

When it comes to business... Are Mississippi Courts Functional or Dysfunctional?

By Robert Wells

About five years ago, I was sitting in a Board of Directors meeting where the discussion involved a proposed business transaction and the risks to the company in the event a vendor refused to comply with its contract.

One director, a lawyer, basically said that the company would have a contract and could, of course, sue the vendor, force compliance and all would be well.

A prominent, non-lawyer, businessman quickly responded and said, "I'll not vote for anything where the planned cure for a problem is the courts. The courts of this state are dysfunctional for handling any business disputes."

To my surprise, all the other non-lawyer businessmen started nodding. For some reason, this struck a chord in me, and caused me to begin rethinking my experiences with the courts. After five years of rethinking and watching, I'm going to say my piece and it might not be pretty.

Let's ask a seemingly simple question: Are the courts of Mississippi capable of effectively responding to the needs of business?

If you had asked whether the judges are qualified, fair, well intended and hard working, I would tell you that my experience is that almost all judges have these qualifications. But that's not the question.

If you had asked whether the funds being allocated to the courts are being wasted and are the courts inefficient, I would say that I haven't seen any more waste or inefficiency than I see in most private businesses. But, that's not the question.

If you had asked whether the basic rules of court need revamping, I would dare you to come up with anything better. My experience is that once you get into the courtroom, the process is fair, the methods are sound and, on a long-term basis, the jury system is the best system possible. But, that's not the question.

The question is: Are the courts of Mississippi capable of effectively responding to the needs of business?

Stated another way: Can they timely resolve a dispute. Can they bring finality to a problem without the process itself destroying the business?

Can a business' count on the courts to right a business-wrong before bankruptcy occurs?

To answer the questions, strange non-lawyer words need to be used. Things like cash flow, time, delay, etc. all come to mind. Business disputes can't effectively be resolved based on assurances that someone will decide a problem in three to four years with an appeal of a year or more usually added.

Since my friend made the bold statement five years ago, I have handled plenty of business disputes. My experiences have confirmed that the rules are fair, the judges and court personnel are well meaning and it's taking longer every year to get anything done.

Right now, I have several business dis-

asters I'm handling where we will win at trial, and the client will get paid.

That seems OK except I'm expecting the clients will all go, or almost go, bankrupt unless we settle for a smaller amount than they're entitled to or we put the business into bankruptcy to stop the other creditors while we wait on the courts.

Each year, the court delays seem to get longer and longer. Also, the delays involved in getting routine pretrial hearings seem to increase. The question again: Is this effective? Is this business functional or dysfunctional?

The answer may be in the numbers. In 1993 Mississippi created an Administrative Office of the Courts (AOC), which, among other duties, gathers statistics on Mississippi's courts and judges.

The AOC is under the control of the

Chancery judges in the 82 counties.

So, why can't I tell a client that I can get them to trial in Chancery or Circuit Court within, say a year, two years, or three years?

Why does it take months to even talk to a judge about a motion?

Is this inherent in our system of justice or is something else afoot? In 1997, the AOC started reporting the number of cases filed and disposed of each year in the Circuit, Chancery, County and Supreme Courts.

The data is at the web page stated above.



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CIRCUIT COURT				
Year	Filings	Dispositions	Number of Judges	Dispositions per Judge
1997	22,583	12,350	49	252
1998	22,048	11,925	49	243
1999	23,334	14,039	49	287
2000	31,658	13,574	49	277
	99,623	51,888		
CHANCERY COURT				
Year	Filings	Dispositions	Number of Judges	Dispositions per Judge
1997	74,054	47,605	45	1058
1998	69,232	45,929	45	1021
1999	68,687	43,165	45	959
2000	84,580	50,660	45	1126
	296,553	187,359		

Supreme Court and publishes statistics that are available to the public and some of those are available at <http://www.mssc.state.ms.us/statejudiciary>. The numbers aren't yet in for 2000, but I understand they're consistent with the past three years for the trial courts.

Before the numbers, a little civics lesson may be needed.

Mississippi has several sets of court systems. Justice Court handles disputes involving under \$2,500. I'm ignoring that court system for this discussion as I haven't been in Justice court in 19 years and the amount is too small to really matter.

Every county has a Circuit Court and a Chancery Court where almost all cases begin. The Circuit Court handles contract disputes, personal injury cases, warranty claims and the like. That's where the jury trials occur.

The Chancery Courts handle divorces, injunctions, and a variety of other matters. Only 19 counties have County Courts which handle claims up to \$75,000, but the conclusions stated below also apply to those courts. There are 49 Circuit judges and 45

According to the AOC data, the number of civil cases filed each year exceeds the number of cases disposed of by about 70% in the Circuit Courts and by about 50% in the Chancery Courts.

The AOC reports that the Circuit judges are each disposing of an average of about 275 cases per year. On average, the Chancery judges are each disposing of about 1000 cases per year. The differences in Chancery and Circuit are expected from the type cases they handle.

But, those average cases per judge say nothing about the system except that the judges appear to be working a decent workday.

The real numbers are that in 1997 through 1999, the imbalance between filing and dispositions were about the same each year. The numbers are stated below:

At this rate, assuming no backlog of cases as of 1997 (probably a false assumption), the filing have exceeded the dispositions by about 10,000 cases per year in the Circuit Courts and about 25,000 cases per year in the Chancery Courts. I checked these numbers with the AOC and also was

told that the backlog of cases has about 99,000 cases still open in the Chancery, Circuit and County Courts (excluding estates and the like) that were filed from January 1997 through December 1999.

They don't have statistics on the backlogs still in place before then. Using the average dispositions per judge as a gauge, we'd need another 38 Circuit judges and another 25 Chancery judges to just keep up. We'd also need another 104 full time Circuit judges and another 75 full time Chancery judges to resolve in one year the backlog that has been created in only three years.

Can this be true?

The numbers are there, and there may be a thousand explanations why they don't mean exactly what they imply.

But, it is taking me much longer to get to trial than it used to. It is much harder to get a motion heard. It is getting more and more frustrating to resolve things in the courts.

From a businessman's perspective of simply trying to resolve a problem in the court system, this doesn't look good.

The good news is that the AOC is there, looking at all this and making suggestions. Also, the numbers for the Supreme Court were bad until more judges were hired for an Intermediate Court of Appeals.

This led to their backlogs being reduced dramatically until the two appeals courts now claim that a case will be resolved in under 270 days.

I confronted a judge friend of mine and asked why this isn't all fixed. Budgets and money was the answer.

I've loved to sing the praises of the courts for 20 years. I still believe we have the fairest system of justice possible, but maybe, just maybe, my businessman friend had a point. Unless the numbers are wrong, our economy has outgrown the size of the system.

Problem: Too many cases, too few judges.

Real Problem: The courts can't resolve conflicts timely and inspire the confidence of the business community.

Answer: Money. It may just be that simple. Let's think — hmmm, that's Circuit plus Chancery needs about 63 new judges to keep up at \$94,700 per year plus 25% for benefits plus about \$75,000 each for staff and benefits (a fair guess) plus another \$10,000 each for miscellaneous equals about \$13,000,000 per year.

With about 91,000 filings per year that's about \$141 additional charges for filing fees to pay for it all.

Round it up to \$200 per file for other, and that's dirt cheap for a fix, count me in and start today.

That's how a businessman would answer this problem.

Let's see what we lawyers do. I think I know.

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