

North Carolina Business Litigation Report

Reporting on Judicial Decisions of Significance to Business & Shareholders

A Case Doesn't Have To Be "Complex" To Be Designated To The NC Business Court

By Mack Sperling on January 23, 2018

The North Carolina Business Court sent a message to all lawyers practicing in the Business Court last week in *Barclift v. Martin*, 2018 NCBC 5. Judge Gale said in the ruling that:

“The Court is publishing this Order & Opinion to provide guidance to the practicing bar on the statutory process for designating a case as a mandatory complex business case and to clarify apparent misconceptions regarding the requirements for designation.



Op. Par. 1 (emphasis added).

Barclift, contesting the Defendants' designation of his case as a "complex business case," argued that there was nothing complex about his case, and that it could be handled by a regular (non-Business Court) Superior Court Judge.

The "apparent misconception" referenced by Judge Gale? That a case has to be complex in order to be designated to the Business Court. The source of the supposed need for complexity stems from **Rule 2.1 of the General Rules of Practice**, which says that "the complexity of the evidentiary matters and legal issues involved" should be considered in the process of getting a case into the Business Court.

Rule 2.1 isn't totally obsolete as a method for getting a case to the Business Court, but most cases (like the *Barclift* case) are designated there by way of **G.S. sec. 75A-45.4**. A Rule 2.1 designation involves persuading a Superior Court Judge in the County in which the case was filed that it should be a "complex business case." The factors included in making that persuasion include its complexity. The "local" Judge, upon being persuaded that the case should be handled by a "Superior Court Judge for Complex Business Cases", (i.e. a "Business Court Judge") then makes a recommendation to the Chief Justice of the NC Supreme Court that he or she so designate the case. Those recommendations are usually rubber stamped and the case lands in the Business Court.

The practice under Section **7A-45.4** is much more streamlined and far more automatic. The statute lists six categories of cases that can be designated to the Business Court so long as they raise a "material issue." "Complexity" is not necessary for these cases.

Is this ruling about the lack of a need for complexity in a 7A-45.4 designation something new from the Business Court? Not at all. Judge Tennille said in a ruling, over ten years ago, pretty much the same thing. He held in *Johnson v. Johnson*, an unpublished Order from 2007, that:

“complexity or the lack thereof is not an issue under section 7A-45.4. Section 7A-45.4 simply requires that the action involves a material issue related to at least one of six subjects, including “[t]he law governing corporations” and “issues concerning governance” and “breach of duty of directors.” N.C. Gen. Stat. § 7A-45.4(a)(1).

Order at 1 (emphasis added).

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