

Removal Procedure after 1/01/11

A Notice of Designation must be filed for a case to be assigned to the Business Court as a mandatory complex business case.

Requirements for filing the Notice of Designation:

- Timing:
 - Plaintiff (or 3rd Party Plaintiff) → within 30 days of filing of complaint
 - Intervening Party (rare) → simultaneously with motion to intervene
 - Anyone else (including defendant) → within 30 days of being served with initial pleading seeking relief against that party (usually the complaint)
- Contents:
 - Must clearly state the basis for the designation as “mandatory complex business”
 - Certificate on behalf of the party seeking removal that the case satisfies the criteria for a mandatory complex business case.
 - A “Mandatory Complex Business Case” contains a material issue relating to one of the following areas of law:
 - law of corporations
 - securities law, including proxy disputes and tender offer disputes
 - antitrust law, except claims based solely on unfair competition under G.S. 75-1.1
 - state trademark and unfair competition law, except claims based solely on unfair competition under G.S. 75-1.1
 - intellectual property law, including software licensing disputes
 - technology (internet, electronic commerce, biotechnology)
 - tax law, when the dispute has been the subject of a contested tax case for which judicial review is requested under G.S. 105-241.16 or the dispute is a civil action under G.S. 105-241.17
- Must be filed with/served on:
 - Superior Court in county where action was filed
 - All opposing parties or counsel
 - Chief Special Superior Court Judge for Complex Business Cases (Judge Jolly)
 - by email to christy.rutan@aoc.nccourts.org
 - Chief Justice of Supreme Court (by email or fax)
 - by email to David.F.Hoke@nccourts.org
 - or by fax to 919 831-5735
- Filing Fee (paid upon assignment) – additional non-refundable \$1,000 filing fee to be paid to Clerk of Court where action was filed by the party or parties filing the Notice of Designation. Note that this filing fee is only applicable to mandatory complex business cases. *

Once the Notice of Designation is filed, the case is automatically and immediately in the Business Court until it is either resolved or its designation is denied after being opposed. All motions, etc. will be heard in the Business Court.

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Opposing the designation:

- Who → Any party may oppose the designation
- Timing → must file opposition with the Business Court within 30 days of Notice of Designation
- Who decides → Chief Business Court Judge (Judge Jolly)
- Appeal → that decision may be appealed to the Chief Justice of the Supreme Court

Once assigned:

- Chief Special Superior Court Judge for Complex Business Cases (Judge Jolly) determines which Business Court Judge will handle the case
- All proceedings will be before the Business Court until the case is resolved or its designation is denied after being opposed

Old Rules still apply to:

- 2.1 cases
- Cases in which a party seeking removal has not met the timing requirements