

**BUSINESS COURTS TASK FORCE
WHITE PAPER FOR STATEWIDE BUSINESS COURT**

A. Introduction.

Florida has a unique, sophisticated, and changing business community covering a diverse geography. Each factor poses particular legal challenges, and businesses operating within the state frequently turn to alternative dispute resolution systems to address legal matters to avoid the delay and uncertainty associated with submitting disputes to Florida Courts. Florida should have a state court system for these diverse and complicated business matters that will offer efficient and more predictable outcomes. By creating a statewide business court, Florida will foster a more favorable environment for creating and maintaining businesses, and as a result enhance Florida's economic well-being.

Business courts also serve the public by easing pressure on Florida's state court systems. Removing complex commercial cases from the general civil divisions will free resources for the courts to function more efficiently and reduce the burden on them to commit disproportionate court time to address the few complicated commercial cases. The Florida business courts proposed here would use the following general approaches to accomplish effectively addressing complex business matters in Florida:

1. Advanced case management techniques, including close judicial oversight of each stage of litigation and case tracking by type and complexity.
2. Piggybacking the statewide e-filing system to expand technology.
3. Defining standards for assigning judges on the business court.
4. Vesting chief judges with oversight and discretion to control case load.
5. Cooperation between the bench and bar to achieve cost-effective resolutions.

Creating a statewide business court in Florida requires either an amendment to the Florida Constitution or a rule-based approach. The Task Force has presented a rule-based approach because the current rules confer the Florida Supreme Court with the authority to create a statewide business court system. Therefore, the rule-based approach must satisfy the constitutional limits imposed on the judiciary to ensure proper separation of powers and the constitutional authority vested in the chief judges while also preserving the citizenry's right to vote for their judges.

Within these parameters, the Task Force has proposed adding a part to the Florida Rules of Judicial Administration to create a statewide business court. It is worth noting that Florida Rule of Judicial Administration 2.110 states, "[t]he rules shall be construed to secure the speedy and inexpensive determination of every proceeding to which they are applicable." Rule 2.110 is therefore consistent with the objectives the Task Force has identified for creating a statewide business court.

The following proposal if adopted would create a Part VI to the Florida Rules of Judicial Administration ("Statewide Business Court"). Along with the Statewide Business Court, there are other steps necessary to create the statewide business court: (1) the Florida Supreme Court certifies additional circuit court judges; (2) the Florida legislation accepts the certification and increases

funding for the additional circuit court judges and associated staff; (3) the Florida Supreme Court adopts a statewide rule for addressing venue for the business cases in the various circuits; and (4) the circuit court chief judges decide who will serve as business court judges, and what, if any, elective complex litigations matters to include with the mandatory business related matters.

B. Proposed Florida Rules of Judicial Administration for the Statewide Business Court.

The Task Force proposes to amend the Florida Rules of Judicial Administration to insert Part VI.

FLORIDA RULES OF JUDICIAL ADMINISTRATION

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PART VI. STATEWIDE BUSINESS COURT

RULE 2.566. SCOPE AND PURPOSE.

To establish a judicial structure for administering and efficiently resolving business disputes within the circuit courts, referred to as the “Statewide Business Court”. The Statewide Business Court will resolve business disputes using expertise and technology, and will enhance efficiency, consistency, and predictability for administering justice in business disputes.

RULE 2.567. DIVISIONS AND HEADQUARTERS.

(a) Divisions. The Statewide Business Court shall consist of five divisions comprised of the following:

(1) The First Division shall administer and resolve qualifying business disputes from the First, Second, Third, Fourth, Eighth, and Fourteenth Judicial Circuits.

(2) The Second Division shall administer and resolve qualifying business disputes from the Sixth, Tenth, Twelfth, Thirteenth, and Twentieth Judicial Circuits.

(3) The Third Division shall administer and resolve qualifying business disputes from the Eleventh and Sixteenth Judicial Circuits.

(4) The Fourth Division shall administer and resolve qualifying business disputes from the Fifteenth, Seventeenth, and Nineteenth Judicial Circuits.

(5) The Fifth Division shall administer and resolve qualifying business disputes from the Fifth, Seventh, Ninth, and Eighteenth Judicial Circuits.

(b) Headquarters. Each division of the Statewide Business Court shall have headquarters located within a circuit court comprising its division, as follows:

(1) The headquarters of the First Division shall be in the Second Judicial Circuit, in and for Leon County;

(2) The headquarters of the Second Division shall be in the Thirteenth Judicial Circuit, in and for Hillsborough County;

(3) The headquarters of the Third Division shall be in the Eleventh Judicial Circuit, in and for Miami-Dade County;

(4) The headquarters of the Fourth Division shall be in the Seventeenth Judicial Circuit in and for Broward County; and

(5) The headquarters of the Fifth Division shall be in the Ninth Judicial Circuit in and for Orange County.

(c) **Branches.** At the request of the Chief Judge for the judicial circuit serving as the headquarters for a division of the Statewide Business Court, the Chief Justice of the Florida Supreme Court, by administrative order, may designate other locations within the division as branches to administer the Statewide Business Court.

RULE 2.568. JUDGES.

(a) **Qualification of Judges.** A circuit court judge must have the following qualifications to serve as judge for the Statewide Business Court:

(1) have at least five (5) years of experience presiding over a circuit civil docket; or

(2) be board certified in business litigation; or

(3) have at least ten (10) years of experience in:

(A) practicing complex civil business litigation;

(B) practicing complex business transaction law;

(C) teaching courses in complex civil business litigation or complex business transaction law at an accredited law school; or

(D) any combination of experience described in paragraphs (A)—(C) above.

(b) **Initial and Continuing Education Requirements.** In order to qualify as a judge for the Statewide Business Court, a circuit judge must meet both the initial and continuing education requirements set forth in this section. Such requirements may be met by attending coursework covering the topics identified as core curriculum by the Florida Court Education

Council. Qualified continuing education providers must be approved by the Office of Court Education.

(1) **Initial Educational Requirement for Assignment.** A circuit judge assigned to the Statewide Business Court must complete the educational requirement for assignment either within 1 year prior to or within the first year of the judge's assignment to the Statewide Business Court. Failure to timely complete the educational requirement may be grounds for removal from the assignment. The initial educational requirement shall be comprised of 16 hours of required classwork in the identified core curriculum.

(2) **Continuing Education Requirements.** A circuit judge shall remain qualified to sit as a judge of the Statewide Business Court by attending at least 10 hours of business court core curriculum courses during each of the subsequent continuing judicial education (CJE) reporting periods. Courses shall be separately designated as approved for business court credit.

(c) **Selection of Judges.** The Chief Judge for the judicial circuit serving as the headquarters for each division of the Statewide Business Court shall select the circuit court judges who shall serve on the Statewide Business Court and shall ensure that each division has at least 2 circuit court judges assigned to serve so long as such positions are made available by the Florida Supreme Court in its annual certification of need pursuant to Article V, section 9 of the Florida Constitution and fully funded by the legislature. If a branch is created pursuant to Rule 2.567(c) to administer the Statewide Business Court in a particular division thereof, the Chief Judge for the judicial circuit serving as the headquarters for the division may assign a circuit court judge to sit in the branch with the consent of the Chief Judge of the judicial circuit where the branch is located.

(d) The Chief Justice of the Florida Supreme Court may waive these requirements in exceptional circumstances at the request of a Chief Judge of any division of the Statewide Business Court.

RULE 2.569. QUALIFYING BUSINESS MATTERS.

(a) **Mandatory Assignment.** The Statewide Business Court shall administer and resolve all new and existing circuit court-qualified matters for which the disputes involve the following:

- (1) a derivative action on behalf of a business entity;
- (2) an action regarding the governance or internal affairs of a business entity;
- (3) an action in which a claim under a state or federal securities or trade regulation law is asserted against:
 - (A) a business entity;
 - (B) an owner or governor of a business entity for an act or omission by the business entity or by the person in the person's capacity as a governor;

(C) a person directly or indirectly controlling a business entity for an act or omission by the business entity; or

(D) a person directly or indirectly controlling an owner or governor for an act or omission by the governor;

(4) an action by a business entity, or an owner or governor of a business entity, if the action:

(A) is brought against an owner or governor of the business entity; and

(B) alleges an act or omission by the person in the person's capacity as an owner or governor of the business entity;

(5) an action alleging that an owner or governor breached a duty, by reason of the person's status as an owner or governor, including the duty of care, loyalty, or good faith;

(6) an action arising out of the Florida Business Corporation Act, Fla. Stat. § 607.0101, *et seq.*; the Florida Revised Limited Liability Company Act, Fla. Stat. § 605.0101, *et seq.*; the Florida Revised Uniform Limited Partnership Act of 2005, Fla. Stat. § 620.1101, *et seq.*; or the Florida Revised Uniform Partnership Act, Fla. Stat. § 620.81001, *et seq.*

(7) an action involving patents or copyrights not pre-empted by federal jurisdiction, trademarks, trade secrets, or other intangible rights entitled to legal protection.

(b) Elective Assignment. The Chief Judge for the judicial circuit serving as the headquarters for each division of the Statewide Business Court may, by local administrative order, elect to include new and existing matters for which the disputes involve any of the following:

(1) actions involving commercial real property;

(2) receivership actions;

(3) complex construction litigation;

(4) actions seeking to enforce contracts that restrict competition or that are brought pursuant to Ch. 542, Fla. Stat.; or

(5) actions involving franchisee/franchisor relationships, obligations, or liabilities.

(c) Amount in Controversy. At the request of a Chief Judge of any division of the Statewide Business Court, the Chief Justice of the Florida Supreme Court may set an amount in controversy requirement for some or all otherwise qualifying business court matters within that division.

(d) Exceptions to Mandatory or Elective Assignment to the Statewide Business Court. At the request of a Chief Judge of a judicial circuit in which venue for an action would be

found under Ch. 47, Fla. Stat., and a showing of either exceptional circumstances or undue hardship, the Chief Judge for the judicial circuit serving as the headquarters for the division of the Statewide Business Court where the action would otherwise be maintained may allow the action to proceed in the circuit court of original venue rather than in the Statewide Business Court.

RULE 2.570. JURY PRACTICE AND PROCEDURE. A party in an action pending in the Statewide Business Court shall have the right to a trial by jury when required by the constitution and permitted by law.

(a) A jury trial shall be held in any county in which venue would be found under Ch. 47, Fla. Stat. The parties and the judge of the Statewide Business Court judge to whom the case is assigned may agree to hold the jury trial in any other county, though a party may not be required to agree to hold the jury trial in a different county.

(b) The drawing of jury panels, selection of jurors, and other jury-related practice and procedure in the business court shall be the same as for the circuit court in the county in which the jury trial is held.

(c) The judge of the Statewide Business Court to whom the case is assigned shall preside over the jury trial.

RULE 2.571. POLICIES AND PROCEDURES; CASE MANAGEMENT; TECHNOLOGY. To implement the provisions of this section, the Chief Justice of the Florida Supreme Court shall establish a uniform set of policies and procedures for the consistent operation of all divisions of the Statewide Business Court, including the uniform use of advanced technology and case management techniques. The Chief Justice may convene committees, task forces, or other bodies to assist in the development of these policies and procedures.