

Superior Court Administrative Directive No. 09-1
SUPERIOR COURT BUSINESS LITIGATION SESSIONS

The Business Litigation Sessions of the Superior Court (BLS) are permanent sessions of the Superior Court located in the Suffolk County Superior Court. The Suffolk County Civil Clerk's Office is the clerk's office for the BLS.

If a plaintiff, when filing an action, seeks to have a case accepted into the BLS, the plaintiff shall file the case in the Suffolk County Civil Clerk's Office and complete the BLS Civil Action Cover Sheet, articulating the reasons why the plaintiff believes the case should be accepted into the BLS. Failure to complete the BLS Civil Action Cover Sheet will result in the case being assigned to a Suffolk County Time Standards Session. A copy of the completed BLS Civil Action Cover Sheet shall be served on all defendants with the complaint.

The complaint, with the BLS Civil Action Cover Sheet, shall be brought forthwith by the clerk to the BLS Administrative Justice, who will determine whether to accept the case into the BLS. Cases that fall within any of the following categories may be accepted into the BLS in the sound discretion of the BLS Administrative Justice, based principally on the complexity of the case and the need for substantial case management:

- a.1 claims relating to the governance and conduct of internal affairs of entities
- a.2 claims relating to employment agreements
- a.3 claims relating to liability of shareholders, directors, officers, partners, etc.

- b.1 shareholder derivative claims
- b.2 claims relating to or arising out of securities transactions

- c.1 claims involving mergers, consolidations, sales of assets, issuance of debt, equity and like interests

- d.1 claims to determine the use or status of, or claims involving, intellectual property
- d.2 claims to determine the use or status of, or claims involving, confidential, proprietary or trade secret information
- d.3 claims to determine the use or status of, or claims involving, restrictive covenants

- e.1 claims involving breaches of contract or fiduciary duties, fraud, misrepresentation, business torts or other violations involving business relationships

- f.1 claims under the U.C.C. involving complex issues

- g.1 claims arising from transactions with banks, investment bankers and financial advisers, brokerage firms, mutual and money funds

- h.1 claims for violation of antitrust or other trade regulation laws
- h.2 claims of unfair trade practices involving complex issues

- i.1 malpractice claims by business enterprises against professionals

- j.1 claims by or against a business enterprise to which a government entity is a party

- k.1 other commercial claims, including insurance, construction, real estate and consumer matters involving complex issues.

If a case is accepted into the BLS, the BLS Administrative Justice shall assign the case to either the BLS1 Session or the BLS2 Session and issue a Notice of Acceptance into the Business Litigation Session. If a case is not accepted into the BLS, the BLS Administrative Justice shall issue a Notice of Denial of Acceptance into the Business Litigation Session, and the case shall be assigned to or returned to a Time Standards Session.

Where a case has been accepted into the BLS, once each defendant has filed a responsive pleading, or has been defaulted for failure to do so, the clerk of the assigned BLS session shall schedule a Rule 16 conference to establish a Tracking Order appropriate to the case. The parties shall confer with each other prior to this Rule 16 conference in an attempt to agree upon, or narrow their differences as to, a proposed Tracking Order.

Nothing in this Administrative Directive changes the statutory requirements for venue. Since improper venue may be waived, the BLS Administrative Justice does not consider the appropriateness of venue in determining whether to accept a case into the BLS. If a plaintiff files a complaint in Suffolk County without proper venue, and the case is accepted into the BLS, any party may move to dismiss or transfer the case for improper venue, and the case shall be dismissed without prejudice or transferred in accordance with G.L. c. 223. Failure to file such a motion within the time limits prescribed by Mass. R. Civ. P. 12(h)(1) shall constitute a waiver of improper venue.

If a plaintiff files an action in Suffolk County and does not seek to have the case accepted into the BLS, or if a plaintiff files an action in any other county, and the case is therefore assigned to a Time Standards Session, any party may move to transfer the case to the BLS by filing, in the Time Standards Session, pursuant to Superior Court Rule 9A, a motion for transfer. Where a case has been filed in a county other than Suffolk, if a party fails to oppose a motion to transfer, the failure shall be deemed a waiver of the defense of improper venue. If a motion to transfer to the BLS is approved by the judge in the Time Standards Session, the clerk of the Time Standards Session shall promptly bring the motion to the attention of the BLS Administrative Justice, who will allow or deny the motion. Consequently, the case shall be transferred to the BLS only with the approval of, first, the judge in the Time Standards Session and, second, the

BLS Administrative Justice.

Barbara J. Rouse
Chief Justice
Superior Court

Effective: January 19, 2009