

# “Section Poised to Call for a Statewide Business Court,” The Florida Bar News and Journal

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By: Jon Polenberg



After more than a year of meetings and intense study, a Business Law Section task force is poised to unveil a proposal for a statewide business court.

Business Courts Task Force Co-Chair Jon Polenberg said the panel is expected to approve a “rules-based approach” at the Winter Meeting in Orlando next month.

“We’re going to have a product for approval at the [Winter] meeting,” Polenberg said. “Hopefully we’ll be able to roll out to the Supreme Court and the State Courts Administrator a draft rule for implementing a statewide business court.”

Polenberg cautions that the proposal still faces review and approval by the Business Law Section, the Board of Governors, and Supreme Court. And Florida lawmakers will ultimately have to approve funding.

When it was formed, the Business Courts Task Force’s first priority was to “evaluate the need for a business court system” statewide.

After studying models in other states, including the Delaware Court of Chancery, and business courts in Tampa, Miami, and Orlando, the task force determined that Florida could support a statewide business court, Polenberg said.

According to a two-year-old study by the National Center for State Courts, 23 states, including Delaware, California and New York, have some form of business or complex litigation court.

The task force’s proposal calls for establishing business courts in each of Florida’s five appellate districts, but Polenberg declined to say how many new judges would be required, or how much funding would be requested.

A white paper should be ready for distribution in February, Polenberg said.

The task force set a goal of proposing legislation for the 2020 session, but it’s not clear if that goal will be met. The Legislature convenes its 60-day session January 14.

“We had to cancel a meeting because of a hurricane, and that cost us a lot of time,” Polenberg said.

Polenberg and Business Court Task Force Co-Chair Gill Freeman, a retired 11th Circuit judge, divided the task force into four subcommittees: legislative, funding, policy, and logistics and operations.

Task force members include former Florida Bar President Michael Higer and 11th Circuit Administrative Judge Jennifer Bailey, who oversees a complex litigation division.

Other task force members include retired Ninth Judicial Circuit Chief Judge Frederick Lauten, Jr., and his successor, Chief Judge Donald Myers, Jr.

Judge Lauten closed the complex civil litigation division in January 2018, saying an overflowing docket in the family division left him with no choice.

Judge Myers recently announced the reopening of the complex litigation division after lawmakers funded a new judgeship for the circuit.

“As his last act, at his retirement ceremony, I had him sign the administrative order reopening the business court,” Judge Myers said, referring to Judge Lauten. “It was to honor the work that he performed in the Legislature and, around our community, to reopen it.”

Judge Myers said business courts offer litigants more than swifter resolution of their disputes. Strong case management gives litigants more certainty about when a case will be resolved, he said.

“If you’re a business owner, you generally have to anticipate and prepare a budget associated with litigation, and it’s very difficult to budget for litigation that doesn’t have a time-certain built into it,” he said.

Precedents established in business courts save litigants time and money by narrowing the universe of disputes, Judge Myers said.

“It really builds in a predictability and certainty that businesses need in order to be successful,” Judge Myers said.

Ninth Judicial Circuit Judge John Jordan, who hears cases in the complex civil litigation division, sees an immediate benefit to expanding business courts statewide.

“I have several cases where there are also other cases in other counties and circuits involving the same parties,” Judge Jordan said. “So, if we expand it to the district court level, a lot of that we can consolidate for discovery purposes, and get consistency of rulings from judges, it can move it along.”

Judge Myers said one of the biggest challenges will be convincing lawmakers to fund more judgeships.

But he said that could be an easier sell if lawmakers realize the potential to make all civil dockets run more efficiently.

When the business court closed in the Ninth Circuit, a civil trial division docket immediately filled up for the next four months, Judge Myers said.

“That meant that every other case on that docket was now looking at hearing time five and six months out,” he said. “So there’s an appreciation level across the board.”