

Federal vs. State Practice

THOMPSON
HINE



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Being a Lawyer, Especially a Litigator, Ain't Easy





Overall Thoughts & Stigmas

- Federal rules are typically more stringent and carry harsher consequences for non-compliance
- With more deadlines and reporting requirements, practicing in federal courts requires you to stay on your toes
- Do not take practicing in state court lightly, though. Take careful note of Case Management Orders and Standing Orders



Pleadings

- Entry of Appearance – Unif. Sup. Ct. R. 4.2
- Timing of Answers – State Court (30 Days), Federal Court (21 days)
- Waiver of Defenses
 - ▣ Waiver of Affirmative Defenses – Federal Court arguably more stringent
- Tolling Effect of Motions to Dismiss – State tolls, but not in Federal
- Right to Trial by Jury – State’s default rule is entitled to jury trial; waive if not demanded in Federal Court
- Third-Party Complaint – State Court (10 Days), Federal Court (14 Days)
- Amended Pleadings – Before a Pre-Trial Order v. 21 days



Local Rules

- Regardless of if in State or Federal Court, review the local rules, standing orders, etc.
- N.D.Ga. has many unique rules to consider at case's inception:
 - ▣ Formatting Requirements
 - ▣ Corporate Disclosure Statement
 - ▣ N.D.Ga. Certificate of Interested Parties
 - ▣ 26(f) Conference Requirements and filing deadlines
- These are not present in state courts, unless a judge has a standing order requiring them



Service

- State Court
 - ▣ Exercise Diligence in Serving
 - ▣ Relating Back (5 day rule)
 - ▣ Renewal Action
- Judges frequently say that these are some of the most briefed matters



Scheduling and Discovery Practices

- Federal Court's Initial Disclosures
- Initial Planning Conference/26(f) Conference
- Scheduling Orders/Case Management Orders
 - ▣ Although State Court does not mandate these, in sophisticated cases Judges may entered them or the parties can request them
 - ▣ Again, be on the lookout for standing orders and make a cheat sheet for Case Management Orders



Written Discovery

- State Court:
 - Interrogatories – 50 limitation
 - Deadline – serve responses within 30 days of service of requests (plus three days for electronic service)
 - Unif. Sup. Ct. R. 5.2 – File 5.2 Certificate for Written Discovery
 - Unif. Sup. Ct. R. 6.4 -- Certify that conferred in good faith for Motions to Compel and Motions for Protective Order
 - Legitimately try to work out discovery disputes before dragging Court into it
 - Standard 6 Month Discovery Period



Written Discovery

■ Federal Court

- Interrogatories – 25 limitation (be selective and purposeful)
- Commencement – discovery period typically does not begin until after Rule 26(f) conference
- Deadlines –
 - N.D.Ga. – cases are assigned different tracts/periods depending upon type of case
 - S.D.Ga. – unless Court provides otherwise, all written discovery must be served and all depositions must be completed within 140 days after filing of the last answer of the defendants named in the original complaint



Motion Practice

- Motions to Dismiss
- Motions for Judgment on the Pleadings
- Motions for Summary Judgment (Refer to Scheduling Orders and Case Managements Orders for deadlines)
- Motions to Compel/Motions for Protective Order



The Often Implicated

- Withdrawals: Unif. Sup. Ct. R. 4.3 – follow this very specifically
- Leaves of Absence: Unif. Sup. Ct. R. 16.1 – follow specifically
- Conflicts: Unif. Sup. Ct. R. 17.1 – file a notice of conflict as soon as possible. Update your conflict notices immediately
- Companion and Related Actions: Unif. Sup. Ct. R. 3.2 – notify the Solicitor/DA and Case Manager immediately
- Motions/Pleadings: File in the Clerk's Office. Generally, courtesy copies are disfavored unless you know the particular Judge prefers them



Metro Atlanta Business Court

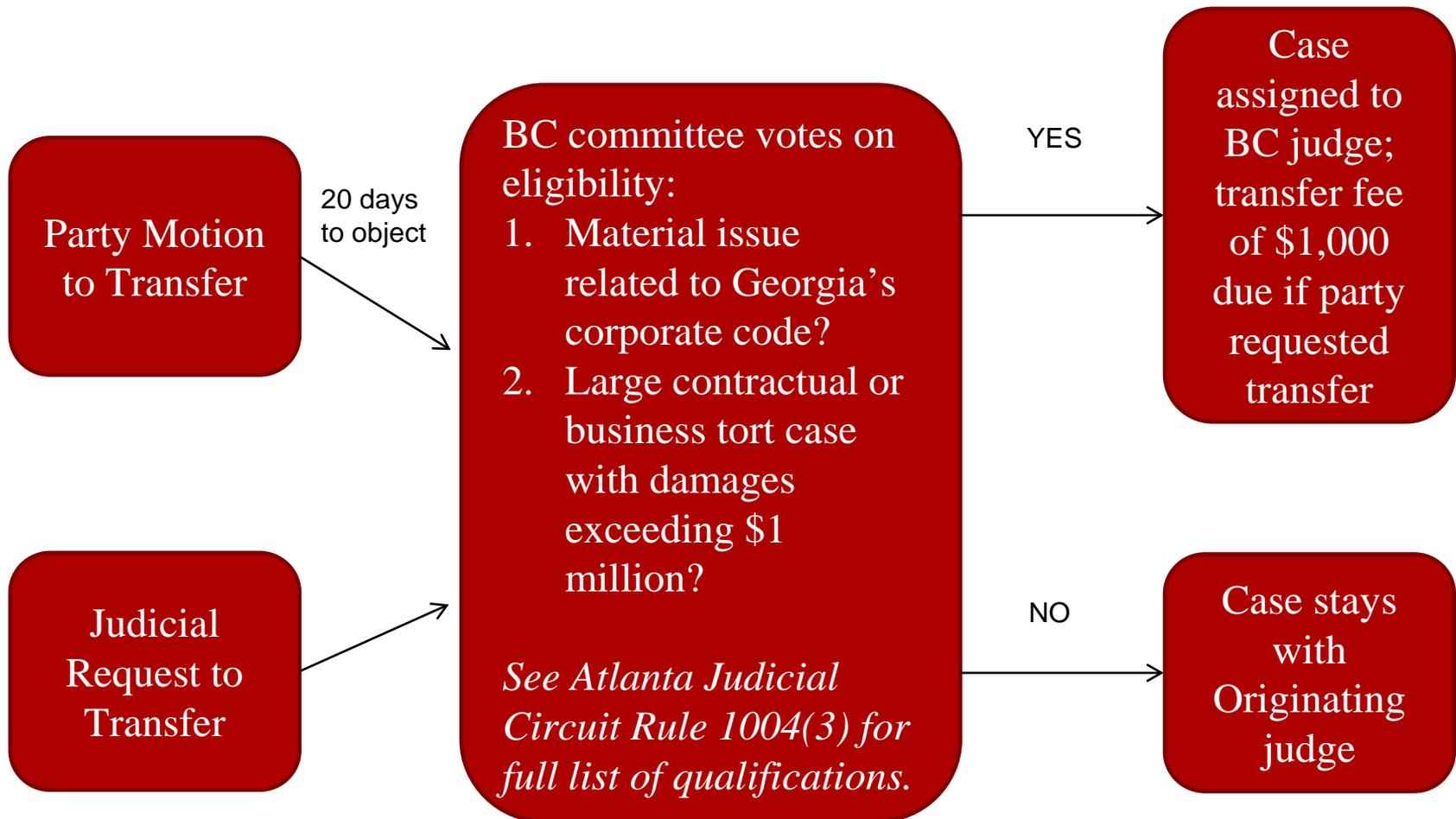
- Complex commercial cases on the general docket were stalled out behind large criminal and civil dockets and judges were not able to devote significant time to complex issues
- While the Division strives to rule on every motion filed within 30 days of the motion being fully briefed and heard, the average time for resolution of motions in 2015-2016 was approximately **16 days**
- 88% of 82 Business Court attorneys responding to a 2011 survey were “very satisfied” (46%) or “satisfied” (42%) with their Business Court experience with 6% responding “neutral.”³



Identification

Qualification

Assignment





5. My Five Tips For Young Lawyers

■ 1. Become Comfortable Being Uncomfortable

- Most important characteristic stated by Fortune 100 CEOs;
- On a daily, or at the least weekly basis, seek to breach your comfort zone;
- The moment you are fully comfortable is the moment you stop progressing.

■ 2. Seek to be Great at Everything You do

- From doing document review, to drafting a brief, to volunteering; be great. Every opportunity is an opportunity to learn and grow.
- The opportunities that will arise will be amazing.



My Five Tips for Younger Lawyers

■ 3. Seek Out a Mentor and Listen, Do Not Talk

- The best mentors are found organically.
- Time permitting, most people will be flattered to be a mentor.
- Most efficient method to learn, and take the elevator.

■ 4. Begin With the End in Mind

- To know what you need to do, you must know where you want to go.
- This goal-oriented focus is indispensable to properly structuring your career and your short-term goals.



My Five Tips for Younger Lawyers

- **5. Life Isn't About Waiting For the Storm to Pass Its About Learning to Dance In The Rain**
 - ▣ Law is a regimented profession, and a stressful profession.
 - ▣ But don't always be wishing for your days to be over because, in the end, they will be.
 - ▣ Instead, enjoy the journey.





Thank you.

If have further questions, do not hesitant to contact me at:

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