

Creation of Commercial Litigation Docket in the Birmingham Division, Tenth Judicial Circuit

By Presiding Judge J. Scott Vowell

For many years, our Birmingham circuit judges have been assigned to specific divisions of the court due to the volume of litigation filed in Birmingham. We now have 11 circuit judges in the Civil Division, nine in the Criminal Division, three in Domestic Relations and one in Family Court. With this degree of specialization, a judicial candidate may select a judgeship that is assigned to the area of the law in which the candidate has expertise. When the judge achieves the judgeship, he/she will have the opportunity to develop the special skills needed to handle the type of case to which he/she is assigned. We have found that this system serves us well.

In Birmingham, we have further specialized our court system in establishing “Problem Solving Courts” or “Remediation Courts.” The concept of these courts is that the traditional adversarial system is not the best method of dealing with some of modern American society’s major problems: drug use, domestic violence and mental health. In these courts, we use specialists to address the root cause of the defendant’s legal problem. These courts provide alternatives to incarceration and reduce recidivism. Special skills are required of the judges in these courts.

Another trend in the American legal system is the establishment of specialized, commercial civil dockets to help expedite cases arising out of business disputes and other complex litigation. These dockets have been especially useful in metropolitan areas, such as ours, where business litigation is most prevalent.

Chief Justice Sue Bell Cobb asked me to consider the feasibility of creating a Business Court in Alabama. I appointed an *ad hoc* committee, which included **Jefferson County Circuit Judge Robert Vance**, retired **Supreme Court Justice Ralph Cook**, retired **Circuit Judge Tennant Smallwood**, corporate litigation attorney **Drew Sinor**, and **Alabama Gas Corporation President Dudley Reynolds**.

The committee obtained and considered a great deal of information dealing with the formation of a Business Court. The committee submitted a report to the chief justice, and she has accepted our recommendations.

The committee concluded that the creation of a specialized Commercial Litigation Docket (CLD) would be beneficial to the

people of Alabama. It was determined that this name for the docket would be more descriptive than “Business Court.”

The creation of a specialized CLD serves several goals. The laws contemplated to be at issue in such cases generally affect all businesses in the state, and the efficient planning of those businesses requires greater predictability in assessing the effects of potential litigation. The prompt resolution of such claims requires developing expertise in those laws and the utilization of specialized case management procedures. Concentrating such litigation in a specialized docket, with one judge presiding, furthers the goals of predictability and efficiency. Such benefits have been recognized by a number of states that have already created specialized business or commercial litigation courts.

The committee reached the following conclusions:

1. The CLD should have a specifically-defined jurisdiction so that parties, attorneys and judges could readily determine whether their cases fit within the defined jurisdiction. Cases falling within the CLD are described below.
2. Only those cases properly within the Birmingham Division of the Jefferson County Circuit Court would be eligible for assignment. Since the presiding judge has the authority to assign cases under the *Rules of Judicial Administration*, no legislation or other formal action would be needed to establish this docket in Birmingham. This would permit an easier implementation of this docket and would allow for the assessment of the docket as a pilot program that, if proven to be beneficial, might become a model for the establishment of additional such courts in other circuits.

The committee further agreed to the following points pertaining to managing the CLD:

- A party desiring to have a newly-filed case included on the docket must file, in addition to the summons and complaint, and the Civil Cover Sheet (form *A.R.Civ.P.-93*), a verified

document that would make explicit the request for inclusion in the docket and an explanation why inclusion is warranted. Any such request would be forwarded to the presiding judge, who would determine whether the case should go on the docket. An order to that effect would be directed to the clerk of the court, who would then make the necessary arrangements for assignment.

- No additional filing fees would be required of a party requesting that a case be included in the docket.
- Alternatively, if a case is assigned to another judge as part of the circuit's regular docket, and that judge subsequently and reasonably concludes that the case should be on the CLD, that judge may refer the matter to the presiding judge for possible re-assignment.
- All cases on the CLD would be assigned by the presiding judge to Circuit Judge Robert S. Vance, who would handle the CLD in addition to his regular caseload. There would be a standing designation of another judge to serve as a backup in the event that Judge Vance could not hear a particular case on the docket, or is absent when exigent circumstances arise. Note that it is with gratitude that Judge Vance has volunteered to take the responsibility for this docket.
- Like with all other circuit civil cases, the Birmingham Differential Case Management Plan would apply.
- Assignment to the CLD would not affect any party's right to a jury trial that might otherwise exist.
- Judge Vance would retain the authority to refer a case back to the court's regular docket, with re-assignment to a judge at random, if events occurring after a case's initial filing (e.g., a ruling that a proposed class is not properly certifiable) remove the case from the categories of cases properly included in the CLD.

The following cases would be properly included within the CLD:


1. Claims arising from allegations of breach of commercial contract or of fiduciary duty, fraud, statutory violation arising out of business dealings (e.g., sales of assets or securities, corporate structuring, partnership, shareholder, joint venture and other business agreements, trade secrets, and restrictive covenants), and all other litigation arising under *Ala. Code* (1975) § 10-1-1, *et seq.*
2. Actions relating to securities, such as claims arising under *Ala. Code* (1975) § 8-6-1, *et seq.*
3. Actions arising from trade secrets or intellectual property disputes.
4. Business torts such as antitrust claims under *Ala. Code* (1975) § 8-10-1, *et seq.*, claims of unfair competition, interference with contractual or business relations.
5. Claims pertaining to trademarks, names, marks, devises, and labels, under *Ala. Code* (1975) § 8-12-1, *et seq.*
6. Transactions involving the development of commercial real property or complex commercial construction disputes.

7. Commercial class actions and consumer class actions not based on personal injury or product liability claims.
8. Malpractice claims involving a business entity and attorneys, accountants, architects or other professionals in connection with services rendered to that business.
9. Environmental claims and environmental insurance coverage litigation arising out of the acquisition or sale of business.
10. Transactions governed by the *Uniform Commercial Code, Ala. Code* (1975) § 7-1-1, *et seq.*, provided the amount in controversy, exclusive of interest, attorneys' fees and litigation expenses, exceeds \$50,000.
11. Any other case in which the presiding judge determines that any of the following apply:
 - (A) that the case may have implications for business and industry beyond the decision in the particular case;
 - (B) that the case may result in a significant interpretation of a statute within the scope of the docket, or
 - (C) that there exist other reasons for the proper inclusion in the CLD.

The following types of litigation would not be properly included within the CLD:

1. Disputes regarding sales of residential real property or construction of residential dwellings.
2. Professional malpractice cases arising outside the context of a commercial dispute.
3. Cases seeking declaratory judgment as to insurance coverage for personal injury or property damages.
4. Individual consumer claims including product liability, other personal injury or wrongful death cases.
5. Individual employment-related claims.
6. Individual consumer claims, including product liability.

At this time, we do not know the amount of litigation which will be included in the CLD. As we gain experience, we anticipate refining the descriptions of cases which are properly assigned to the CLD.

We look forward to this attempt to improve the quality of justice offered by our courts to the Alabama business community. We appreciate the cooperation of the Alabama State Bar and welcome your suggestions as the program develops. The program was expected to begin January 2, 2010. The cases assigned to the court will be designated "CLD." 

Judge J. Scott Vowell, presiding judge of the Tenth Judicial Circuit, is a graduate of the University of Virginia Law School. Vowell was elected to the Jefferson County Circuit Court (Civil Division) in 1994 after practicing law for 30 years. He has been re-elected twice. Vowell has served as presiding judge of the circuit since 2003. Judge Vowell also serves on the Alabama Court of the Judiciary and the Alabama Pattern Jury Instruction Committee.