court level to advise clients on likely rulings.”<sup>80</sup>

A majority of published Bus &Tech CMP opinions come from Baltimore City and Montgomery County,<sup>81</sup> where a majority of Bus &Tech CMP cases take place.<sup>82</sup> However, one of the purposes of the opinion database is to “encourage . . . consistency among the judges.”<sup>83</sup> If only certain judges from certain circuits are publishing opinions on a regular basis, then it is difficult to determine whether this purpose is being fulfilled. For example, Baltimore County did not publish any opinions from 2008 to present, but its Program has seen 23 cases in that time; Anne Arundel County has published one opinion since 2008, and its Program has admitted 55 cases in that time.<sup>84</sup> There is also concern regarding the transparency of the Program. The small number of opinions being published does not fully allow public review of Bus &Tech case management in Maryland.

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<sup>79</sup> See *infra* Section III(d).

<sup>80</sup> See *supra* note 72.

<sup>81</sup> Baltimore City has published 47 opinions since 2003. Montgomery County has published 41 opinions since 2003. All other circuits combined have published 20 opinions since that same year. See APPENDIX B – Bus & Tech CMP CASES SINCE 2003.

<sup>82</sup> From 2010 to 2014, 333 cases were admitted into Bus & TechCMP. Of those 333 cases, 68 took place in Baltimore City Circuit Court and 195 took place in Montgomery County Circuit Court. The circuit with the next highest volume of Bus & TechCMP cases in that time period is Anne Arundel County Circuit Court, with 33 cases.

<sup>83</sup> <http://www.mdcourts.gov/businessstech/opinions.html>.

<sup>84</sup> See APPENDIX B.

Based on discussions at the Business and Technology Case Management Program Symposium and a review of Bus &Tech CMP data, time seems to be the biggest constraint on publication. In some jurisdictions, business or commercial judges handle only business and commercial cases.<sup>85</sup> In Maryland, however, Bus &Tech CMP judges handle Bus &Tech cases *in addition to* their normal dockets. Understandably, judges do not want to publish opinions if they do not have the time to dedicate to making the opinion of “publishable” quality.<sup>86</sup> The “ideal” solution would be for assigned judges to only handle Bus &Tech CMP cases.<sup>87</sup> If this was the case, then *all* Bus &Tech CMP opinions could be published.<sup>88</sup> This would be a substantial change, however, and may not be practical at this time.<sup>89</sup> Another more feasible solution is more centralized guidance as to when an opinion should be published. For example, guidelines for the publication of opinions regarding certain matters (e.g., evidentiary issues) could help to ensure that litigants will have at least minimal guidance in those areas.<sup>90</sup> At the same time, focusing on specific areas where case law is lacking will be a more efficient use of Bus &Tech CMP judges’ time.

### **C. Selection of Opinions for Publication**

What is included in the Opinion Database? The Bus &Tech CMP Opinion Database contains judicial opinions which address a substantive area of particular interest to the business and technology community. This includes, but is not limited to, opinions on procedural matters

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<sup>85</sup> For example, in New York, Bus & Tech CMP judges only handle business court cases; they do not maintain a separate docket. Best Practices Report at 5.

<sup>86</sup> See, e.g., Symposium, Panel III, p. 177-178 (statements of Judge Johnston and Judge Wallace).

<sup>87</sup> See, e.g., Symposium, Panel IV, p. 210-211 (statement of Judge Carrion).

<sup>88</sup> This is the practice in certain other jurisdictions, such as South Carolina. See Best Practices Report at 4.

<sup>89</sup> See, e.g., Symposium, Panel IV, p. 211-212 (statement of Judge Wilkes).

<sup>90</sup> This may also require a better “tracking” system for the opinions that are published. Bus & Tech opinions are simply listed in reverse chronological order on the Bus & Tech CMP website. Further classification of these opinions by, for example, topic or keyword would facilitate easy identification of which areas require more written opinions. See *infra* Section III, subsection D.

for which there is little direct legal appellate authority (e.g., class certification), opinions on evidentiary issues (e.g., expedited discovery)<sup>91</sup>, and other matters directly involving science and technology.<sup>92</sup>

What is the selection process for the Opinion Database? Any Maryland Bus &Tech CMP judge can submit an opinion or ruling for publication by completing a “transmittal form”<sup>93</sup> and submitting the opinion and completed form to the Honorable Ronald B. Rubin, Montgomery County Circuit Court. The transmittal form requires the submitter to provide the case name, case number, name of counsel, court, judge, and date of opinion. Submissions must also include a brief synopsis of *why* the author feels the opinion should be published (i.e., its relevance and importance to Bus &Tech CMP). All submissions are reviewed by the “Opinion Committee;” all decisions of the Opinion Committee are final. Those opinions chosen for publication are assigned a citation consisting of the year of publication and number of the opinion added in sequential order for that year. For example, a case captioned “2003 MDBT 5” would be the fifth opinion published in 2003.

## **D. Accessibility of Published Opinions**

### **1.) Bus &Tech CMP Website**

All published opinions are available on the Bus &Tech CMP website under the “Published Opinions” tab.<sup>94</sup> Opinions published between 2003 and 2008 are available via the “Published Opinions Archive,”<sup>95</sup> while opinions published from 2009 to the present are listed in

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<sup>91</sup> See, e.g., *In re American Realty Capital Trust*, 2013 MDBT 3 (denying Plaintiffs’ motion to expedite discovery).

<sup>92</sup> See, e.g., *McDonald-Lerner v. Neurocare Assocs.*, 2013 MDBT 6 (denying Defendant’s motion to dismiss in a case alleging misuse of a medical device).

<sup>93</sup> The “transmittal form” is available on the “Protocol” page.

<sup>94</sup> See *supra* note 73.

<sup>95</sup> *Id.*

reverse chronological order directly on the “Published Opinions” page. The Bus & TechCMP website is further discussed in Section V.

## 2.) LexisNexis and Westlaw

In addition to the Opinion Database, Bus & Tech CMP opinions are also available on LexisNexis (“Lexis”) and Westlaw:

- What to search: The exact search term “MDBT” in the jurisdiction of Maryland will accomplish the most complete search for Bus & Tech CMP opinions on both Lexis and Westlaw.
- Searching “MDBT” on Lexis: This search will yield 105 “cases.”
  - Lexis contains 102 of the 108 published Bus & Tech CMP opinions.<sup>96</sup>
  - Searching for and within these opinions on Lexis is simple, because all opinions are listed in one place.
  - The “MDBT” search yields 105, as opposed to 102, results because (i) the results include two other Maryland cases that directly cite to Bus & Tech CMP opinions;<sup>97</sup> and (ii) the results include a Bus & Tech CMP opinion that is cited two separate times on Lexis, but only once on the Bus & Tech CMP website<sup>98</sup>
- Searching “MDBT” on Westlaw: This search will yield 48 “cases” and 57 “trial court orders.”
  - Westlaw contains substantially fewer Bus & Tech CMP opinions than Lexis;<sup>99</sup> the total number of results (105) is misleading, because there are many duplicate cites between “cases” and “trial court orders.”
  - Because the results are separated into two separate categories: “cases” and “trial court orders,” the viewer cannot see one master list of the results, making searching for and finding specific Bus & TechCMP cases difficult.

Even considering the disparities between Lexis and Westlaw, accessibility to Bus & Tech CMP opinions on these online legal research services greatly enhances the effectiveness of publishing, as these services have “search within” and other functions that allow the researcher

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<sup>96</sup> The “missing” opinions (i.e., available on the Bus & TechCMP website but not on Lexis) are: 2016 MDBT 3; 2015 MDBT 6; 2013 MDBT 9; 2013 MDBT 4; 2009 MDBT 6; 2007 MDBT 3.

<sup>97</sup> These cases are: *Balt. Co. v. Balt. Co. FOP Lodge No. 4*, 439 Md. 547 (2013); *Premium of Am., LLC v. Sanchez*, 213 Md. App. 91 (2013).

<sup>98</sup> *Hamot v. Telos Corp.*, 2012 MDBT 3.

<sup>99</sup> For example, out of the 43 Bus & TechCMP opinions published between 2008 and 2016, only 7 are available on Westlaw. Those 7 opinions are: 2015 MDBT 5; 2013 MDBT 5; 2012 MDBT 1; 2011 MDBT 3; 2010 MDBT 5; 2009 MDBT 5; 2009 MDBT 4; 2008 MDBT 3.



(e.g., an attorney with a Bus &Tech CMP case) to do more than simply browse cases. For example, if a researcher wished to locate a Bus &Tech CMP opinion related to expedited discovery, he or she could search all “MDBT” cases and/or trial court orders for that specific terminology. In contrast, a researcher using the Bus &Tech CMP website would need to browse through each individual opinion to find what he or she is looking for.

## **V. APPEALS**

### **A. Task Force Recommendations for Appeals**

Maryland adopted the 2000 Task Force recommendation that there was no need for any specialized appellate process for Bus &Tech CMP cases.<sup>100</sup> Currently, rule 16-308 “enable[s] each **circuit court** to handle business and technology matters” (emphasis added) and does not contemplate appellate courts. Creating a specialized Bus &Tech appellate track would require a new rule.

### **B. Appealing Bus &Tech CMP Cases in Maryland**

Appeals of Bus &Tech CMP are not tracked in either appellate court.<sup>101</sup> There is no special process or track designated for Bus &Tech CMP appeals, either statutorily or in practice. Like Maryland, several other jurisdictions have elected not to establish a specialized court.<sup>102</sup>

Nor are many Bus &Tech CMP case appealed; looking at all Published Opinions<sup>103</sup> from 2009 to 2016, only seven out of 43 total Bus &Tech CMP cases were heard by an appellate

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<sup>100</sup> MD Bus & Tech CMP Task Force Report 2000 at 12-13, *supra* note 1.

<sup>101</sup> Per response to email inquiry to the Honorable Sean D. Wallace, Circuit Court Judge, Circuit Court for Prince George’s County (Oct. 27, 2016).

<sup>102</sup> See APPENDIX E – APPEALS PRACTICE IN OTHER JURISDICTIONS.

<sup>103</sup> Published Opinions does not mean precedential or reported; these Opinions represent a database collection of all decisions rendered in cases that used Bus & Tech CMP. Not all Bus & Tech CMP cases are selected for publication; the cases in the time frame indicated above included only Montgomery County and Baltimore City Circuit Court cases.

judge.<sup>104</sup> And in Montgomery County, specifically, of the 343 cases assigned to Bus &Tech CMP or its predecessor since 1998, only 69 cases saw an appeal filed.<sup>105</sup> In these cases, there was no mention of the Bus &Tech CMP program. Without tracking, it is unclear if any appealed Bus &Tech CMP case is heard by an appellate judge with experience or expertise in complex business litigation.<sup>106</sup>

### C. Appeals Summary

Specialized appellate processes have been a matter of concern in Maryland and other jurisdictions.<sup>107</sup> In Maryland, there are relatively few cases appealed from the Bus &Tech CMP program. The original Task Force did not think it would be necessary to establish a special rule for Bus &Tech CMP appeals, relying instead on existing rules, statutes, and case law authorizing courts to advance a case on its own or on a party's motion. Only North Carolina has created a special rule allowing appealed Bus &Tech cases to go straight to its highest court; other jurisdictions either tabled the discussion or found active opposition to the idea of specializing a Bus &Tech appeals court when there was not such a court for Family Law or Criminal Law.

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<sup>104</sup> Bus & Tech CMP cases are published here: <http://www.courts.state.md.us/businessstech/opinions.html>. The cases from 2009 to 2016 that were appealed are (in chronological order): *Congressional Hotel Corporation v. Mervis Diamond Corporation*, 200 Md. App. 489, 28 A.3d 75 (Sept. 2, 2011); *Alicia Gomex v. Jackson Hewitt, Inc.*, 42 Md. 128, 46 A.3d 443 (June 22, 2012); *100 Harborview Drive Condominium Council of Unit Owners v. Penthouse 4C, LLC*, 2015 WL 5929355 (Md. Ct. Spec. App. Aug. 20, 2015); *Lyon Villa Venetia, LLC et al., v. CSE Mortgage LLC, et al.*, 2016 WL 476694 (Md. Ct. Spec. App. Feb 4, 2016); *Lockheed Martin, Inc. v. Vincent Balderrama*, 277 Md. App. 476, 134 A.3d 398 (March 31, 2016); *John Poling v. Caplease Inc., et al.*, 2016 WL 1749803 (May 3, 2016). Cert was denied for two cases not listed above. In addition to the cases heard, two more were appealed but cert was denied.

<sup>105</sup> Per response to email inquiry to Ms. Doris Taminini, Administrative Assistant to Judge Michael D. Mason, Circuit Court for Montgomery County (Oct. 27, 2016).

<sup>106</sup> CSA Question and Answer session at UB, Mar. 7, 2016.

<sup>107</sup> Symposium, Panel II at 184–87.

## **VI. Business and Technology Education of Judges**

Maryland's Bus &Tech CMP program has a history of promoting and encouraging continuing judicial education; however, Business and Technology Court Judges are not required to receive additional or ongoing training in the area.<sup>108</sup> By reviewing the available educational resources, it may help to shed light on ways to expand offered curriculum to greater benefit the needs of Business and Technology Case Management Program judges.

### **A. Is Training and Continuing Education Necessary for Bus &Tech Judges' Success?**

Initial training of new Bus & Tech Judges is critical to their success, but questions remain as to whether continuing education is needed. Many judges indicate that there is a need or desire for annual Bus &Tech CMP conferences to create efficiency and consistency in the program.

There seems to be a consensus among interviewed Judges that there should be required training for new Bus &Tech Judges and then a secondary training piece consisting of collaboration of all Bus &Tech Judges on an ongoing basis. This collaboration could consist of a meeting once per year that all Bus &Tech Judges attend to 1) foster collaboration and communication between Judges and 2) reeducate judges based on the changing needs of the program.<sup>109</sup>

This continuing education piece could be achieved by holding training sessions at Conferences for Bus &Tech Judges. By bringing all judges together for this training, it would give them the opportunity to meet and discuss issues and develop best practices. This would create efficiency and consistency in administration of the program. A participant at the

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<sup>108</sup> In the Court of Appeals of Maryland Administrative Order on Continuing Education of Judges, Magistrates, and Commissioners (Nov. 23, 2015), <http://www.courts.state.md.us/adminorders/20151123continuingedjudgesmagistratescommissioners.pdf>.

<sup>109</sup> Symposium, Panel III at p. 228.

Symposium indicated that development of statewide shared knowledge and standardization of processes for things such as discovery orders, ESI orders, scheduling conference orders, etc. would be of a great benefit to the Program.<sup>110</sup> An annual meeting would further this goal.

Commentators seem to consider case management as one of the most impactful continuing education focuses.<sup>111</sup> To accomplish this goal, the judges should be trained on management efficiency. Some conference attendees believed that it is the lawyer's responsibility to "teach" the judges about the particular law of a case. Commentators stated that there seems to be a disconnect between the programs offered and the particular needs of Bus & Tech Judges.<sup>112</sup> Communication and collaboration could strengthen the program and add value.<sup>113</sup>

## **B. Current Educational Opportunities for Business and Technology Judges**

There are three main sources of judicial training in Business and Technology matters<sup>114</sup>: Judicial Institute of Maryland, George Mason's College of Business Court Judges, and the National Judicial College.

### **1.) Judicial Institute of Maryland**

The Judicial Institute of Maryland provides a wide array of local educational opportunities to judges.<sup>115</sup> Funds for Maryland Judges to attend these course offerings are

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<sup>110</sup> *Id.* at p. 223.

<sup>111</sup> *Id.* at p. 223.

<sup>112</sup> *Id.* at p.227.

<sup>113</sup> One Conference Panelist recommends an annual half day Advanced Business Law Institute event from the Business Law Section of the Maryland Bar. There are multiple training tracks with varying topics that are likely to be of interest and applicable to knowledge the Bus & Tech Judges may be seeking. The training would be potentially free for the Judges to attend. This was rebutted with argument that travel, etc. are still costs that the court would have to pick up. However, there are a wealth of scholarships and grants available that perhaps are not fully utilized. *Id.* at p. 235.

<sup>114</sup> ASTAR, created in 2004, is a Maryland court designed to hear cases involving advanced science and medical issues. ASTAR, Circuit Court for Anne Arundel County, <http://www.circuitcourt.org/learn-about/astar> (last visited Jan. 31, 2016). To become an ASTAR Fellow, the judge must complete a 120-hour, two-year training program. See APPENDIX F – ASTAR and Bus & Tech CMP COMPARISON CHART.

allocated in the annual budget of the Administrative Office of the Courts.<sup>116</sup> Data on course offerings prior to October 24, 2008 have largely been purged.<sup>117</sup> Since October 2008, eight courses have been or will be offered on Business and Technology.<sup>118</sup> However, no Business and Technology courses were offered in 2010, 2011 or 2012.<sup>119</sup> As evident, local business and technology educational opportunities have been and continue to be sparse. The most recent course occurred on October 27, 2016 at George Mason’s School of Law titled “Economic Analysis of Law”, an area that is useful for Bus &Tech Judges.

Judges seem to value the training given by the Judicial Institute as it offers trainings taught by both fellow judges as well as venerable business leaders.<sup>120</sup> They feel that the courses help them become better judges by creating greater efficiencies through shared knowledge.

## **2.) George Mason’s American College of Business Court Judges**

The Law and Economics Center at George Mason has offered educational programs to almost 2,000 sitting U.S. federal and state judges.<sup>121</sup> Up to a dozen courses and seminars are offered each year by the Judicial Education Program (JEP).<sup>122</sup> There is representation on the JEP

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<sup>115</sup> JUDICIAL INSTITUTE OF MARYLAND, <http://mdcourts.gov/judicialinstitute/index.html> (last visited Feb. 6, 2016).

<sup>116</sup> *Id.*

<sup>117</sup> E-mail from Lisa Gangi, Deputy Director, Judicial Institute of Maryland, to Barbara Ann White, Professor of Law, University of Baltimore School of Law (Feb. 11, 2016, 14:43 EST) (on file with co-authors).

<sup>118</sup> Business and Technology Courses 2008-2017, attachment to e-mail from Lisa Gangi, Deputy Directory, Judicial Institute of Maryland, to Barbara Ann White, Professor of Law, University of Baltimore School of Law (Nov. 25, 2015, 15:57 EST) (on file with co-authors).

<sup>119</sup> *Id.*

<sup>120</sup> Symposium, Panel I at 53.

<sup>121</sup> *Mason Judicial Education Program*, GEORGE MASON UNIVERSITY SCHOOL OF LAW, <http://www.masonlec.org/programs/mason-judicial-educational-program> (last visited February 7, 2016).

<sup>122</sup> *Id.*

Advisory Board from Judge Sean D. Wallace from Prince George's County Circuit Court, Maryland.<sup>123</sup>

A subset of George Mason's Law and Economics College is the American College of Business Court Judges (ACBCJ) which develops programs and seminars for business court judges to deal with the increasingly complex issues they confront.<sup>124</sup> Steven I. Platt, a retired Prince George's County Circuit Court Judge, was a former President of the ACBCJ Board.<sup>125</sup> The Twelfth Annual Meeting of the ACBCJ will be held on December 4-6<sup>th</sup>, 2016.

The ACBCJ is a tremendous resource enabling Bus &Tech Judges to get direction from other judges, particularly judges from the Delaware Chancery Court.<sup>126</sup> Additionally, the Bus &Tech Judges meet and put together educational programs with their colleagues from all over the country.<sup>127</sup> These trainings cover a variety of topics including what types of cases should be admitted to the Bus &Tech program, forms and procedural documents to use, and drafting and promulgating rules. The program's success stimulated other states to follow, such as Iowa, West Virginia, South Carolina, New Jersey, Ohio and Michigan.<sup>128</sup>

### **3.) The National Judicial College**

The National Judicial College (NJC) located in Reno, Nevada offers programs to judges nationwide in an effort to "improve productivity, challenge current perceptions of justice, and

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<sup>123</sup> *JEP Advisory Board*, GEORGE MASON UNIVERSITY SCHOOL OF LAW, <http://www.masonlec.org/programs/23> (last visited February 7, 2016).

<sup>124</sup> *American College of Business Court Judges*, GEORGE MASON UNIVERSITY SCHOOL OF LAW <http://www.masonlec.org/programs/20> (last visited February 7, 2016).

<sup>125</sup> *Id.*

<sup>126</sup> Symposium, Panel I at 46-47.

<sup>127</sup> *Id.*

<sup>128</sup> Symposium, Panel III at 197.

inspire judges to achieve judicial excellence”.<sup>129</sup> The NJC offers an average of 90 courses<sup>130</sup> and programs annually with more than 4,000 judges attending from the United States and over 150 countries.<sup>131</sup> However the only course of relevance to the training of Business Law Judges is the currently listed course titled “Complex Commercial Litigation”.<sup>132</sup> The majority of the courses listed focus on evidence and other procedural aspects of trial.<sup>133</sup>

### **C. Should Judicial Bus & Tech Education Offer Alternate Viewpoints?**

Some Judges argue that programs offered are inherently biased to get a Judge to think about an issue from a certain view point – one that is pro-business and pro-corporation.<sup>134</sup> Certain judges feel that there could be improvements made by diversifying the source and content of education.<sup>135</sup> However, to the contrary point, it is also the lawyers’ job to educate the judge on the issues of the case. It can be argued that a short amount of training in any complex subject is not going to be sufficient for a Judge to walk away with a true practical understanding.<sup>136</sup>

### **D. Judges Availability to Attend Trainings**

A Judge’s caseload is also an important factor in the Judge’s ability to access training. Some judges feel that it is hard for them to find the appropriate time to attend trainings with such a full docket.<sup>137</sup> A suggestion was made to have a standard three or four more days per year to

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<sup>129</sup> *NJC History*, NAT’L JUD. C., <http://www.judges.org/about/the-njc-experience/history/> (last visited Feb. 9, 2016).

<sup>130</sup> The NJC also offers online education, which caters to more than 4,000 judicial officers with thirty to fifty web events each year.

<sup>131</sup> *Id.*

<sup>132</sup> For a complete listing of courses please see *Courses*, NAT’L JUD. C., <http://www.judges.org/courses/> (last visited Feb. 9, 2016).

<sup>133</sup> *Id.*

<sup>134</sup> Symposium, Panel II at 107.

<sup>135</sup> Symposium, Panel II at 101.

<sup>136</sup> Symposium, Panel II at 102.

<sup>137</sup> Symposium, Panel III at 195.

attend trainings.<sup>138</sup> Currently, it is up to each Administrative Judge in each circuit and he or she each has different needs.

## **VII. MD BUS & TECH CMP'S WEB PRESENCE: Current State and Its "Potential to Contribute to Program's Success.**

Information and resources that promote Bus & Tech CMP may be found on the Maryland Courts website. Each Circuit Court maintains their own independent website where the Program is promoted as well. This Section will examine the availability of and access to information currently on the Maryland Courts website and how the Program is being promoted in each Circuit. Lastly, this Section will discuss the enhancement of Bus & Tech CMP's Web presence as a means for facilitating its success.

### **A. "Maryland Courts" Website**

Upon visiting the Maryland Courts website, a user must click "Courts" and then click "Circuit Courts," at which point a "Business & Technology Case Management Program" Homepage will be directly accessible from the sidebar menu. The Bus & Tech CMP Homepage contains six "sub-pages" and numerous links within the sub-pages that direct the browser to further information and resources.<sup>139</sup>

#### **1.) Current State of Bus & Tech CMP Homepage**

The Bus & Tech CMP Homepage provides that the Implementation Committee "proposed New Rule 16-205 to establish a business and technology case management program to enable each circuit court to handle business and technology matters in a coordinated, efficient, and response manner and to afford convenient access to lawyers and litigants in business and

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<sup>138</sup> Symposium, Panel III at 196.

<sup>139</sup> Upon entering the Maryland Courts Homepage, the user must then click three links, (1) "Courts," (2) "Circuit Courts," and then (3) "Business & Technology Case Management Program." Maryland Business and Technology Case Management Program, MDCOURTS.GOV, <http://www.mdcourts.gov/businesstech/index.html> (last visited Nov. 2, 2016).



technology matters.” The “Rules (MD Rule 16-205)” sub-page directs the browser to LexisNexis for non-subscribers to navigate through the Code of Maryland and Rules. However, “New Rule 16-205” is the former rule and is no longer in effect—Maryland Rule 16-308 is the current Rule governing the Business and Technology Case Management Program.<sup>140</sup>

The Bus & Tech CMP Homepage includes five sub-pages in addition to the “Rules (MD Rule 16-205)” sub-page:

- “Mediators” sub-page: States that “[t]o be designated as a Business and Technology Mediator, persons must meet qualifications set forth in Maryland Rule 17-104(c).” However, the qualifications to be designated as a Bus & Tech Mediator are set forth in Maryland Rule 17-205(a)–(b) (effective July 1, 2016). The sub-page also includes links to view a list of current Mediator’s and an “[a]pplication to be designated as a Business and Technology Mediator (pursuant to MD Rule 17-107).” However, the Rule governing the application procedure is now Maryland Rule 17-207(b) (effective July 1, 2016).
- “Mediator Application” sub-page: Clicking on this sub-page directs you to the Mediator Application that is already provided on the “Mediators” sub-page, and is thus unnecessary.
- “Protocol” sub-page: Provides procedural information regarding the submission and selection of opinions for publication on the website.<sup>141</sup>
- “Published Opinions” sub-page: Provides public access to published opinions.<sup>142</sup>
- “Links” sub-page: Provides “related links” that direct user to online information regarding specialized forums in other jurisdictions that are similar to Bus & TechCMP.<sup>143</sup>

## **2.) Current Accessibility of Bus & Tech CMP Information and the Web’s Potential to Publicize the Program**

General public awareness of Bus & Tech CMP and the advantages of this specialized forum are essential to its success because a case is generally assigned to Bus & Tech CMP only upon the request of a party.<sup>144</sup> Rule 16-308, which creates awareness of both the specialized

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<sup>140</sup> Maryland Rule 16-308 (effective July 1, 2016).

<sup>141</sup> See *supra* Section VI, subsection A.

<sup>142</sup> See *supra* Section VI, subsection B.

<sup>143</sup> The “related links” include the websites for the North Carolina Business Court, Philadelphia Courts (Commerce Program) and the Commercial Division of the Supreme Court of the State of New York. Maryland Business and Technology Case Management Program, MDCOURTS.GOV, <http://mdcourts.gov/businessstech/links.html> (last visited Nov. 2, 2016).

<sup>144</sup> Discussing requests for assignment to Bus & TechCMP, Judge Wilkes questioned, “Are new lawyers coming out even aware that there are these specialized courts?” Symposium, Panel IV at 230.

function and procedure for assignment is not directly accessible through the Maryland Courts website. Instead, the “Rules (MD Rule 16-205)” directs the browser to LexisNexis where the user must then navigate through the Maryland Rules, and will not be successful in finding “MD Rule 16-205” because it no longer exists.<sup>145</sup> Moreover, navigating through LexisNexis non-subscriber website to which the user is will be directed is challenging.<sup>146</sup>

In contrast to other jurisdictions’ websites that heavily promote their Program and the benefits of having a case assigned to it, the Bus & Tech CMP Homepage does not educate the user about the Program’s specialized function or promote the benefits of having a case assigned to the Bus & Tech track.<sup>147</sup> Similarly, information regarding how to seek assignment and how a case is ultimately selected for the Program is also lacking.<sup>148</sup> Although the Civil Non-Domestic Information Report Form for requesting assignment is available on the Maryland Courts website, it is neither included nor referenced on the Bus & Tech CMP Homepage.

## **B. Promoting Bus & Tech CMP within each Circuit**

Bus & Tech CMP is distributed among different Circuits and other Circuits maintain independent websites that promote their Program. But unlike other jurisdictions that are also

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<sup>145</sup> See *supra* note 140 and APPENDIX B.

<sup>146</sup> See *supra* Published Opinions, section D, subsection 2; see also Amelia Parsons & Brett Burka, *Report on Business Courts, Recent Developments, and Related Issues*, UM CAREY LAW REPORT 11 (May 2015) (“finding the rule establishing BTCMP on the LexisNexis host site is difficult.”).

<sup>147</sup> For example, many other business courts’ websites describe the specialized judge’s education, training and expertise, and express that having a designated judge handle all matters of the case will provide for quicker and less costly resolution. Commercial Division – NY Supreme Court, NYCOURTS.GOV, <http://nycourts.gov/courts/comdiv/history.shtml> (last visited Nov. 2, 2016); Business Court Division Overview, COURTSWV.GOV, <http://www.courtswv.gov/lower-courts/business-court-division/overview-TCR29.html> (last visited Nov. 2, 2016).

<sup>148</sup> Other jurisdictions’ websites also provide specific requirements for designation and forms for requesting assignment. Commerce Case Management Program, COURTS.PHILA.GOV, <http://courts.phila.gov/common-pleas/trial/civil/units/commerce-program.asp> (last visited Nov. 2, 2016); North Carolina Business Court, NCBUSINESSCOURT.NET, <http://ncbusinesscourt.net/New/aboutcourt/> (last visited Nov. 2, 2016).

fastened to a circuit-by-circuit structure, the Maryland Courts website neither provides access to those Circuits' websites nor even mentions those Circuits.<sup>149</sup>

As the Maryland Courts website does not provide any information regarding Bus & TechCMP in the other Circuits, each circuit is forced to promote the Program independently. Only two Circuit Courts maintain a Bus & Tech CMP Homepage on their independent websites—Baltimore City<sup>150</sup> and Montgomery County.<sup>151</sup> Unlike the Maryland Courts Bus & Tech CMP Homepage, these websites include information regarding how to request for assignment on the Civil Non-Domestic Information report and the benefits of having an assigned Bus & Tech judge manage the case until its resolution.

Notably, the two Circuits with the greatest number of cases assigned to Bus & Tech CMP, Baltimore City and Montgomery County, are also the only two Circuits that promote the Program on their own websites.<sup>152</sup> Underlying this correlation is the decentralized administration of Bus & Tech CMP. The Circuits whose Program is not being promoted and experience a low volume of Bus & Tech cases will continue to prove unappealing to litigants who seek consistency from circuit-to-circuit.<sup>153</sup>

### **C. Facilitating Success Through Web Presence**

With the exception of the Opinion Database and Maryland Rule 16-308 itself, there are few resources and/or publications that exist to educate the legal community and businesses about

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<sup>149</sup> The New York Courts website provides links to the Commercial Division for each Circuit. *Links to Courts*, NYCOURTS.GOV, [http://nycourts.gov/courts/comdiv/courts\\_links.shtml](http://nycourts.gov/courts/comdiv/courts_links.shtml) (last visited Nov. 2, 2016).

<sup>150</sup> *Business and Technology Case Management Program*, BALT. CITY CIR. CT., <http://www.baltimorecitycourt.org/court-divisions/civil/business-and-technology/> (last visited Nov. 9, 2016).

<sup>151</sup> *Business and Technology*, MONTGOMERY CTY. CIR. CT., <http://www.montgomerycountymd.gov/Circuitcourt/court/CivilDepartment/BusinessandTechnology.html> (last visited Nov. 9, 2016)

<sup>152</sup> See APPENDIX B.

<sup>153</sup> Addressing concerns about whether a case should be designated as a Bus & Tech case, “one of the problems that we’re all...concerned about is [sic] that from circuit to circuit, from court to court, how that decision is made may differ[.]” Symposium, Panel II at 112 (statement of Eric Orlinsky).

how Bus & Tech cases are managed and litigated. Apprising potential parties of the manner in which a Bus & Tech case proceeds upon assignment, and Bus & Tech courts' expectations of counsel, facilitates efficient and effective adjudication.<sup>154</sup>

Some jurisdictions include “Advice to Counsel” sub-pages, or “Guidelines to Help Lawyers Practicing” on their Program’s website that generally set forth when Case Management Conferences will be scheduled, the court’s expectation with regard to discovery disputes between counsel, and sample forms for certain motions.<sup>155</sup> An “Operational Information” sub-page could be included on each Circuits separate website as well.<sup>156</sup>

The availability of similar resources, materials, and publications in general with respect to the functional component of Bus & Tech CMP would be beneficial and contribute further to the Program’s overall success. From a practical perspective, it could afford litigants with predictability.<sup>157</sup> Similarly, informing litigants of what to expect upon assignment could potentially increase efficacy throughout the process, which would be advantageous for the Bus & Tech judges in Maryland who are assigned these cases in addition to their general docket.<sup>158</sup>

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<sup>154</sup> The purposes of the program in Delaware are best served by counsel “know[ing] the court,...know[ing] the procedure,...know[ing] the judges...[and] know[ing] what’s expected” of the them.” Symposium, Panel III at 139 (statement of Judge Johnston).

<sup>155</sup> Court of Chancery, *Guidelines to Help Lawyers Practicing in the Court of Chancery*, DELAWARE COURTS, <http://courts.delaware.gov/chancery/docs/CompleteGuidelines2014.pdf> (last visited Oct. 29, 2016); Commerce Case Management Program, *Advice to Counsel*, PHILADELPHIA COURTS, <http://courts.phila.gov/pdf/cpcvcomprg/cmc.pdf> (last visited Oct. 29, 2016).

<sup>156</sup> For example, each Circuit in New York has its own Bus & TechCMP “Operational Info” sub-page, which serves to facilitate mediation, sets forth the procedural elements of alternative dispute resolution, and also provides practice guides and expectations of the court with respect to preliminary conferences. *Commercial Division – NY Supreme Court*, NYCOURTS.GOV, <http://nycourts.gov/courts/comdiv/index.shtml> (last visited Oct. 29, 2016).

<sup>157</sup> Providing litigants with guidance on expedited discovery issues that frequently arise in Bus & Tech cases would be enormously helpful. Symposium, Panel III at 181–82 (statement of Scott Wilson).

<sup>158</sup> The stringent time restraints that are inherit in the decentralized structure of Bus & TechCMP forces judges to “handle[] those cases in addition to [t]he[i]r other responsibilities as a judge in the court of general jurisdiction.” Symposium, Panel I at 52 (statement of Judge Berger); *see also* Symposium, Panel IV at 195 (statement of Judge Rubin) (“The problem is simply one of getting time off from our general docket.”).

# Maryland Business & Technology Case Management Program

## Structure and Procedure Questionnaire

### Instructions:

Please fill out one form for each of the 8 Maryland circuits, and answer each question by hitting the enter key on your keyboard after each question and type in your answers.

NOTE: At the end of the Questionnaire, there is an opportunity to provide additional information you feel is pertinent and/or interesting to include about your program.

When finished, please save the document and email it back to:

Professor Barbara Ann White, Director  
University of Baltimore Business Law Clerkship Program  
at: [bwhite@ubalt.edu](mailto:bwhite@ubalt.edu)

Please feel free to email or call Professor White at 410-837-4536 with any questions or concerns

**Circuit Court Jurisdiction Number:** \_\_\_\_\_

**Covered Counties:** \_\_\_\_\_

## **Administration and Selection of Judges:**

- 1) Who is (are) the administrative judge(s) for your circuit?
- 2) Who administers the B&T Case Management Program in your circuit?
- 3) Who decides which judges are selected for the Program?
  - a) Are the judges appointed by the administrative judge?
  - b) Do judges request to serve?
  - c) Does every judge who requests to serve in the B&T Case Management Program have an opportunity to serve?
  - d) Are there particular criteria or qualifications looked for in a judge who will serve in the Program?
- 4) Who are the designated business and technology track judges for your circuit? How were they selected?
- 5) Do the judges who serve get any particular training of any form (attending special programs, etc.)?
- 6) How long do the judges typically serve in the B&T Case Management Program?

## **Implementation of the Business & Technology Case Management Program:**

### **Cases:**

- 7) How many B&T Case Management Program cases is the circuit handling?
  - a) Per year
  - b) Since the Program began in 2001
  - c) Has the number of Business Law Cases in the Program over time:
    - i) Increased
    - ii) Decreased
    - iii) Stayed the same
    - iv) Never commenced
  - d) What do you think are the reasons for the circumstance that you selected above?
- 8) What types of cases are typically handled in in the B&T Case Management Program?
- 9) How many parties apply to be put onto the Business and Technology track?
  - a) How many, if any, are rejected?
  - b) If rejected, why?
- 10) Do in the B&T Case Management Program cases tend to be Businesses v. Businesses or Businesses v. Individuals? Approximately, what percentage of the case are each? (e.g., predominantly or exclusively Business v. Business, or, e.g., 50% each of Business v. Business and 50% Business v. Individual.)

### **Management of B&TCMP Cases:**

- 11) What is the typical time table for adjudicating one of these cases?
- 12) How does the typical time table for B&T cases compare to the time table for regular civil cases.
- 13) Is there one Judge that is assigned from the beginning to the end of the case?
- 14) At what point is the Judge assigned to a case?
- 15) At what point does the assigned Judge begin to oversee the case?
- 16) When a Judge is appointed to a B&TCMP case, is his or her caseload in other aspects reduced? Or does the Judge overseeing the B&TCMP case do so on top of his or her other caseload?

### **B&TCMP Rulings and Opinions:**

- 17) How many B&TCMP cases generate written opinions?
- 18) What percentage of B&TCMP cases generate written opinions?
- 19) Who decides whether there is a written opinion?
- 20) What percentage of the written opinions are posted online:
  - a) On your own website?
  - b) At a centralized website? URL?
- 21) Who decides whether a written opinion is posted online?
- 22) Is it possible to access B&TCMP opinions not posted? How?
- 23) Is it possible to access information about B&TCMP cases without written opinions?
- 24) Is it possible to find B&TCMP cases through any search mechanism in the Courthouse Case Management System?

### **Accessibility of Information regarding B&TCMP:**

- 25) Do you have information about B&TCMP available on your website?
- 26) Is a link to that information on the front page of your website?
- 27) By what methods can parties learn about B&TCMP in your Circuit (and which is the most likely means):
  - a) Your own website?
  - b) Links from your website to the B&TCMP website?
  - c) Word of mouth?
  - d) Promotion (what forms)?

Is there a link on your website to track B&TCMP cases in your jurisdiction?

(Room for Additional Comments on Next Page)

# APPENDIX A – CC-DCM-002 FORM

IN THE CIRCUIT COURT FOR \_\_\_\_\_  
 (City or County)

## CIVIL - NON-DOMESTIC CASE INFORMATION REPORT

**DIRECTIONS**

*Plaintiff:* This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a).

*Defendant:* You must file an Information Report as required by Rule 2-323(h).

**THIS INFORMATION REPORT CANNOT BE ACCEPTED AS A PLEADING**

**FORM FILED BY:**  PLAINTIFF  DEFENDANT CASE NUMBER \_\_\_\_\_ (Clerk to insert)

**CASE NAME:** \_\_\_\_\_ Plaintiff vs. \_\_\_\_\_ Defendant

**PARTY'S NAME:** \_\_\_\_\_

**PARTY'S ADDRESS:** \_\_\_\_\_ **PHONE:** \_\_\_\_\_ (Daytime phone)

**PARTY'S E-MAIL:** \_\_\_\_\_

**If represented by an attorney:**

**PARTY'S ATTORNEY'S NAME:** \_\_\_\_\_ **PHONE:** \_\_\_\_\_

**PARTY'S ATTORNEY'S ADDRESS:** \_\_\_\_\_

**PARTY'S ATTORNEY'S E-MAIL:** \_\_\_\_\_

**JURY DEMAND?**  Yes  No

**RELATED CASE PENDING?**  Yes  No If yes, Case #(s), if known: \_\_\_\_\_

**ANTICIPATED LENGTH OF TRIAL:** \_\_\_\_\_ hours or \_\_\_\_\_ days

**PLEADING TYPE**

**New Case:**  Original  Administrative Appeal  Appeal

**Existing Case:**  Post-Judgment  Amendment

*If filing in an existing case, skip Case Category/ Subcategory section - go to Relief section.*

**IF NEW CASE: CASE CATEGORY/SUBCATEGORY (Check one box.)**

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| <p><b>TORTS</b></p> <input type="checkbox"/> Asbestos<br><input type="checkbox"/> Assault and Battery<br><input type="checkbox"/> Business and Commercial<br><input type="checkbox"/> Conspiracy<br><input type="checkbox"/> Conversion<br><input type="checkbox"/> Defamation<br><input type="checkbox"/> False Arrest/Imprisonment<br><input type="checkbox"/> Fraud<br><input type="checkbox"/> Lead Paint - DOB of Youngest Plt: _____<br><input type="checkbox"/> Loss of Consortium<br><input type="checkbox"/> Malicious Prosecution<br><input type="checkbox"/> Malpractice-Medical<br><input type="checkbox"/> Malpractice-Professional<br><input type="checkbox"/> Misrepresentation<br><input type="checkbox"/> Motor Tort<br><input type="checkbox"/> Negligence<br><input type="checkbox"/> Nuisance<br><input type="checkbox"/> Premises Liability<br><input type="checkbox"/> Product Liability<br><input type="checkbox"/> Specific Performance<br><input type="checkbox"/> Toxic Tort<br><input type="checkbox"/> Trespass<br><input type="checkbox"/> Wrongful Death<br><p><b>CONTRACT</b></p> <input type="checkbox"/> Asbestos<br><input type="checkbox"/> Breach<br><input type="checkbox"/> Business and Commercial<br><input type="checkbox"/> Confessed Judgment (Cont'd)<br><input type="checkbox"/> Construction<br><input type="checkbox"/> Debt<br><input type="checkbox"/> Fraud | <input type="checkbox"/> Government<br><input type="checkbox"/> Insurance<br><input type="checkbox"/> Product Liability<br><p><b>PROPERTY</b></p> <input type="checkbox"/> Adverse Possession<br><input type="checkbox"/> Breach of Lease<br><input type="checkbox"/> Detinue<br><input type="checkbox"/> Distress/Distrain<br><input type="checkbox"/> Ejectment<br><input type="checkbox"/> Forcible Entry/Detainer<br><input type="checkbox"/> Foreclosure<br><input type="checkbox"/> Commercial<br><input type="checkbox"/> Residential<br><input type="checkbox"/> Currency or Vehicle<br><input type="checkbox"/> Deed of Trust<br><input type="checkbox"/> Land Installments<br><input type="checkbox"/> Lien<br><input type="checkbox"/> Mortgage<br><input type="checkbox"/> Right of Redemption<br><input type="checkbox"/> Statement Condo<br><input type="checkbox"/> Forfeiture of Property / Personal Item<br><input type="checkbox"/> Fraudulent Conveyance<br><input type="checkbox"/> Landlord-Tenant<br><input type="checkbox"/> Lis Pendens<br><input type="checkbox"/> Mechanic's Lien<br><input type="checkbox"/> Ownership<br><input type="checkbox"/> Partition/Sale in Lieu<br><input type="checkbox"/> Quiet Title<br><input type="checkbox"/> Rent Escrow<br><input type="checkbox"/> Return of Seized Property<br><input type="checkbox"/> Right of Redemption<br><input type="checkbox"/> Tenant Holding Over | <p><b>PUBLIC LAW</b></p> <input type="checkbox"/> Attorney Grievance<br><input type="checkbox"/> Bond Forfeiture Remission<br><input type="checkbox"/> Civil Rights<br><input type="checkbox"/> County/Mncpl Code/Ord<br><input type="checkbox"/> Election Law<br><input type="checkbox"/> Eminent Domain/Condemn.<br><input type="checkbox"/> Environment<br><input type="checkbox"/> Error Coram Nobis<br><input type="checkbox"/> Habeas Corpus<br><input type="checkbox"/> Mandamus<br><input type="checkbox"/> Prisoner Rights<br><input type="checkbox"/> Public Info. Act Records<br><input type="checkbox"/> Quarantine/Isolation<br><input type="checkbox"/> Writ of Certiorari<br><p><b>EMPLOYMENT</b></p> <input type="checkbox"/> ADA<br><input type="checkbox"/> Conspiracy<br><input type="checkbox"/> EEO/HR<br><input type="checkbox"/> FLSA<br><input type="checkbox"/> FMLA<br><input type="checkbox"/> Workers' Compensation<br><input type="checkbox"/> Wrongful Termination<br><p><b>INDEPENDENT PROCEEDINGS</b></p> <input type="checkbox"/> Assumption of Jurisdiction<br><input type="checkbox"/> Authorized Sale<br><input type="checkbox"/> Attorney Appointment<br><input type="checkbox"/> Body Attachment Issuance<br><input type="checkbox"/> Commission Issuance | <input type="checkbox"/> Constructive Trust<br><input type="checkbox"/> Contempt<br><input type="checkbox"/> Deposition Notice<br><input type="checkbox"/> Dist Ct Mtn Appeal<br><input type="checkbox"/> Financial<br><input type="checkbox"/> Grand Jury/Petit Jury<br><input type="checkbox"/> Miscellaneous<br><input type="checkbox"/> Perpetuate Testimony/Evidence<br><input type="checkbox"/> Prod. of Documents Req.<br><input type="checkbox"/> Receivership<br><input type="checkbox"/> Sentence Transfer<br><input type="checkbox"/> Set Aside Deed<br><input type="checkbox"/> Special Adm. - Atty<br><input type="checkbox"/> Subpoena Issue/Quash<br><input type="checkbox"/> Trust Established<br><input type="checkbox"/> Trustee Substitution/Removal<br><input type="checkbox"/> Witness Appearance-Compel<br><p><b>PEACE ORDER</b></p> <input type="checkbox"/> Peace Order<br><p><b>EQUITY</b></p> <input type="checkbox"/> Declaratory Judgment<br><input type="checkbox"/> Equitable Relief<br><input type="checkbox"/> Injunctive Relief<br><input type="checkbox"/> Mandamus<br><p><b>OTHER</b></p> <input type="checkbox"/> Accounting<br><input type="checkbox"/> Friendly Suit<br><input type="checkbox"/> Grantor in Possession<br><input type="checkbox"/> Maryland Insurance Administration<br><input type="checkbox"/> Miscellaneous<br><input type="checkbox"/> Specific Transaction<br><input type="checkbox"/> Structured Settlements |
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**IF NEW OR EXISTING CASE: RELIEF (Check All that Apply)**

- |                                                  |                                                 |                                                      |                                                 |
|--------------------------------------------------|-------------------------------------------------|------------------------------------------------------|-------------------------------------------------|
| <input type="checkbox"/> Abatement               | <input type="checkbox"/> Earnings Withholding   | <input type="checkbox"/> Judgment-Interest           | <input type="checkbox"/> Return of Property     |
| <input type="checkbox"/> Administrative Action   | <input type="checkbox"/> Enrollment             | <input type="checkbox"/> Judgment-Summary            | <input type="checkbox"/> Sale of Property       |
| <input type="checkbox"/> Appointment of Receiver | <input type="checkbox"/> Expungement            | <input type="checkbox"/> Liability                   | <input type="checkbox"/> Specific Performance   |
| <input type="checkbox"/> Arbitration             | <input type="checkbox"/> Findings of Fact       | <input type="checkbox"/> Oral Examination            | <input type="checkbox"/> Writ-Error Coram Nobis |
| <input type="checkbox"/> Asset Determination     | <input type="checkbox"/> Foreclosure            | <input type="checkbox"/> Order                       | <input type="checkbox"/> Writ-Execution         |
| <input type="checkbox"/> Attachment b/f Judgment | <input type="checkbox"/> Injunction             | <input type="checkbox"/> Ownership of Property       | <input type="checkbox"/> Writ-Garnish Property  |
| <input type="checkbox"/> Cease & Desist Order    | <input type="checkbox"/> Judgment-Affidavit     | <input type="checkbox"/> Partition of Property       | <input type="checkbox"/> Writ-Garnish Wages     |
| <input type="checkbox"/> Condemn Bldg            | <input type="checkbox"/> Judgment-Attorney Fees | <input type="checkbox"/> Peace Order                 | <input type="checkbox"/> Writ-Habeas Corpus     |
| <input type="checkbox"/> Contempt                | <input type="checkbox"/> Judgment-Confessed     | <input type="checkbox"/> Possession                  | <input type="checkbox"/> Writ-Mandamus          |
| <input type="checkbox"/> Court Costs/Fees        | <input type="checkbox"/> Judgment-Consent       | <input type="checkbox"/> Production of Records       | <input type="checkbox"/> Writ-Possession        |
| <input type="checkbox"/> Damages-Compensatory    | <input type="checkbox"/> Judgment-Declaratory   | <input type="checkbox"/> Quarantine/Isolation Order  |                                                 |
| <input type="checkbox"/> Damages-Punitive        | <input type="checkbox"/> Judgment-Default       | <input type="checkbox"/> Reinstatement of Employment |                                                 |

If you indicated **Liability** above, mark one of the following. This information is not an admission and may not be used for any purpose other than Track Assignment.

- Liability is conceded.     Liability is not conceded, but is not seriously in dispute.     Liability is seriously in dispute.

**MONETARY DAMAGES (Do not include Attorney's Fees, Interest, or Court Costs)**

- Under \$10,000       \$10,000 - \$30,000       \$30,000 - \$100,000       Over \$100,000

- Medical Bills \$ \_\_\_\_\_       Wage Loss \$ \_\_\_\_\_       Property Damages \$ \_\_\_\_\_

**ALTERNATIVE DISPUTE RESOLUTION INFORMATION**

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

- |                |                              |                             |                          |                              |                             |
|----------------|------------------------------|-----------------------------|--------------------------|------------------------------|-----------------------------|
| A. Mediation   | <input type="checkbox"/> Yes | <input type="checkbox"/> No | C. Settlement Conference | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| B. Arbitration | <input type="checkbox"/> Yes | <input type="checkbox"/> No | D. Neutral Evaluation    | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

**SPECIAL REQUIREMENTS**

- If a Spoken Language Interpreter is needed, **check here and attach form CC-DC-041**
- If you require an accommodation for a disability under the Americans with Disabilities Act, **check here and attach form CC-DC-049**

**ESTIMATED LENGTH OF TRIAL**

*With the exception of Baltimore County and Baltimore City, please fill in the estimated **LENGTH OF TRIAL**.*

*(Case will be tracked accordingly)*

- |                                                   |                                                         |
|---------------------------------------------------|---------------------------------------------------------|
| <input type="checkbox"/> 1/2 day of trial or less | <input type="checkbox"/> 3 days of trial time           |
| <input type="checkbox"/> 1 day of trial time      | <input type="checkbox"/> More than 3 days of trial time |
| <input type="checkbox"/> 2 days of trial time     |                                                         |

**BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM**

*For all jurisdictions, if Business and Technology track designation under Md. Rule 16-205 is requested, attach a duplicate copy of complaint and check one of the tracks below.*

- |                                                                                           |                                                                                           |
|-------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| <input type="checkbox"/> <b>Expedited</b> - Trial within 7 months of Defendant's response | <input type="checkbox"/> <b>Standard</b> - Trial within 18 months of Defendant's response |
|-------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|

EMERGENCY RELIEF REQUESTED

**COMPLEX SCIENCE AND/OR TECHNOLOGICAL CASE  
MANAGEMENT PROGRAM (ASTAR)**

*FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO ASTAR RESOURCES JUDGES under Md. Rule 16-202, attach a duplicate copy of complaint and check whether assignment to an ASTAR is requested.*

**Expedited** - Trial within 7 months of Defendant's response

**Standard** - Trial within 18 months of Defendant's response

**IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY OR BALTIMORE COUNTY, PLEASE FILL OUT THE APPROPRIATE BOX BELOW.**

**CIRCUIT COURT FOR BALTIMORE CITY (CHECK ONLY ONE)**

- Expedited                      Trial 60 to 120 days from notice. Non-jury matters.
- Civil-Short                      Trial 210 days from first answer.
- Civil-Standard                  Trial 360 days from first answer.
- Custom                          Scheduling order entered by individual judge.
- Asbestos                         Special scheduling order.
- Lead Paint                      Fill in: Birth Date of youngest plaintiff \_\_\_\_\_.
- Tax Sale Foreclosures        Special scheduling order.
- Mortgage Foreclosures        No scheduling order.

**CIRCUIT COURT FOR BALTIMORE COUNTY**

- Expedited  
(Trial Date-90 days)              Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
- Standard  
(Trial Date-240 days)              Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, International Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
- Extended Standard  
(Trial Date-345 days)              Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
- Complex  
(Trial Date-450 days)              Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Signature of Counsel / Party

\_\_\_\_\_  
Printed Name

## APPENDIX B – Bus & Tech CMP CASES SINCE 2003

| Year (total)      | Anne Arundel County | Baltimore City | Baltimore County | Howard County | Montgomery County | Prince George's County |
|-------------------|---------------------|----------------|------------------|---------------|-------------------|------------------------|
| 2003 (11)         | -                   | 8              | -                | 1             | -                 | 2                      |
| 2004 (15)         | 2                   | 4              | -                | 4             | 2                 | 3                      |
| 2005 (11)         | 1                   | 5              | -                | 3             | 2                 | -                      |
| 2006 (16)         | -                   | 12             | 1                | 1             | 2                 | -                      |
| 2007 (6)          | -                   | 2              | -                | 1             | 3                 | -                      |
| 2008 (6)          | 1 (5)               | 2 (12)         | - (2)            | - (0)         | 3 (24)            | - (1)                  |
| 2009 (10)         | - (7)               | 2 (19)         | - (4)            | - (0)         | 8 (34)            | - (0)                  |
| 2010 (5)          | - (11)              | 1 (11)         | - (3)            | - (0)         | 4 (59)            | - (0)                  |
| 2011 (3)          | - (10)              | 1 (19)         | - (3)            | - (0)         | 2 (48)            | - (1)                  |
| 2012 (5)          | - (5)               | 3 (16)         | - (4)            | - (0)         | 2 (55)            | - (1)                  |
| 2013 (9)          | - (2)               | 5 (18)         | - (3)            | - (0)         | 4 (33)            | - (0)                  |
| 2014 (2)          | - (5)               | - (18)         | - (4)            | - (0)         | 2 (22)            | - (3)*                 |
| 2015 (6)          | -                   | 2              | -                | -             | 4                 | -                      |
| 2016 (3)**        | -                   | -              | -                | -             | 3                 | -                      |
| <b>Total: 108</b> | <b>4</b>            | <b>47</b>      | <b>1</b>         | <b>10</b>     | <b>41</b>         | <b>5</b>               |

\*Highlighted sections include the total number of cases admitted in that circuit for that year in parentheses next to the number of opinions published (e.g., “1 (5)” means that one opinion was published that year in that circuit, and 5 cases were admitted to the Bus & Tech program that year in that circuit). This gives a better idea of what *percent* of opinions are being published. For example, in Howard County, there were zero cases admitted to the Bus & Tech program from 2008-2014, so the fact that there were no published opinions during that time period is not significant. On the other hand, Anne Arundel County only published one opinion between 2008 and 2014, while 45 cases were admitted into the Bus & Tech program in Anne Arundel during that same time period.

\*\*Total number of opinions published for 2016 as of November 5, 2016.

## APPENDIX C – REDLINE OF RULE 16-205 (NOW RULE 16-308)

### RULE 16-308. BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

(a) **Definitions.** The following definitions apply in this Rule:

- (1) *ADR.* “ADR” means “alternative dispute resolution” as defined in Rule 17-102.
- (2) *Program.* “Program” means the business and technology case management program established pursuant to this Rule.
- (3) *Program Judge.* “Program judge” means a judge of a circuit court who is assigned to the program.

(b) **Program Established.** Subject to the availability of fiscal and human resources, a program approved by the Chief Judge of the Court of Appeals shall be established to enable each circuit court to handle business and technology matters in a coordinated, efficient, and responsive manner and to afford convenient access to attorneys and litigants in business and technology matters. The program shall include:

- (1) a program track within the differentiated case management system established under Rule 16-2302;
- (2) a procedure by which an action is assigned to the program;
- (3) program judges who are specially trained in business and technology; and
- (4) ADR proceedings conducted by individuals qualified under Title 17 of these Rules and specially trained in business and technology.

**Cross reference:** See Rules 16-401-a102 (d) and 16-403-108 concerning the assignment of a judge of the circuit court for a county to sit as a program judge in the circuit court for another county.

(c) **Assignment of Actions to the Program.** On written request of a party or on the court's own initiative, the ~~Circuit County~~ Administrative Judge ~~of the circuit in which an action is filed~~ or the ~~Administrative Judge's~~ that judge's designee may assign the action to the program if the judge determines that the action presents commercial or technological issues of such a complex or novel nature that specialized treatment is likely to improve the administration of justice. Factors that the judge may consider in making the determination include: (1) the nature of the relief sought, (2) the number and diverse interests of the parties, (3) the anticipated nature and extent of pretrial discovery and motions, (4) whether the parties agree to waive venue for the hearing of motions and other pretrial matters if assignment of the action to the program makes that necessary, (5) the degree of novelty and complexity of the factual ~~and~~ legal, or evidentiary issues presented, (6) whether business or technology issues predominate over other issues presented in the action, and (7) the willingness of the parties to participate in ADR procedures.

(d) **Assignment to Program Judge.** Each action assigned to the program shall be assigned to a specific program judge. To the extent feasible, ~~the~~ program judge to whom the action is assigned shall hear all proceedings until the matter is concluded, except that, if necessary to prevent undue delay, prejudice, or injustice, the Circuit Administrative Judge or the Circuit Administrative Judge's designee may designate another judge to hear a particular pretrial matter. That judge shall be a program judge, if practicable.

(e) **Scheduling Conference; Order.** Promptly after an action is assigned, the program judge shall (1) hold a scheduling conference under Rule 2-504.1 at which the program judge and the parties discuss the scheduling of discovery, ADR, and a trial date and (2) enter a scheduling order under Rule 2-504 that includes case management decisions made by the court at or as a result of the scheduling conference.

**Source:** ~~This Rule is new.~~ This Rule is derived from former Rule 16-205 (2016).

## APPENDIX D – CASE SELECTION IN OTHER JURISDICTIONS

| States         | Mandatory Assignment | Discretionary Assignment | Hybrid |
|----------------|----------------------|--------------------------|--------|
| California     |                      | X                        |        |
| Connecticut    |                      | X                        |        |
| Delaware       | X                    |                          |        |
| New York       | X                    |                          |        |
| North Carolina |                      |                          | X      |
| Pennsylvania   | X                    |                          |        |

Some jurisdictions have mandatory assignment, means that where a case meets established criteria in that state (e.g. amount in controversy > \$50,000 and commercial litigants), it is automatically assigned to that state’s version of Bus & Tech CMP. Others follow a discretionary assignment model, like in Maryland, which is where a judge determines whether the case will be assigned to that state’s version of Bus & Tech CMP. Finally, some jurisdictions have evolved a hybrid approach, meaning that some cases are automatically assigned, while others are assigned based on the judge’s discretion.<sup>159</sup>

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<sup>159</sup> See Jennifer Bove and Christopher Stock, *Best Practices in Business Law Courts in the 23 States Listed by the ABA* (January 2016); see also Amelia Parsons and Brett Burka, *Report on Business Courts, Recent Developments, and Related Issues* (UM Carey Law Report on Existing Business Law Courts (May 2015)).

**APPENDIX E – APPEALS PRACTICE IN OTHER JURISDICTIONS**

| <b>States</b>  | <b>Business and Technology (Bus &amp; Tech) Appeals Practice</b>                                                       |
|----------------|------------------------------------------------------------------------------------------------------------------------|
| North Carolina | Bus & Tech cases get to bypass intermediate appellate court and go straight before the Supreme Court of North Carolina |
| Pennsylvania   | No special court, and no movement towards one after discussions                                                        |
| Delaware       | No intermediate court, so Bus & Tech cases go straight to the Supreme Court                                            |
| Texas          | No special court, and no movement towards one after discussions                                                        |
| New York       | No special court, and the suggestion of creating a specialized intermediate appellate court was controversial          |

## APPENDIX F – ASTAR and Bus & Tech CMP COMPARISON CHART

|                                        | Bus & TechCMP                                                                                                                                                                                                                                                                                                                                                                                                                                                         | ASTAR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. How Was the Program Created?</b> | Created by Maryland Rule 16-308 <sup>160</sup> , supported by interested attorneys and judges in Maryland.                                                                                                                                                                                                                                                                                                                                                            | Created by a nonprofit consortium of the judiciaries of Ohio and Maryland, supported by Department of Justice and National Institute of Health. <sup>161</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>2. Basic Goal of the Program</b>    | Judges preside over cases involving complex business and technology issues. <sup>162</sup>                                                                                                                                                                                                                                                                                                                                                                            | Judges preside over cases involving advanced science and medical issues. <sup>163</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>3. Case Selection</b>               | <p>Cases are placed in one of two ways:</p> <ul style="list-style-type: none"> <li>- Written request by a party.</li> <li>- Self-selection by <math>\pi</math> at the time of filing an action, designated at the bottom of the front of the Civil Non-Domestic Case Information Report. <i>(Note: Bus &amp; TechCMP selection is only found on the Non-Domestic Form)</i></li> </ul> <p style="padding-left: 40px;">On the court’s own initiative.<sup>164</sup></p> | <p>Cases are placed in one of three ways:</p> <ul style="list-style-type: none"> <li>- Self-selection by <math>\pi</math> at the time of filing an action, designated at the bottom of the front of the Civil Domestic or Non-Domestic Case Information Report. <i>(Note: ASTAR selection is found on both the Domestic and Non-Domestic Form)</i></li> <li>- After commencement of an action, on motion by counsel, at a point when it becomes apparent that a complex or novel scientific or medical issue looms ahead.</li> <li>- Referral of a pending case, at any point along its course of proceeding, by another member of the Bench.<sup>165</sup></li> </ul> |

<sup>160</sup> Originally Rule 16-205, this Rule was updated in July 2016 and renumbered to 16-308.

<sup>161</sup> *ASTAR: Complex Science and/or Medical Case Management Program*, Montgomery County Circuit Court, <http://www.montgomerycountymd.gov/circuitcourt/Court/CivilDepartment/ASTAR.html> (last visited Jan. 31, 2016).

<sup>162</sup> Md. Rule 16-308.

<sup>163</sup> *ASTAR*, Circuit Court for Anne Arundel County, <http://www.circuitcourt.org/learn-about/astar> (last visited Jan. 31, 2016).

<sup>164</sup> Md. Rule 16-308.

<sup>165</sup> Circuit Court for Cecil County, Maryland, *Differentiated Case Management Plan*, at 12, <http://www.courts.state.md.us/clerks/cecil/pdfs/dcm.pdf>.

|                                                           | <b>Bus &amp; TechCMP</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>ASTAR</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>4. Case Assignment to Judges</b>                       | Cases are assigned to judges by the administrative judge in each circuit. <sup>166</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Cases are assigned to judges by the administrative judge in each circuit. <sup>167</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>5. Factors Used in Case Selection</b>                  | <p>Factors the administrative judge uses in making the determination to assign the case to Bus &amp; TechCMP:</p> <ul style="list-style-type: none"> <li>- The nature of the relief sought.</li> <li>- The number and diverse interests of the parties.</li> <li>- The anticipated nature and extent of pretrial discovery and motions.</li> <li>- Whether the parties agree to waive venue for the hearing of motions and other pretrial matters.</li> <li>- The degree of novelty and complexity of the factual and legal issues presented.</li> <li>- Whether business or technology issues predominate over other issues presented in the action.</li> <li>- The willingness of the parties to participate in ADR procedures.<sup>168</sup></li> </ul> | <p>Factors the administrative judge uses in making the determination to assign the case to ASTAR:</p> <ul style="list-style-type: none"> <li>- The nature of the relief sought.</li> <li>- The likelihood of the filing of a motion <i>in limine</i> implicating novel or complex scientific or medical evidence.</li> <li>- Whether the merits of the case implicate a complex or novel issue of science or medicine.</li> <li>- The degree of novelty or complexity of an apparent issue of science or medicine.<sup>169</sup></li> </ul> |
| <b>6. Consistency of Judge Assignment Throughout Case</b> | <p>Cases heard by Bus &amp; TechCMP judge shall hear all proceedings until the matter is concluded.</p> <p>“Except that, if necessary to prevent undue delay, prejudice, or injustice, the administrative judge may designate another judge to hear a particular pretrial matter. That judge shall be a Bus &amp; TechCMP judge, if practicable.”<sup>170</sup></p>                                                                                                                                                                                                                                                                                                                                                                                        | No information found whether ASTAR judges hear all proceedings until matter is concluded.                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|                                                           | <b>Bus &amp; TechCMP</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>ASTAR</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

<sup>166</sup> Md. Rule 16-308.

<sup>167</sup> *ASTAR*, *supra* note 163.

<sup>168</sup> Md. Rule 16-308.

<sup>169</sup> *Differentiated Case Management Plan*, *supra* note 165 at 13.

<sup>170</sup> Md. Rule 16-308.



|                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>7. Training for Judges</b>               | No formalized training requirement                                                                                                                                                                                                                                                                                                                                                                                                           | To become an ASTAR Fellow, the judge must complete an 120-hour, two-year training program. <sup>171</sup>                                                                                                                                                                                                                                                         |
| <b>8. Scheduling Conference/ Order</b>      | <p>Promptly after an action is assigned, the Bus &amp; TechCMP judge shall hold a scheduling conference under Rule 2-504.1.</p> <p>Bus &amp; TechCMP judge and the parties discuss the scheduling of discovery, ADR, and a trial date.</p> <p>Bus &amp; TechCMP judge enters a scheduling order under Rule 2-504 that includes case management decisions made by the court at or as a result of the scheduling conference.<sup>172</sup></p> | <p>Consistent with Md. Rules 2-504.1 and 2-504, the judge specially assigned as an ASTAR Trial Judge shall conduct an initial Scheduling Conference.</p> <p>An appropriate Scheduling Order shall be issued promptly after conclusion of the conference.</p> <p>The Scheduling Order shall address the deadlines required by Md. Rule 2-504(b).<sup>173</sup></p> |
| <b>9. ADR</b>                               | <p>Highly encouraged.</p> <p>Bus &amp; TechCMP has its own ADR rule: Md. Rule 17-207 (2013). However, Maryland Courts website still references the old rule 17-107 (2012).</p> <p>Persons seeking to be designated as a Business and Technology Mediator need to fill out a special application that is posted on Maryland Courts website.</p>                                                                                               | <p>Highly encouraged.</p> <p>Encourages the Court to follow as closely as possible Md. Rule 17-107 (now 17-207) (Bus &amp; TechCMP ADR).</p> <p>Persons seeking to participate as mediators in ASTAR qualified cases should follow Md. Rule 17-107 (now 17-207) (Bus &amp; TechCMP ADR) to the extent possible.<sup>174</sup></p>                                 |
| <b>10. Centralized Resource of Opinions</b> | Centralized resource of Bus & TechCMP case opinions online (not precedent) at <a href="http://www.courts.state.md.us/businessstech/opinions.html">http://www.courts.state.md.us/businessstech/opinions.html</a> .                                                                                                                                                                                                                            | Cannot find a centralized resource of ASTAR case opinions. ( <i>Still seeking data on ASTAR cases in Maryland</i> )                                                                                                                                                                                                                                               |
| <b>11. Web Presence</b>                     | Has a section on the Maryland Courts website.                                                                                                                                                                                                                                                                                                                                                                                                | No section on the Maryland Courts website.                                                                                                                                                                                                                                                                                                                        |

<sup>171</sup> ASTAR, *supra* note 163.

<sup>172</sup> Md. Rule 16-308.

<sup>173</sup> *Differentiated Case Management Plan*, *supra* note 165 at 14.

<sup>174</sup> *Id.*

## **APPENDIX G**

### **OTHER STATES' BUSINESS COURTS BEST PRACTICES**

The foregoing information reflects the best practices from States that have successful Business Courts. The information is broken up into four main sections: Administration and Selection of Judges, Case Implementation, Case Management, and Case Rulings, Opinions, and Publications/Online Posting. Through our research we concluded these are the four most important components to establish and maintain a successful Business Court.

#### **I. ADMINISTRATION AND SELECTION OF JUDGES**

##### **a. ADMINISTRATION**

- i. Judges are assigned a set term on the Business Court Docket. (MI-6 year term; CT- 3 year minimum)
- ii. Program judges meet twice annually to exchange information and participate in continuing education. (CA)
- iii. In many States cases are assigned to an individual judge who presides over all aspects of the case.
- iv. Judges only handle the business court cases and do not maintain a separate docket. (NY)
- v. Chief Justice assigns cases to specialized business court judges. (RI)
- vi. Program judges meet twice annually to exchange information and participate in continuing education. (CA)

##### **b. JUDGE SELECTION**

- i. In many States Judges are appointed by the State's Highest Court to preside over business court.
- ii. Selection should be based on the Judge's ability, interest, training, experience (including experience with complex cases) and willingness to participate in education programs related to the management of complex cases. (MN)

#### **II. CASE IMPLEMENTATION**

- a. Assignment to the Business Court is "whether the outcome will have implications for business and industry beyond the conflicts of the parties in the litigation." (NC)
- b. Commercial cases where at least one plaintiff and one defendant are business organizations, the primary issues of law and fact concern a business organization, or a primary issue concerns a business contract or transaction. (AZ)
- c. Cases are considered for placement on the docket on the basis of their individual merit, under the judge's discretion on a non-formulaic basis. (CT)
- d. Many states require a minimum amount to be in controversy before assignment to the Business Court, typically \$50,000.
- e. States vary with regard to whether both parties must motion to have their case heard before the Business Court

III. **CASE MANAGEMENT**

- a. Judges are given a Deskbook on the Management of Complex Civil Litigation (CA)
- b. Streamlined procedures that are monitored for strict adherence to achieve swift litigation. (FL)
- c. Use a scheduling system where all judges maintain their own calendars. (IL)
- d. Judges may establish informal procedures, which the Judge believe will be helpful in achieving prompt resolution of discovery disputes or other preliminary matters. (RI)
- e. Adopt Statewide Standards for Assignment of Cases and Rules of Practice. (NY)
- f. Many States have mandatory pre-trial mediation.

IV. **CASE RULINGS, OPINIONS, AND PUBLICATIONS/ONLINE POSTING**

- a. Many States have the case Opinions available online.
- b. All orders from the court are released online. (SC)
- c. Publish an annual report indicating its budget during the fiscal year, filings, dispositions and information about each court. (DE)
- d. Distribute a Business Court Law Report summarizing recent cases. (NY)