

Superior Court Administrative Directive 17-1

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.

Filing the Action

If a plaintiff seeks acceptance of a case into the BLS, the plaintiff shall file the complaint and *the BLS Civil Action Cover Sheet* with the Suffolk County Civil Clerk's Office. The Cover Sheet must articulate the reasons why the plaintiff believes the case should be accepted into the BLS. Failure to file a BLS Civil Action Cover Sheet will cause the case to be assigned to a Suffolk County civil session in accord with the Court's usual practice. A copy of the completed BLS Civil Action Cover Sheet shall be served on all defendants with the summons and complaint.

Venue Not a Bar to Requesting Acceptance into the BLS

A plaintiff may seek acceptance into the BLS even if venue does not lie in Suffolk County.

Although nothing in this Administrative Directive changes the statutory requirements for venue, because improper venue may be waived, the BLS Administrative Justice does not consider venue when determining whether to accept a case into the BLS.

The filing of a complaint in Suffolk County and its acceptance into the BLS does not prevent any party from moving to dismiss or transfer the case for improper venue. Upon such a motion and a determination that venue is improper, the case shall be transferred in accordance with G.L. c. 223. However, 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.

Acceptance into the BLS

Once a case has been filed, the clerk shall forthwith bring the complaint and BLS Civil Action Cover Sheet to the attention of the BLS Administrative Justice, who will determine whether to accept the case into the BLS. In the event that the plaintiff is seeking *ex parte* relief or a short order of notice, the BLS Administrative Justice will first decide if the case is accepted into the BLS and if it is, rule on the request. If the case is not accepted, then the case will be assigned to a regular Suffolk civil session and the request will be handled by the judge assigned to that session.

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, including class actions
- h.2 claims of unfair trade practices involving complex issues, including class actions that do not involve personal injury

- i.1 professional malpractice claims other than claims for personal injury or death

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

- k.1 other claims involving complex issues or that require close case management, including but not limited to insurance coverage or reinsurance, construction, commercial lease disputes, real estate and consumer matters.

If a case is accepted into the BLS, a Notice of Acceptance into the Business Litigation Session shall be issued and the case shall be assigned to either BLS1 or BLS2.

If a case is not accepted into the BLS, a Notice of Denial of Acceptance into the Business Litigation Session shall be issued and the case shall be assigned, or returned, to a regular civil session.

Transfers into the BLS

Requests to Transfer into the BLS from Another Suffolk County Superior Court Session

If a plaintiff files an action in Suffolk County and does not seek to have the case accepted into the BLS, any party may file a motion, in the manner provided by Superior Court Rule 9A, in the session to which the case is assigned, requesting a transfer to the BLS. If the motion is granted by the judge in the session, the clerk of that session shall promptly bring the case to the attention of the BLS Administrative Justice, who will decide whether to accept the case into the BLS in accordance with the procedure described above.

Requests to Transfer into the BLS from a Superior Court Session Outside of Suffolk County

If a plaintiff files an action outside of Suffolk County, any party may file in the session to which the case is assigned a motion requesting a transfer to the BLS. If no party opposes the motion, the failure to oppose shall be deemed a waiver of any defense of improper venue. If the motion is granted by the judge sitting in the session, the clerk of courts for that county shall promptly bring the case to the attention of the BLS Administrative Justice, who will decide whether to accept the case into the BLS in accordance with the procedure described above.

Sua Sponte Transfers into the BLS

A case filed in any Suffolk County session may be transferred to the BLS by a sua sponte order of: 1) the BLS Administrative Justice, or 2) the judge sitting in the session to which the case is assigned after that judge has consulted with the BLS Administrative Justice as to the propriety of a transfer. Transfer from a regular civil session shall be pursuant to a written Order of Referral coupled with an endorsement by the BLS Administrative Justice accepting or denying the transfer.

A case filed outside of Suffolk County may be transferred to the BLS by a sua sponte order of: 1) the BLS Administrative Justice, or 2) the judge sitting in the session to which the case is assigned after that judge has consulted with the BLS Administrative Justice as to the propriety of a transfer, as long as either venue lies in Suffolk County or, after consultation with the parties, no objection to venue is raised.

Rule 16 Conference Upon Acceptance into the BLS

When a case has been accepted into the BLS, either after filing there originally or via transfer, 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 before the Rule 16 conference in an attempt to agree upon, or narrow their differences as to, a proposed tracking order.

This administrative directive supercedes Administrative Directive No. 09-1, dated January 19, 2009.

Effective March 1, 2017