

COURTS DECIDE TO BE “ALL ABOUT BUSINESS”

Standardized procedures, more consistency, predictability of rulings on recurring issues and expedience are reasons to create a new Complex Business Litigation Division (CBLD). CLBD will hear certain business related cases in which the amount in controversy is greater than \$75,000. Administrative Order S-2007-004 establishing the CBLD details the types of cases which can be filed in this division, such as sales of businesses or business assets; franchisee and franchisor relationships; professional malpractice (excluding medical) in connection with rendering services relating to a business enterprise; business torts; trade secrets and non-compete agreements.

The new business court was first suggested by the HCBA in 2001 after the court set up a civil trial division to handle cases, involving lengthy trials, some of which were business-related. “This is the first time we have had available judicial resources to fill this need for our community,” Chief Judge Manuel Menendez, Jr. announced, “which promises to offer both an efficiency measure for the court system and economic stimulus to the community based on the success of other business courts across the nation.”

Where do you find a model to create a business court? Complex litigation courts are still relatively rare, according to Court Administrator Mike Bridenback, although they certainly have begun to spring up in major urban courts. But it is straight across the I-4 corridor, in the Ninth Judicial Circuit, where the first business court in Florida was created in 2003. Orlando Judge Rene Roche has been instrumental in assisting the Thirteenth Judicial Circuit by making herself available for candid discussions during the developmental phase of this court.

Procedures for the CBLD are being finalized at this time. The procedures will be very similar to those used in the Ninth Circuit which has had a business court since 2003. Each case assigned to the CBLD will have an initial case management conference when the case will be “mapped out” by the parties and the judge. At an initial case management conference, a litigation track will be assigned which is designed to set a trial date within the stated number of months from the filing of the complaint:

- Track 1 – Business Expedited (within 13 months);
- Track 2 – Business Standard (within 18 months); and
- Track 3 – Business Complex (within 24 months).

There is an advantage to following the Orlando model from the practitioners’ viewpoint, as Judge Richard Nielsen remarked, “there’s something to be said for consistency. Why drive down the interstate from Orlando and have to learn a new set of procedures.”

It’s precisely this type of logical response, those who know Judge Nielsen would expect from him. He was selected for this position because he had more than 25 years experience of practice as a commercial litigator in state, federal and bankruptcy courts before he took the bench. Since becoming a judge in 2000, he has served in Juvenile Delinquency division and the Circuit Civil division. Judge Nielsen’s temperament is ideally suited for this job but he is quick to point out that you could take any of the civil

judges and any dispute and get fairly consistent rulings. However, he believes that if you have one place where there is similarity of issues, day in and day out, a judge can be more proficient, expedient and issue more consistent rulings.

Case management is the key to the success of this court, which Judge Nielsen points out is treated more like federal cases, as there are more memoranda of law filed than hearings held. The civil rules allow for hearings, but experience in this type of litigation indicates that the parties prefer the judge to issue rulings based on “paper” rather than “oral argument.”

“The primary goal is to make sure the parties get back to business,” Judge Nielsen points out. He will do that by utilizing case management tools from the on-set of the case, placing the case on one of the three tracks and then keeping them on track from that point forward to the end of the case. Why? Because this court is all about business!