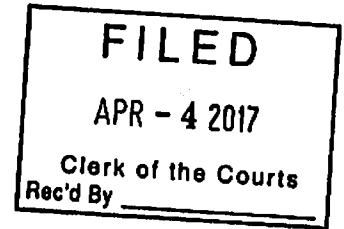


IN THE SUPREME COURT OF TENNESSEE

ADM2017-00638



**ORDER ESTABLISHING THE DAVIDSON COUNTY
BUSINESS COURT DOCKET PILOT PROJECT - PHASE 2**

Pursuant to the inherent power of this Court, and in performing its duty to take necessary action to ensure the orderly administration of justice in accordance with Tennessee Code Annotated section 16-3-501 and 502 and Supreme Court Rule 11(I), the Court hereby establishes Phase 2 of the Business Court Docket Pilot Project (“Business Court Docket”), originally established by previous Order of this Court on March 16, 2015, to meet the litigation needs of existing and future businesses in this State effective through December 31, 2017.

This order continues the already established specialized docket to provide expedited resolution of business matters by a judge who is experienced and has expertise in handling complex business and commercial disputes, and who will continue to provide proactive, hands-on case management with realistic, meaningful deadlines and procedures adapted to the needs of each case for customized, quality outcomes. Phase 2 will continue to develop a body of rulings from which lawyers and litigants can better predict and assess outcomes in business cases. Non-business case dockets, as well, will benefit from the removal of complex and time-consuming business cases from the general docket. This Business Court Docket Pilot Project Phase 2 Order supersedes the previous Order with respect to any modifications reflected in the designation, composition, criteria, or procedure of this Business Court Docket.

For Phase 2 of the Business Court Docket, the Tennessee Supreme Court hereby assigns the business court docket to the existing Davidson County Chancery Court Part III, which will gather data and information and identify best practices for development of potential future Tennessee Business Courts. The Supreme Court, in its discretion and as necessary, shall designate special judges to preside over particular cases or to preside over judicial settlement conferences.

The Business Court Docket shall proceed as follows:

1. **Eligible Cases** – The criteria for assignment or transfer to the Business Court Docket are these:

- a. Civil cases filed on or after May 1, 2017, and
- b. Cases in which at least \$250,000 compensatory damages are alleged or cases seeking primarily injunctive or declaratory relief, and which also satisfy one or more of the following criteria:
 - i. relate to the governance or internal affairs of businesses (i.e., corporations, limited liability companies, general partnerships, limited liability partnerships, sole proprietorships, professional associations, real estate investment trusts, and joint ventures), including the rights or obligations of shareholders, officers, directors, partners, and members, or the liability or indemnity of officers, directors, managers, trustees, or partners;
 - ii. involve claims of breach of fiduciary duty or statutory violations between businesses arising out of business transactions or relationships;
 - iii. involve a commercial class action;
 - iv. arise from technology licensing agreements, including software and biotechnology licensing agreements, or any agreement involving the licensing of any intellectual property right, including patent rights;
 - v. claims involving antitrust, trade secrets, trademark law, or securities-related actions;
 - vi. involve claims that present sufficiently complex commercial issues that would have significant implications for the larger business community, including but not limited to cases with subject matter that technically would render the case “Excluded” pursuant to Section 2, as recommended by the Business Court Docket Judge and as determined within the discretion of the Chief Justice.

2. **Excluded Cases** – The following cases are excluded from the Business Court Docket:

- a. personal injury or wrongful death;
- b. professional malpractice claims;
- c. commercial property disputes, residential landlord-tenant matters, and foreclosure actions;
- d. employee/employer disputes, except where pendent or incidental to the matters listed in Section 1 above and sufficiently complex business issues are presented;
- e. health care liability;
- f. the sole claim is a professional fee dispute;
- g. where the State of Tennessee or any other government or governmental agency is a party;
- h. administrative appeals from a State or County Agency, including tax and zoning matters;

- i. claims involving breach of contract, fraud, or misrepresentation, except when pendent or incidental to matters listed in Section 1 above and sufficiently complex business issues are presented;
- j. actions for violations of or interference with noncompete, nonsolicitation, and/or confidentiality agreements, except when pendent or incidental to matters listed in Section 1 above and sufficiently complex business issues are presented;
- k. commercial or residential contract construction disputes and/or commercial or residential construction defect claims; and
- l. cases involving violations of the Tennessee Consumer Protection Act.

3. Case Assignment

- a. Request for Designation to the Business Court Docket
 - i. Within 30 days of the date of service of a complaint on a defendant, any party may file with the Davidson County Chancery Court Part III a *Request for Designation* of the case to the Business Court Docket, with a copy served on all parties. Upon the recommendation of the Business Court Docket Judge as to eligibility, the Chief Justice shall determine whether a case meets the eligibility criteria set forth above and whether, in the discretion of the Chief Justice, the case is sufficiently complex to warrant transfer to the Business Court Docket. Upon making that determination, the Chief Justice may transfer the case to the Business Court Docket.
 - ii. The filing of a *Request for Designation* certifies that the case meets the criteria for assignment to the Business Court Docket provided above in Sections 1 and 2 and shall be in a form approved by this Court.
 - iii. The Chief Justice may designate one or more sitting Davidson County Chancellors, Davidson County Circuit Court Judges, or Senior Judges to hear and decide cases assigned to the Business Court Docket and/or serve as settlement conference judges, as needed.
- b. Cases Outside of Davidson County – In addition to Section 3a., cases filed in any other county in Tennessee that otherwise meet the eligibility criteria provided in Sections 1 and 2 above may be transferred pursuant to Tenn. Code Ann. § 16-11-201 at the discretion of the Chief Justice to the Business Court Docket in Davidson County if all parties file with the Davidson County Chancery Court Part III a *Request for Designation* of the case to the Business Court Docket that includes a joint consent and waiver of venue in a form approved by this Court.
- c. Objections to Transfer – All objections to assignment of the case to the Business Court Docket, except eligibility, must be filed with the Supreme Court, Appellate Court Clerk, Middle Section, Nashville, TN within 30

days of the entry of the order transferring the case to the Business Court Docket, with a copy served on all parties and the Business Court Docket judge.

- d. Recusal – Should recusal by a Business Court Docket judge be necessary, the case will be re-assigned to another Business Court Docket judge by the Chief Justice.

4. Rules and Procedures

The Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence shall apply, and the Business Court Docket shall have broad discretion to establish appropriate Rules, consistent with Rule 18, Rules of the Supreme Court, and to develop case management procedures to allow for more efficient handling of cases and produce quicker resolutions with reduced litigation pursuant to Rule 16 of the Tennessee Rules of Civil Procedure.

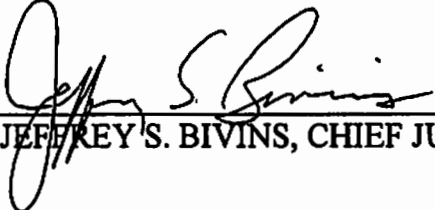
5. Technology

Technology, particularly electronic filing and video conferencing, will be utilized and encouraged as it becomes available in Davidson County Chancery Court. Noteworthy and informative decisions shall be posted on the website of the Davidson County Clerk and Master's Office and the Administrative Office of the Courts to assist lawyers and litigants in assessing and predicting outcomes in business issues.

6. Performance Evaluations

In an effort to more effectively meet the litigation needs of existing and future businesses in this State, this Court shall create performance evaluation forms to be completed by the attorneys and litigants who utilize the Business Court Docket for submission to the Administrative Office of the Courts, which shall report the results thereof to the Tennessee Supreme Court. These performance evaluations shall serve as a valuable tool to evaluate and identify the effectiveness, efficiency, and best practices of this Business Court Docket.

It is so ordered.



JEFFREY S. BIVINS, CHIEF JUSTICE