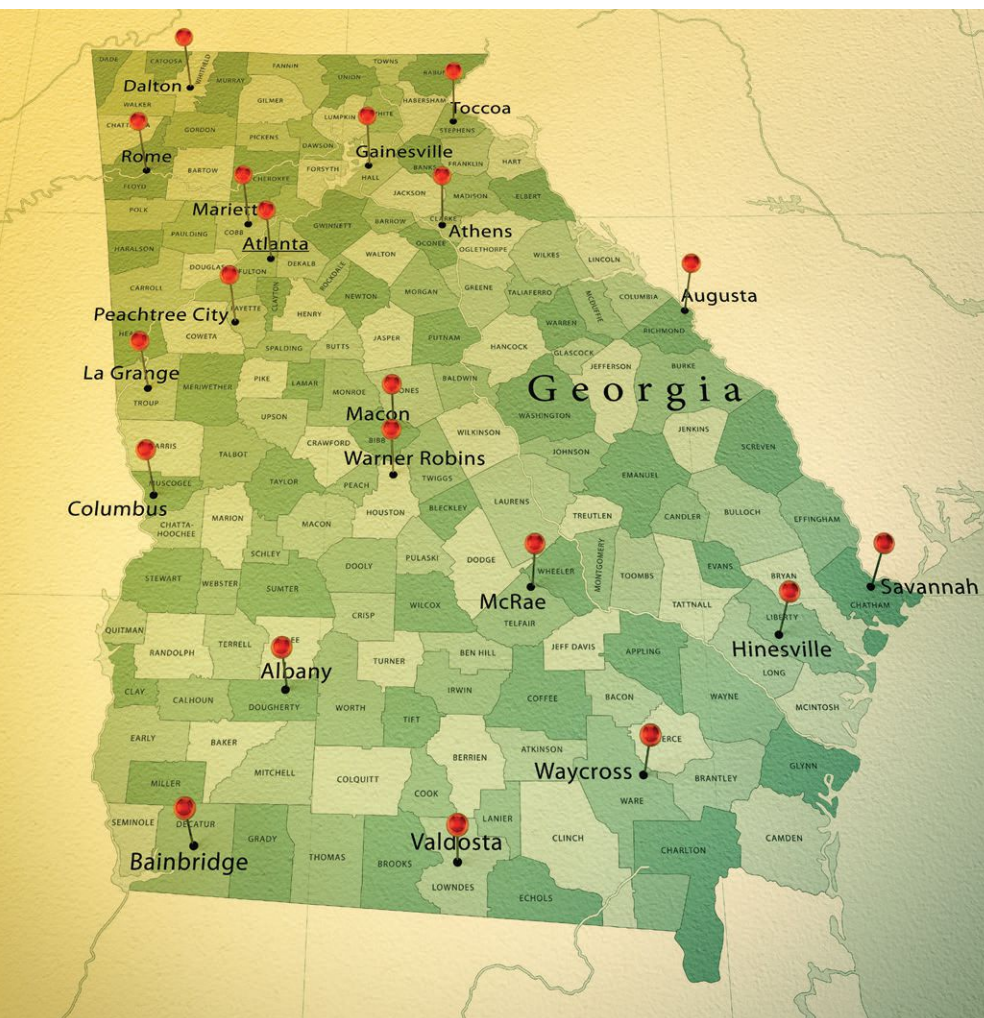


Statewide Business Court Opens Its Doors

Georgia's first new statewide court in 114 years, the Business Court . . . was created to promote efficiency and predictability in complex litigation and to make Georgia more attractive for business.

BY ROBERT "BOB" WATTS, JOHN "JACK" HERON IV AND JONATHAN KAUFMAN



On Aug. 3, 2020, the Georgia State-wide Business Court (Business Court) opened its virtual doors.¹ Georgia's first new statewide court in 114 years, the Business Court joins specialized commercial courts and related pilot programs in 24 other states across the country, including all of Georgia's neighbors.² The Business Court, like its sister courts in other states, was created to promote efficiency and predictability in complex litigation and to make Georgia more attractive for business.³

History

The Business Court is the result of court reform efforts started by Gov. Nathan Deal. In March 2017, Gov. Deal created a Court Reform Council (Council) tasked with improving efficiencies within the judicial court system.⁴ After a subcommittee investigated the feasibility and efficacy of a statewide business court, the Council issued a "Final Report" that recommended "the constitutional creation of a statewide business court in Georgia."⁵ The Business Court was designed to provide specialized expertise for the adjudication of complex cases, ultimately enhancing litigation of complex matters by providing judicial resources specifically tailored to such cases. The Council also noted that "[t]he creation

GETTYIMAGES.COM/FRANKRAMSPOTT

of a statewide business court in Georgia would . . . make Georgia a more attractive and competitive venue for business.⁶

Creating the Business Court required the citizens of Georgia to amend Article VI of the Georgia Constitution. HR 993, the proposed constitutional amendment, passed the Georgia House and Senate by a two-thirds supermajority. On Nov. 6, 2018, Georgia voters approved the constitutional amendment with almost 70 percent of voters voting in favor of the amendment providing for the Business Court. In the following legislative session, the General Assembly passed HB 239—enabling legislation that effectively brought the Business Court from concept to reality. In July 2019, Gov. Brian Kemp nominated Walt Davis, then a partner at the law firm of Jones Day in Atlanta, to serve as the Business Court’s inaugural judge; one month later, Judge Davis was unanimously confirmed by the Judiciary Committees of both Chambers of the General Assembly. He began his term on Jan. 1, 2020. Now that the Business Court is open for business, it is important for Georgia practitioners to understand the Business Court and how it functions.

Bringing a Claim in the Business Court

There are generally three ways that parties may bring a claim before the Business Court.⁷ All three of these procedures are set forth in Georgia statutes.⁸

First, parties can file their claims directly with the Business Court. The governing statutes provide that a plaintiff may initiate a civil action directly with the Business Court so long as the action is not already pending in a Superior or State Court.⁹ Once a plaintiff files the complaint with the Business Court, any defendant may object to the filing within 30 days and request transfer of the lawsuit to any Superior or State Court in which venue is proper.¹⁰ If a defendant objects, the Business Court may transfer the case to the Superior or State Court where venue otherwise lies, unless the action involves a contract claim or dispute where all parties are business entities and the contract specifies the Business Court is the proper forum.¹¹

Second, the parties to a case that is already pending in a Superior or State Court may jointly remove the case to the Business Court.¹² To remove a case from a State or Superior Court, all parties must consent to the removal and file a petition for removal with the Business Court.¹³ This petition must be filed with the Business Court within 60 days after the original complaint was filed in the Superior or State Court.¹⁴

Third, a party may petition the Business Court for transfer of the action from a State or Superior Court of competent jurisdiction.¹⁵ The petition for transfer must be filed with the Business Court within 60 days of service of the complaint, or within 60 days after the service of an amended pleading, motion, order or other document that provides notice to a party that the case is eligible for transfer to the Business Court.¹⁶ As with direct filing, an opposing party has 30 days to object to transfer. Upon a timely objection, the case may be transferred back to the Superior or State Court in which it was filed.¹⁷

Regardless of the method of entry, the parties must pay a \$3,000 filing fee.¹⁸ This fee is paid by the party that files the case with the Business Court or the party that seeks transfer of the case to the Business Court.¹⁹ If the parties seek removal of the action by agreement, the filing fee may be equally allocated among all parties to the agreement seeking removal of the case.²⁰

Jurisdiction of the Business Court

The Business Court has jurisdiction over 17 different categories of business-related claims.²¹ These 17 categories generally involve business-related disputes including claims arising under the Georgia Trade Secrets Act of 1990, the Uniform Commercial Code, the Georgia Business Corporation Code and the Georgia Uniform Securities Act of 2008, among others.²² The Business Court also has jurisdiction over tort and contract claims involving businesses and cases involving commercial real property.²³ In a case requesting damages, the Business Court may exercise jurisdiction only where the amount in controversy is at least \$500,000.²⁴ If the claim involves commercial real property, the

amount of controversy must be at least \$1,000,000.²⁵ In cases where no damages are requested, the Business Court may exercise its equitable powers in any case that falls within the 17 categories of jurisdiction provided by statute.²⁶

In addition to the 17 categories discussed above, the Business Court may also exercise supplemental jurisdiction over any claim that forms part of the same case or controversy as claims within the jurisdiction explicitly provided to the Business Court.²⁷ This provision provides the Business Court with the necessary jurisdiction to handle predominantly business-related disputes even though not all claims in a case may fall within the Business Court’s carefully crafted subject matter jurisdiction. While these jurisdictional provisions may be new to Georgia practitioners, the venue provisions applicable to the Business Court remain largely the same as other courts in the state.

Venue

The Business Court currently sits at the seat of government in Atlanta and is working to establish a physical presence in Macon.²⁸ When a case is initiated directly in the Business Court, venue will be determined as otherwise provided for by state law and the Georgia Constitution.²⁹ If more than one venue is proper, then the party initiating the case shall select among the proper venues at the time of filing with the Business Court.³⁰ If a case is either removed or transferred from a Superior or State Court, then venue will lie as properly set forth in the original pleadings filed in the Superior or State Court.³¹

The judge of the Business Court may conduct pretrial proceedings via video, phone or other technological means.³² In addition, the parties may request that the Business Court conduct pretrial proceedings in the county where trial will be held and, upon such a request, the judge of the Business Court has discretion to do so.³³ In the event that a case proceeds to trial, the judge of the Business Court shall preside over a bench trial unless the parties request a jury trial.³⁴ The Business Court will hold both bench trials and jury trials in the

properly-designated venue. To facilitate a smooth trial process, in the event a trial becomes necessary, the Business Court's proposed rules are tailored to ensure that the parties can resolve their disputes efficiently.

Business Court Proposed Rules

The Business Court Proposed Rules are the result of an intentional, deliberative process that spanned a period of seven months. A Rules Commission, authorized by statute, drafted the Proposed Rules for the Business Court. The eight-member Rules Commission consisted of lawyers from all over the state of Georgia, each of whom brought a diverse perspective to the rule-drafting process.³⁵

To draft the proposed rules, the Rules Commission relied on four primary sources: the Uniform Superior Court Rules, the Rules of the North Carolina Business Court, the Local Rules of the U.S. District Court of the Northern District of Georgia and the Delaware Chancery Court Rules.³⁶ In so doing, the Commission sought to consolidate best practices into a single set of rules with a particular focus on early case management, motions practice and discovery.³⁷ The rule-making process resulted in a set of proposed rules tailored to address the particular demands of the complex cases that will come before the Business Court, including general business claims and data intensive cases involving numerous parties and nuanced questions of commercial law. These rules will undoubtedly provide a benefit to the litigants before the Business Court, as will the staff of the Business Court, which Judge Davis selected to ensure that cases move expeditiously through the litigation process.

Staffing

In July 2020, Gov. Kemp nominated Angie T. Davis, the long-time clerk of court for the State Court of Cobb County, to serve as the first clerk of court for the new Business Court. Ms. Davis was unanimously confirmed by the General Assembly just eight days later and was

sworn in on Aug. 4. Like Judge Davis, she will serve a five-year term and be eligible for reappointment for any number of consecutive terms. The clerk's office also includes a senior deputy clerk of court.

The Business Court is staffed by E. Lynette Jimenez, senior staff attorney, formerly the program director and staff attorney for the Metro Atlanta Business Case Division. The Business Court also employs two term clerks, a judicial assistant and legal interns. This level of staffing will ensure that cases receive appropriate attention given their complexity and that they will be handled in an efficient manner.

Any interested parties or counsel can file proceedings with the Business Court anytime via the PeachCourt eFiling system at www.PeachCourt.com. More information is also available on the Business Court website at www.georgiabusinesscourt.com. ●



Robert "Bob" Watts is an associate at Jones Day in Atlanta. His practice focuses on complex commercial litigation, including shareholder and securities litigation, in state and federal courts. He also served as a member of the Business Court Rules Commission, where he helped combine national best practices into the proposed Business Court Rules.



John "Jack" Heron IV is an associate at Jones Day in Atlanta. His practice focuses on complex commercial litigation, including shareholder and securities litigation following mergers or acquisitions, internal corporate investigations involving fraud and governmental investigations.



Jonathan Kaufman currently serves as one of the first term law clerks for the Georgia Statewide Business Court. He will serve the Business Court for a one-year term.

Endnotes

1. FAQ, GA. STATE-WIDE BUS. CT., <https://www.georgiabusinesscourt.com/faq/> (last visited Aug. 19, 2020).
2. Lee Applebaum et al., *Through the Decades: The Development of Business Courts in the United States of America*, 75 BUS. LAW. 2053, 2057 (2020).
3. STATE OF GA. CT. REFORM COUNCIL, FINAL REPORT 19 (Nov. 20, 2017).
4. *Id.* at 2.
5. *Id.* at 17.
6. *Id.* at 19.
7. See O.C.G.A. § 15-5A-4 (2019).
8. *Id.*
9. O.C.G.A. § 15-5A-4(a)(1) (2019).
10. *Id.*
11. *Id.*
12. O.C.G.A. § 15-5A-4(a)(2) (2019).
13. *Id.*
14. *Id.*
15. O.C.G.A. § 15-5A-4(a)(3) (2019).
16. *Id.*
17. *Id.* Whether a case can be transferred at the behest of one or more parties (but not all) is a hotly contested issue that is currently before the Court. See *Southern States, L.L.C. v. Cigna Health and Life Insurance Company*, 20-GSBC-0001; *Overlook Gardens Properties v. Orix USA, L.P.*, 20-GSBC-0002.
18. O.C.G.A. § 15-5A-5 (2019).
19. O.C.G.A. § 15-5A-5(a)(1) (2019).
20. O.C.G.A. § 15-5A-5(a)(2) (2019).
21. O.C.G.A. § 15-5A-3(a) (2019).
22. O.C.G.A. § 15-5A-3(a)(1)(A)(i)-(xvii) (2019).
23. *Id.*
24. O.C.G.A. § 15-5A-3(a)(1)(B)(ii) (2019).
25. O.C.G.A. § 15-5A-3(a)(1)(B)(i) (2019).
26. O.C.G.A. § 15-5A-3(a)(1)(A) (2019).
27. O.C.G.A. § 15-5A-3(a)(2) (2019).
28. O.C.G.A. § 15-5A-2(b) (2019).
29. O.C.G.A. § 15-5A-2(e) (2019).
30. O.C.G.A. § 15-5A-2(e)(1) (2019).
31. O.C.G.A. § 15-5A-2(e)(2) (2019).
32. O.C.G.A. § 15-5A-2(c)(1) (2019).
33. O.C.G.A. § 15-5A-2(c)(2) (2019).
34. O.C.G.A. § 15-5A-2(d) (2019).
35. Letter from the Hon. Walter W. Davis, J., State-wide Bus. Ct., to the Hon. Nels S. D. Peterson, J., Supreme Court of Georgia, (April 28, 2020) (on file with author).
36. *Id.*
37. *Id.*