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### Practice Areas

Business Litigation

## Good Company

### New Hampshire's New Business Litigation Docket Likely To Speed Resolution of Complex Disputes

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The Executive Council is expected to confirm Governor Lynch's nomination of Attorney Richard B. McNamara to serve as the first presiding justice of the State's new "Business Court," paving the way for a new venue for resolution of business disputes in New Hampshire. Business courts in other jurisdictions, including Massachusetts, have been successful in alleviating overcrowded civil and criminal dockets and improving access to justice for businesses and individuals alike. The advantages of having a dedicated business court include greater efficiency in the litigation process, individualized discovery schedules based upon the complexity of the case, and more consistent and predictable decisions from a judge with business litigation experience.

Legislation was passed last year authorizing the creation of a Business and Commercial Dispute Docket of the Superior Court, through which cases meeting the designated criteria will be assigned to a newly appointed judge with business litigation experience. Four criteria must be met for assignment to the Business Docket: (1) the parties must consent to the jurisdiction of the Docket by agreement or stipulation; (2) at least one party must be a "business entity" as defined by the statute; (3) no party may be a "consumer," defined as "an individual who purchases or leases merchandise primarily for personal, family or household purposes;" and (4) money damages, if sought, must exceed \$50,000. Cases meeting these threshold jurisdictional requirements will be assigned to the Docket for all phases of litigation if the principal claims fall into certain enumerated categories, including breach of contract or fiduciary duties, transactions under the Uniform Commercial Code, shareholder derivative actions, commercial class actions, internal affairs and governance, and cases arising from the purchase or sale of commercial real estate or personal property. There is also a catch-all category for "other complex disputes of a business or commercial nature."

The New Hampshire Supreme Court has not yet established rules for the assignment of cases to the new Docket, but it is anticipated that cases currently pending in the Superior Court may be reassigned to the Docket if the parties consent and the other criteria for jurisdiction are met. It is also likely, based on the business courts established in other states, that Judge McNamara will have the flexibility to establish procedures or rules to be followed in certain cases or case "tracks," based on issues that arise frequently in business and commercial disputes. The Supreme Court has also asked a task force of local trial lawyers to review the recommendations of two national organizations regarding potential changes to the civil discovery process, with an eye toward improving the speed and efficiency of civil litigation, thereby reducing its costs. The focus

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of these efforts is likely to be on the volume and complexity of electronic discovery in business litigation cases, which often has the effect of lengthening the discovery process and driving up costs. The creation of a specialized docket is a significant first step in making New Hampshire more attractive to businesses seeking an effective dispute resolution forum.

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