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## The New West Virginia Business Court Division - An Update

by [Heather Heiskell Jones](#), *Member, Litigation Department Chair* and [David Bosak](#), *Associate*

On September 25, 2012, Spilman Thomas & Battle released an [article](#) discussing the key features of the new West Virginia Business Court Division ("BCD"). That article can be found at <http://www.spilmanlaw.com/Resources/Attorney-Authored-Articles/Other/The-New-W-Va--Business-Court--A-Summary>. Since the date of that release, there have been multiple developments. First, some of the more ambiguous provisions of Rule 29 have been clarified.

- BCD leaders have confirmed that the BCD judges will be "traveling judges," which dispels the notion that there will be one BCD judge for each of the seven "Assignment Regions." For example, if a Presiding Judge in a case is from Berkeley County, and the case arose in Kanawha County, the Presiding Judge would travel to Kanawha County, as needed, to manage the case.
- On January 22, 2013, at the Business Court Seminar held in Charleston, BCD Chair, Judge Christopher Wilkes and Supreme Court Justice Robin Davis suggested that individuals can still take their cases to the BCD. Judge Wilkes stated that the focus is on the content of the case; therefore, if the individuals were involved in a dispute regarding a business, then the case may be BCD material. Of course, there are no certainties. Until more precedent develops, the success of a Motion to Refer is case and fact dependent.
- Though Rule 29 refers to the appointment of a "Presiding Judge," BCD Chair Judge Wilkes has decided to appoint two judges to each BCD case. One judge will be the "Trial Judge," who will handle all of the litigation aspects of a case. The other judge, the "Resolution Judge," will act as a court-appointed mediator who can handle the alternative dispute resolution aspects of the case. To help facilitate this new system, every BCD judge went through mediation training.

While some Rule 29 issues were clarified, one big issue remains: whether a case that has a combination of claims referable to the BCD and claims that are barred under Rule 29.04(a)(3) will (1) be referred to the BCD, (2) be excluded from the BCD, or (3) be bifurcated, with some claims going to the BCD and some claims staying in circuit court.

[Click here](#) to read a full discussion of the BCD and related topics on our website.


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