

6-1-2014

Fulton County Business Court: A Specialized Solution for the Modern Business Community

Megan K. Johnson
megan@founderslegal.com

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Business Organizations Law Commons](#), [Civil Law Commons](#), [Commercial Law Commons](#), [Construction Law Commons](#), [Contracts Commons](#), [Courts Commons](#), [Legal Remedies Commons](#), [Litigation Commons](#), and the [Organizations Law Commons](#)

Recommended Citation

Megan K. Johnson, *Fulton County Business Court: A Specialized Solution for the Modern Business Community*, 30 GA. ST. U. L. REV. (2014).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol30/iss4/5>

This Article is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

FULTON COUNTY BUSINESS COURT: A SPECIALIZED SOLUTION FOR THE MODERN BUSINESS COMMUNITY

Megan K. Johnson*

TABLE OF CONTENTS

INTRODUCTION	1027
I. HISTORY OF BUSINESS COURTS	1029
II. HISTORY OF FULTON COUNTY BUSINESS COURT.....	1031
III. FULTON COUNTY BUSINESS COURT—JURISDICTION AND PROCEDURE.....	1032
IV. FULTON COUNTY BUSINESS COURT—CONTINUED GROWTH	1033
V. MEASURING PERFORMANCE—NEW CONFIDENCE IN STATE COURTS	1034

INTRODUCTION

The American justice system is ambitious in its promise to provide a reliable and efficient forum in which to adjudicate disputes, and along the way, it has had to implement certain innovations in order to deliver on its stated mission. In the past few decades, one important trend is the creation of specialized or specialty courts, both civil and criminal, into which certain types of cases are routed for more customized judicial attention.¹

The idea of specialty courts—or courts of limited jurisdiction—is not new. Indeed, specialization has always persisted to some degree in our modern court structure. Courts of limited jurisdiction, such as

* Megan Johnson is a finance/business lawyer and a member of the Georgia Bar. Currently, Megan is serving as co-founder of SparkMarket, a local finance marketplace where everyday Georgians can invest in local businesses. Between 2011 and 2014, Megan served as Program Director and Staff Attorney of the Fulton County Business Court. Megan received her J.D., magna cum laude, from the University of Tennessee.

1. Wendy N. Davis, *Special Problems for Specialty Courts*, A.B.A. J., Feb. 2003, at 32, 34.

bankruptcy and small claims courts, are hallmarks of our current judicial atmosphere.²

But specialty or “boutique” courts are now emerging as a solution to a wide range of modern dilemmas.³ On the criminal side, specialty courts, such as drug courts, mental health courts, community courts and veterans courts rely on a holistic approach to criminal justice that draws from both social work and the law to tailor appropriate solutions to a particular type of offender.⁴ Rather than the one-size-fits all resort to incarceration, specialty courts in the criminal arena have access to professional services for assistance with diagnostic, screening, and rehabilitation services not provided through the general court system.⁵

On the civil side, specialty courts have become a popular method to streamline the administration of certain types of cases into divisions specifically equipped to address unique issues that arise in those cases.⁶ For example, family divisions merge the resources relevant to the administration of family disputes in one place for faster, more consistent service.⁷ More importantly, a unified division allows a single judicial team to process all cases involving one family, for a more comprehensive approach to case administration.⁸

Business courts or complex commercial divisions are also growing in popularity as an effective tool to channel the most complex civil cases into one place before experienced judges with the background and training necessary to resolve the sophisticated issues often presented in those cases.⁹ According to North Carolina Business Court Judge Ben F. Tennille, one of the first judicial advocates of the business court model, the evolution of specialty business courts is a

2. *Id.*

3. *Id.*

4. *Id.* at 34, 36–37.

5. Phylis Skloot Bamberger, *Specialized Courts: Not a Cure-All*, 30 FORDHAM URB. L.J. 1091, 1092 (2003).

6. Mitchell L. Bach & Lee Applebaum, *A History of the Creation and Jurisdiction of Business Courts in the Last Decade*, 60 BUS. LAW. 147, 158–59 (2004).

7. *Family Division General Information*, SUPERIOR COURT FULTON CNTY., <http://fultoncourt.org/family/family-generalinfo.php> (last visited Apr. 3, 2014).

8. *Id.*

9. Lee Applebaum, *The Steady Growth of Business Courts*, in FUTURE TRENDS IN STATE COURTS 70, 70 (2011), <http://www.ncsc.org/sitecore/content/microsites/future-trends-2011/home/specialized-courts-services/~media/Microsites/Files/Future%20Trends/Author%20PDFs/Applebaum.ashx>.

necessary response to “the rapidly increasing complexity, rate of change and globalization of business.”¹⁰ In 2005, Fulton County Superior Court launched a Business Case Division (“Fulton Business Court”) to better serve the business litigants within its district.¹¹ In the past eight years, the Fulton Business Court has demonstrated that, through specialization, the judicial system can evolve to fit the demands of the modern business community.

I. HISTORY OF BUSINESS COURTS

Beginning in the early 1990s, the business court trend first emerged in response to perceived weaknesses in the general trial court’s ability to competently address business litigation.¹² Litigants feared that trial courts of general jurisdiction, with dockets burdened by an overwhelming number of lawsuits sounding in every type of law, were simply not amenable to the needs of highly complex and procedurally dense business cases.¹³ Considering the constitutional priority afforded to criminal cases, civil litigants in courts of general jurisdiction are already at a disadvantage when jockeying with the criminal docket for judicial attention.¹⁴ Doris L. Downs, former Chief Judge of Fulton County Superior Court, explained the dilemma as follows: “Typically, it takes three days to a week to try just one felony case, and we get about 100 a month . . . We’re not able to give [business cases] as much time as we’d like because of the overwhelming felony caseload.”¹⁵

Faced with the reality of litigating on a general trial docket, the business community and bar showed reluctance to pursuing litigation in state forums, where business cases were lumped with the tidal wave

10. *Id.*

11. *Business Court—General Information*, SUPERIOR COURT FULTON CNTY., <http://www.fultoncourt.org/business/business-project.php> (last visited Apr. 3, 2014).

12. Bach & Applebaum, *supra* note 6, at 152.

13. Tom Barry, *Court’s Business Division Gives Cases Needed TLC*, ATLANTA BUS. CHRON. (May 21, 2007), <http://www.bizjournals.com/atlanta/stories/2007/05/21/focus8.html?page=all> (“It’s . . . very hard for judges to shift gears A judge will spend six or seven hours on criminal cases, then all of a sudden have to hear a complex business dispute. I know I couldn’t do it.” (internal quotation marks omitted)).

14. See U.S. CONST. amend. VI; Barry, *supra* note 13.

15. Barry, *supra* note 13 (alteration in original) (internal quotation marks omitted).

of criminal, family, and civil matters that compete for judicial time.¹⁶ One attorney complained that it was “unlikely that a business litigant . . . would have elected to litigate in the state courts in New York. Most such litigants preferred the federal courts, the courts of other states like Delaware, and private [alternative dispute resolution (ADR)].”¹⁷

Likewise in Georgia, attorneys and officers of major local companies admitted their preference for other forums, such as private arbitration or states that had dedicated business courts. Commenting on the negative impact this litigation drain was having on the Georgia legal market, Bill Barwick, former president of the State Bar of Georgia shared: “We flat out lost a significant amount of legal business to a neighboring state . . . [t]here would have been a lot of lawyers involved [in Georgia] if the litigation had stayed here.”¹⁸

In an effort to restore business litigants’ confidence in the state trial court system, states began to create specialized business dockets.¹⁹ New York established what is credited as the first pilot program in New York County’s (Manhattan) Supreme Court, and the program featured a dedicated judicial team to whom all business and commercial cases were assigned in order to foster judicial expertise in such cases.²⁰ The New York program also introduced an active judicial role in case management to better facilitate the resolution of its business docket.²¹ The program was a success.²² The three judges assigned only business cases were credited with administering the caseload of more than four judges tasked with a general docket.²³

Other states began to take notice of the success of the early adopters, and the business court trend has expanded greatly since the early

16. *Id.*

17. Bach & Applebaum, *supra* note 6, at 152 (quoting Legal Opinion Letter from Robert L. Haig to Washington Legal Foundation (Jan. 9, 1998) (alteration in original)).

18. Rachel Tobin Ramos, *Business Court May Start Here as Pilot Project*, ATLANTA BUS. CHRON. (Oct. 11, 2004), <http://www.bizjournals.com/atlanta/stories/2004/10/11/story6.html?page=all>.

19. Bach & Applebaum, *supra* note 6, at 152.

20. *Id.*

21. *Id.* at 153.

22. *Id.*

23. *Id.*

1990s.²⁴ Currently, more than twenty states have established business or complex commercial dockets in their jurisdictions.²⁵

II. HISTORY OF FULTON COUNTY BUSINESS COURT

Georgia's business court aspirations can be traced back to 2001, when Ray Fortin, General Counsel of SunTrust Banks, Inc., first encountered a business court through his experience litigating a case in North Carolina.²⁶ Although Mr. Fortin was not on the side of a favorable ruling in that case, his experience in the North Carolina Business Court left a lasting impression. When he returned to Georgia, he "set out on a one-man mission to interest the legal and business communities in a business court."²⁷

Four years later, in 2005, Fulton County Superior Court launched the Fulton Business Court as a pilot program.²⁸ Initially, it was staffed with two senior judges,²⁹ dedicated exclusively to the administration of the complex business docket filed in Fulton County Superior Court. At the time, the only way cases could transfer into the Fulton County Business Court was upon consent of both parties.³⁰ Understandably, the joint-consent requirement hampered the growth of the program in its early days.³¹ In 2007, the rules governing the Fulton County Business Court were changed to permit cases to transfer over the objection of a party, so long as the cases met the substantive test for eligibility.³² This resulted in a significant increase in docket activity.³³

24. *Id.* at 170.

25. Richard L. Renck & Carmen H. Thomas, *Recent Developments in Business Commercial Courts in the United States and Abroad*, BUS. LAW TODAY (May 2014), http://www.americanbar.org/publications/blt/2014/05/01_renck.html.

26. Ramos, *supra* note 18.

27. *Id.*

28. Cynthia Wright, *Business Court Helps Local Companies*, ATLANTA BUS. CHRON. (Oct. 5, 2012), <http://www.bizjournals.com/atlanta/print-edition/2012/10/05/business-court-helps-local-companies.html?page=all>.

29. "'Senior Judge' means a superior court judge retired from active service, yet authorized by law to serve as a superior court judge." GA. UNIF. SUPER. CT. R. 18.1(B).

30. Barry, *supra* note 13.

31. *Id.*

32. Mary C. Gill & Kerry K Vatzakas, *Report on the Georgia Business Court Pilot Program*, GA. B.J., Apr. 2009, at 38–39.

33. *Id.*

In 2010, the pilot program was unanimously voted a permanent division by the Fulton County Superior Court Bench.³⁴

III. FULTON COUNTY BUSINESS COURT—JURISDICTION AND PROCEDURE

The Fulton Business Court accepts cases that implicate a “core” business statute in Georgia, including the Uniform Commercial Code, Georgia Business Corporation Code, Georgia Securities Act, Uniform Partnership Act, and Georgia Limited Liability Company Act.³⁵ The program also accepts cases considered “other complex commercial litigation[.]” such as large contractual and business tort cases, where the amount in controversy or the value of the relief sought exceeds \$1,000,000.³⁶

Cases are identified for transfer to Fulton Business Court upon the request of the initially assigned judge or motion of one or more of the parties.³⁷ Parties have twenty days to brief the issue of transfer, after which the Business Court Judicial Committee³⁸ votes to accept or deny the case for transfer.³⁹ Once accepted to the division, the case is scheduled for a Case Management Conference within the first thirty days of transfer.⁴⁰ At this conference, the litigants and the Business Court judge establish appropriate case management deadlines and address any issues preventing the parties from proceeding in a timely manner with the litigation process.⁴¹

34. See Carol Hunstein, Chief Justice, Supreme Court of Georgia, 2011 State of the Judiciary Address (Feb. 16, 2011), http://www.gasupreme.us/press_releases/11StateofJudi.pdf.

35. ATLANTA JUD. CIR. R. 1004, ¶ 3 [hereinafter ATLANTA JUD. CIR. R. 1004], available at <http://www.fultoncourt.org/business/BusinessCourtRulesAmendedOctober2012.pdf>.

36. *Id.*

37. *Id.* at ¶ 5.

38. *Id.*

39. *Id.* The Business Court Judicial Committee is comprised of five Fulton County Superior Court judges, who manage the division’s docket and operations. FULTON CNTY. SUPERIOR COURT, BUSINESS COURT 2013 ANNUAL REPORT 3 (2013) [hereinafter 2013 ANNUAL REPORT]. Currently, the Business Court Judicial Committee includes Chief Judge Cynthia Wright, Judge John Goger (Chief Business Case Division Judge), Judge Wendy Shoob (Vice-Chair of the Business Court Committee), Judge Gail Tusan, and Judge Kelly Lee. *Id.*

40. ATLANTA JUD. CIR. R. 1004, at ¶ 15.

41. *Id.* at ¶¶ 10, 15.

Following budget cuts that threatened the program's existence in 2008–2009, the rules governing the program were changed to impose a transfer fee in the amount of \$1,000 on any party who files a motion to transfer to Business Court.⁴²

IV. FULTON COUNTY BUSINESS COURT—CONTINUED GROWTH

Since its inception in 2005, the Fulton Business Court has evolved to better accommodate the needs of civil litigants and to meet the growing demand for its services. Despite the lack of a permanent funding source, the Fulton Business Court bench has expanded to serve the increase in demand.⁴³ Initially, the bench was staffed by two senior judges—Judges Alice D. Bonner and Elizabeth E. Long.⁴⁴ Today, two additional judges have been added to the Court—Senior Judge Melvin K. Westmoreland, who first joined the bench in 2009 as an active Fulton Superior Court judge, and Judge John J. Goger, who currently serves as Chief Business Case Division Judge.⁴⁵

The Fulton Business Court's jurisdiction has also grown. In 2010, the rules governing the division were amended to broaden its jurisdiction by removing the \$1 million amount in controversy requirement for cases brought under certain identified Georgia business statutes.⁴⁶ Cases involving large contractual and business tort disputes must still meet the \$1 million threshold.⁴⁷

To date, more than 200 cases have transferred to Fulton Business Court, and it has processed through resolution 168 complex civil cases.⁴⁸ More than 600 businesses have chosen the division to resolve their disputes, and more than 700 attorneys have practiced before the court.⁴⁹

42. Gill & Vatzakas, *supra* note 32, at 39; *see also Business Court—General Information*, *supra* note 11.

43. *See* FULTON CNTY. SUPERIOR COURT, BUSINESS COURT 2012 ANNUAL REPORT 2 (2012).

44. Barry, *supra* note 13.

45. *Id.*

46. ATLANTA JUD. CIR. R. 1004, ¶ 3 (amended Sept. 2010).

47. *Id.*

48. These numbers are based on internal records maintained by the Fulton Business Court.

49. *See* 2013 ANNUAL REPORT, *supra* note 39, at 2.

V. MEASURING PERFORMANCE—NEW CONFIDENCE IN STATE COURTS

One of the primary goals of any business court is to more efficiently administer complex civil cases. Court delays in the administration of civil and domestic cases are credited for negatively impacting Georgia's economy by between \$337 million and \$802 million each year.⁵⁰ In terms of job loss, the civil and domestic backlog results in the loss of between 3,457 and 7,098 jobs throughout the state.⁵¹ When the impact of court delays is quantified in economic terms, the Fulton Business Court's efforts take on critical significance.

To ensure that the Fulton Business Court is meeting its stated goals, court personnel gathered case data from a representative sample of civil cases pending between 2005 to 2012 to measure the Fulton Business Court's efficiency in comparison to the regular docket.⁵² The report measured both the amount of time a case was pending, and a case's complexity by highlighting the number of docket entries created in each case.⁵³

The case disposition statistics show that the Fulton Business Court is achieving great success in moving complex civil cases. On average, the Fulton Business Court is able to administer a complex contract case in 608 days, compared to an estimated 1,746 days on the general docket—a 65% faster disposition time.⁵⁴ With respect to complex tort cases, the Fulton Business Court moves cases through resolution in 566 days on average, compared to an estimated 1,284 days on the general docket—a 56% faster disposition time.⁵⁵

Both businesses and attorneys have taken note of the advantages of litigating in Fulton Business Court. Indeed, companies have begun writing venue provisions into their contracts to ensure that any litigation will be resolved in the Fulton Business Court as opposed to

50. *Id.* at 3.

51. *Id.*

52. *Id.* at 3–4.

53. *Id.* at 4.

54. *Id.*

55. 2013 ANNUAL REPORT, *supra* note 39, at 4.

courts outside of the state—a welcome reversal from just a few short years before, when Georgia business litigants would willingly waive venue objections to have their cases tried in states with dedicated business dockets.⁵⁶

Attorneys who have practiced before the Fulton Business Court have also provided overwhelmingly positive feedback. In a recent survey, respondents reported that the Court was performing extremely well in a number of categories.⁵⁷ Ninety-seven percent of respondents said they were satisfied or very satisfied with the availability of the court for motions, hearings, and conferences; 93% of respondents indicated that they were satisfied or very satisfied with the timeliness of rulings and the quality of case management; and 88% of respondents said they were satisfied or very satisfied with their experience with the Court, as a whole.⁵⁸

Describing the benefits provided by the Business Court, one litigant highlighted the division’s consistency: “By developing a reputation for expertise, the Business Court builds a perception that the outcome of complex business disputes in Fulton County are more predictable . . . more in line with legal authorities than would otherwise be the case.”⁵⁹ Another litigant praised the increased judicial attention: “More personal attention. The judges are more familiar with their cases, and can issue rulings sooner and spend more time reasoning their rulings.”⁶⁰ And another litigant noted the benefit to clients: “The accessibility of the staff is far superior . . . and the willingness of the Judges to hear and decide motions in a timely manner makes it much easier to manage cases and serve clients.”⁶¹

56. 2013 ANNUAL REPORT, *supra* note 39, at 2.

57. *See generally* SUPERIOR COURT OF FULTON CNTY., 2011 BUSINESS COURT SATISFACTION SURVEY RESULTS (2011) [hereinafter 2011 SURVEY RESULTS], http://www.fultoncourt.org/business/Business_Court_2011_Survey_Results.pdf. The Fulton Business Court conducted a survey of business litigants who practiced before the Court between 2009 and the second quarter of 2011. *Id.* at 1.

58. *Id.* at 1–3.

59. SUPERIOR COURT OF FULTON CNTY., 2011 BUSINESS COURT INTERNAL SATISFACTION SURVEY (2011) (on file with the Fulton County Business Court). The survey collected anonymous narrative from survey respondents, which the Fulton Business Court maintains in its internal records.

60. *Id.*

61. *Id.*

The most frequently praised attribute of the Court is its quick, efficient adjudication of cases, closely followed by the experience and sophistication of the judges who staff the bench.⁶²

62. 2011 SURVEY RESULTS, *supra* note 57, at 6.