

2016

Metro Atlanta Business Court 2016 Annual Report



Fulton County Superior Court



Governing Rules

On June 3, 2005, the Supreme Court of Georgia promulgated Atlanta Judicial Circuit Rule 1004 governing the procedures of the Business Court, as amended on June 6, 2007, May 6, 2009, September 1, 2010, October 11, 2012, and July 14, 2016. The most recent amendment caused the Fulton County Superior Court Business Case Division to be renamed as the “Metro Atlanta Business Case Division” and revised Rule 1004 to allow voluntarily participating metro Atlanta counties to adopt the Rule within its own circuit. Gwinnett County was the first to

adopt Rule 1004 as a pilot project in Gwinnett County State and Superior Court. As a result, two active Gwinnett County Superior Court Judges – Randy Rich and Joseph Iannazzone – joined the Business Court bench.



Purpose

Business Court provides just, accurate, timely, and efficient resolution of complex commercial and business cases, in addition to retaining legal business in Georgia and developing a robust body of business law in Georgia.

Over 600 businesses have chosen Business Court to resolve their cases because of the



expert judicial attention given to complicated business cases by experienced judges with specialized

training in business law subjects. Litigants benefit from reduced resolution time through increased case management components, including:

- Comprehensive scheduling orders addressing all aspects of a case, including electronic discovery;
- Responsiveness to discovery disputes;
- Prompt scheduling of oral arguments and written rulings on all substantive motions; and
- Cases are not scheduled behind a general docket of criminal and civil cases.

Business Court Judges



Judge John Goger

There are a total of six judges across two counties who serve the Business Court and receive case assignments on a rotating basis. In Fulton County, there are three Senior Judges – Judge Long, Judge Bonner, and Judge Westmoreland – and one Active Judge – Judge Goger. Two Active Judges – Judge Iannazzone and Judge Rich – serve as the Business Court judges for cases arising in Gwinnett. The Chief Judge appoints the Business Court Bench for up to a two year term. With support staff, these Judges have the experience and time necessary to administer complex civil cases. Senior Judges are readily available to address any discovery dispute or



Senior Judge Elizabeth Long



Senior Judge Alice Bonner

other emergencies that may arise during the course of a case. While the Active Judges still maintain a general docket, they devote blocks of time to the exclusive administration of Business Court cases.

A panel of seven Active Judges oversee the operations of the Business Court and vet the



Senior Judge Melvin Westmoreland

eligibility of cases seeking transfer to Business Court by assessing the procedural and substantive complexity presented in the cases. Currently, the Business Court Committee is comprised of Judge Goger (Chief Business Case Division Judge), Chief



Judge Randy Rich

Judge Tusan, Judge Edwards, Judge Markle, Judge Ellerbee, Judge Iannazzone and Judge Rich. Upon a majority vote of the Business Court Committee, cases can transfer to Business Court for assignment to a Business Court Judge.



Judge Joseph Iannazzone

The Business Case Division Judges and the staff attorney host a series of monthly lectures coordinated with the assistance of the State Bar of Georgia. The lectures cover topics such as fiduciary duties, capitalization issues, corporate governance, derivative actions, and mergers and acquisitions, among other business law topics.

2016 Business Court Highlights

Business Court Expansion Projects

In 2016, the Business Court supported an amendment to Rule 1004 which would allow additional metro Atlanta counties to adopt Rule 1004 within their respective circuit. The amendment unanimously passed in a vote by the State Bar of Georgia Board of Governors and was approved by the Supreme Court of Georgia on July 14, 2016. Gwinnett County was the first to adopt Rule 1004 and has begun accepting Business Court cases. The Business Court anticipates that other counties will join in adopting Rule 1004. Under the amended Rule, the Fulton County Business Case Division was renamed the Metro Atlanta Business Case Division.

Court-Wide Programs

Area attorneys led seminars hosted by the Business Court for the benefit of the Superior Court judges and staff attorneys, covering a variety of topics such as new developments in electronic discovery, restrictive covenants, mediation techniques, officer and director liability, and recent developments in business law.

Community Impact: Local Law Schools

The Business Court has also been active with local law schools, hosting externs from Emory University, Georgia State University, and University Of Georgia.

Business Court Impact

Case Selection

Cases that implicate the Georgia Securities Act of 1973, UCC, Georgia Business Corporation Code, Uniform Partnership Act, Uniform Limited Partnership Act, Georgia Revised Uniform Limited Partnership Act, or Georgia Limited Liability Company Act are eligible to transfer to the Business Court. Additionally, any other action in which the amount in controversy exceeds \$1 million and warrants the attention of the Business Court, including large contract and business tort cases and other complex commercial litigation may also be considered.

Cases involving personal injury, wrongful death, employment discrimination, or consumer claims in which each individual's claims are in the aggregate less than \$1 million are typically not eligible for transfer to Business Court. However, exclusions may be waived with consent of all parties.

Of the cases currently pending in the business court, approximately 70% involve contract disputes or allege tortious business practices such as mismanagement or misappropriation. The remaining cases included disputes regarding management of trusts (10%), disputes as to alleged business ownership (10%), and shareholder derivative actions or case alleging violations of securities laws (10%).

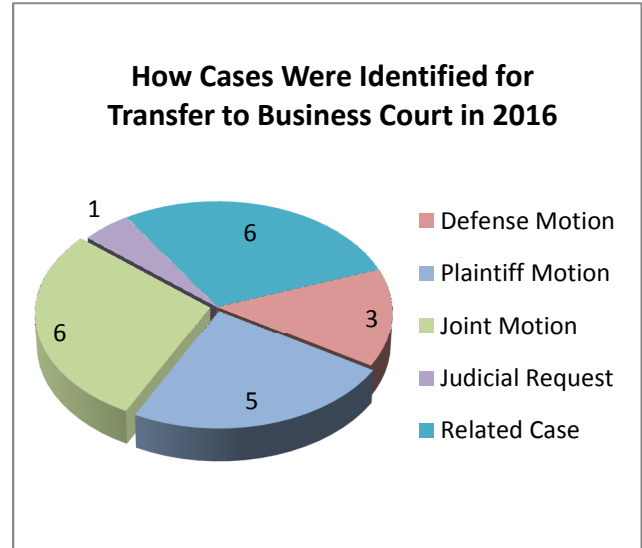
Method of Transfer to Business Court

Cases are identified for transfer to Business Court upon motion of one or more parties or by judicial request. The total number of transfers to Business Court since the inception of the program is 239.

In 2016, like the previous year, the primary method of identification for cases transferred to Business Court was by party request. At the program's inception and as recently as 2013, the majority of transfer requests were made by judges. In addition, more related cases transferred to the Business Court in 2016 than any previous year. In 2016, 20 cases were considered for transfer on a party's request (including related cases). By contrast, only 1 case was considered for transfer by judicial request. Over the life of the program, party requests outnumber judicial requests.

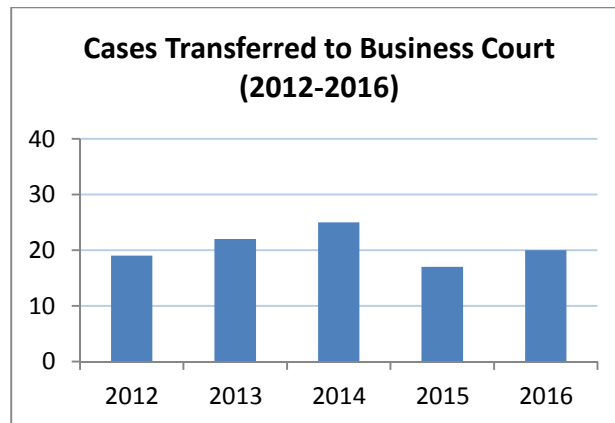
In 2016, only one case was denied transfer to Business Court. As attorneys have become more familiar with the transfer criteria, the number of denied motions to transfer has declined.

The Business Court added 20 new cases in 2016. Since its inception, the Business Court has considered 309 requests for transfer and has accepted a total of 239 cases.



Transfer Requests (2006 - 2016):

Requests by Party	194 (62%)
Requests by Judge	115 (38%)
TOTAL REQUESTS	309
Requests Declined	67
Requests Withdrawn	3
Requests Accepted	239

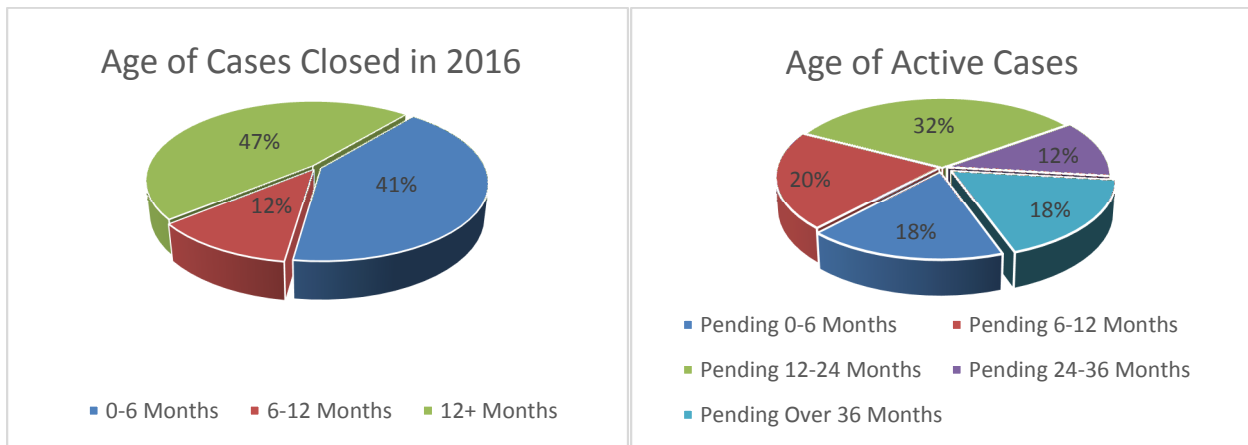


Case Management and Speed of Disposition

The Business Court utilizes early case management conferences (within 30 days of transfer) and ready availability to address discovery issues as they arise. All hearings and conferences are specially set. Together, these features comprise a program that is dedicated to the efficient, just, and timely resolution of complex commercial and business cases with an emphasis on providing superior service to litigants throughout the process.

The Business Court strives to issue an order on all pending motions within 30 days of the hearing or completion of briefing. The average time for disposition of motions in 2015 and 2016 was approximately 16 days. In 2016, the Business Court handled 47 total cases. Of these, 17 were closed or settled. The Business Court held 43 specially set conferences or hearings and issued 268 orders. Only 24 conferences were in person.

As of March 2017, the average age of all active cases pending in Business Court was 416 days. Of the 6 cases pending for more than three years, 5 are stayed pending appeals. The average age of all cases closed in 2016 was 488 days. Of the 17 cases closed in 2016, 53% of the matters were disposed of within 12 months of transfer to Business Court. One case closed in 2016 had been pending 2,808 days. Excluding this outlier, the average case closed in 2016 had been pending 344 days.

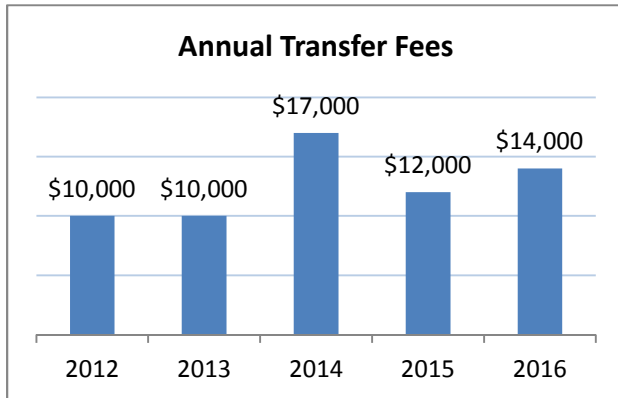


The majority of cases transferred to the Metro Atlanta Business Court are ultimately resolved by the parties through settlement. Very few cases go to trial.

Disposition of cases (2006 - 2016):

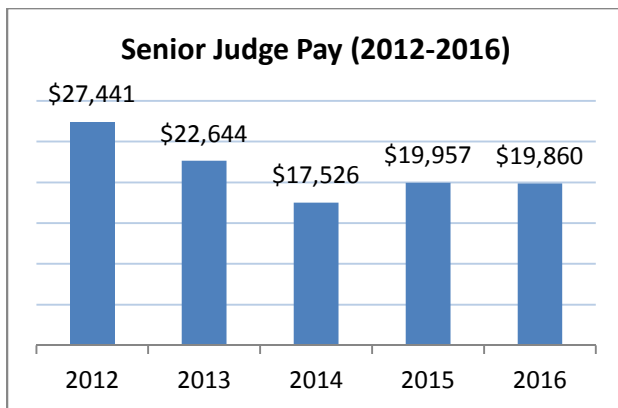
Dismissed with prejudice by parties	103
Dismissed without prejudice	40
Motion to Dismiss granted	10
Motion for Summary Judgment granted	22
Other (removal, arbitration, etc.)	23
Trial	5

Collection of Transfer Fees

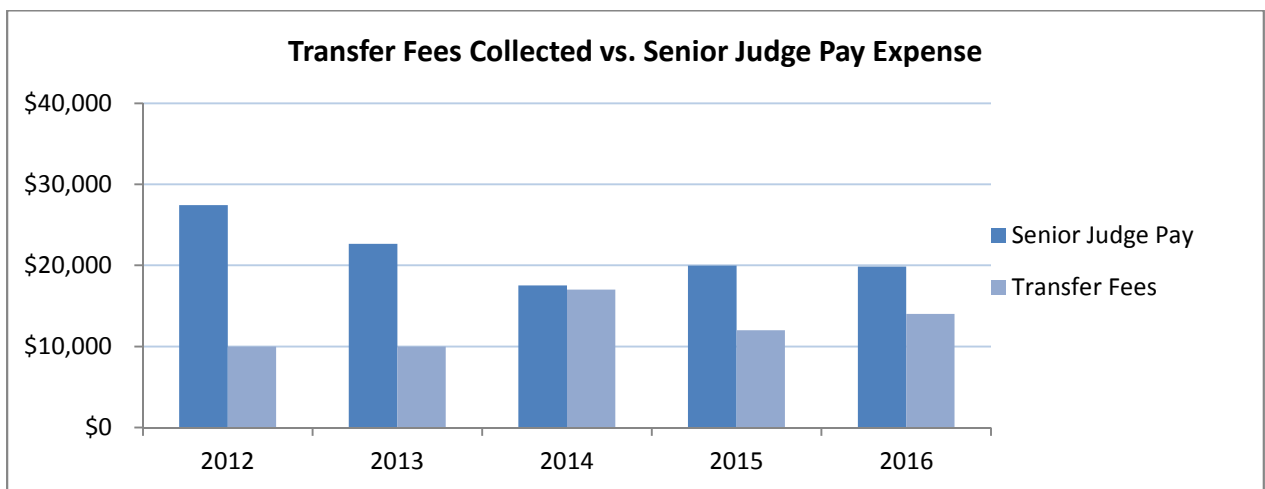


Transfer fees are assessed against the moving party or parties once a case is accepted for transfer to Business Court. Cases accepted following a judicial request to transfer are not assigned a transfer fee. The transfer fee funds are used for Business Court operations and Senior Judge funding. Out of the 20 cases transferred to Business Court in 2016, \$14,000 in transfer fees were collected. Fees are not collected for related cases or judicial requests.

Senior Judge Expense



Senior Judge pay for the year 2016 was the second lowest since 2009. Senior Judge usage is funded through general state or county senior judge allocations and the collection of transfer fees.



For more information about the Business Court, please contact Jody Rhodes at (404) 613-3690 or jody.rhodes@fultoncountyga.gov