THE FUTURE OF BUSINESS DISPUTES







Takeaways from the Business Dispute Resolution Pathways Convening

IAALS INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM


JUDGE
ELIZABETH GONZALEZ



THE FUTURE OF BUSINESS DISPUTES:

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IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research organization that innovates and advances solutions that make our civil justice system more just.

Founded in 2006 at the University of Denver, IAALS believes that justice for all must be a reality for everyone. When innovation is rooted in finding common ground, questioning the status quo, and centering the people, we begin to craft solutions that transform our civil justice system. IAALS' unique approach depends on purposeful research, deep collaboration, and diversity of perspective, followed by evidence-based recommendations that take hold in courts and legal institutions across the country—jumpstarting the groundbreaking and achievable solutions that will clear a path to justice for everyone. Because justice for all will never be a reality if those seeking justice cannot access the system designed to deliver it.

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There is power in numbers. When people collaborate toward a shared goal, we see greater impact than we can achieve from a single point of view. At IAALS, we hold convenings in a cooperative environment where varied perspectives can cocreate justice system innovations. It takes a diversity of perspective to get better justice outcomes for more people.

This report and the convening that informed it are a direct result of the engagement of our partners, and we are deeply grateful for their contributions.

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THE EVOLVING BUSINESS DISPUTE RESOLUTION LANDSCAPE

1

Challenges with Traditional Litigation

Every day, businesses of all sizes head to court to resolve their legal disputes. Once they get there, they often find themselves in a process that feels outdated, expensive, and adversarial. For businesses, traditional litigation can feel like a source of friction rather than resolution for the following reasons:

1. It's resource-intensive.

Complex business lawsuits drain time and money from companies and the courts. They often involve thousands of documents and weeks of trial time. When business owners and employees are focused on litigation rather than running and growing their company, their business can suffer. And the sheer volume of these cases slows down the court for everyone else in the community. Treating business litigation cases as one-size-fits-all adds to the challenges, as smaller issues may be backlogged behind complex cases that may take years to resolve.

2. It's slow.

Complex business cases can sit on a court's docket for years. The private sector moves far more quickly, and businesses often need answers on a much shorter timeline to make critical decisions.

3. It's adversarial.

Traditional litigation is designed to be winner-takes-all. It is not designed for problem-solving or keeping business relationships intact after a dispute ends.

4. Expertise is limited.

In the majority of courts, judges are responsible for handling a broad variety of case types and may not have the opportunity to develop deep familiarity with recurring commercial issues. Attorneys who specialize in business litigation may find it essential to educate judges on industry particulars; however, limited foundational familiarity with business cases on the part of judges may lead to less predictable outcomes.



The Need for Specialized Pathways

In light of these challenges, the one-size-fits-all approach of traditional litigation is likely not the most effective way to resolve all business disputes. Instead, tailored processes and pathways can help meet the unique business needs of companies of all sizes and provide timely case management and disposition. Three general approaches have emerged across the country:[1]

Business Courts

Business courts are specialized courts designed to resolve commercial disputes more efficiently and effectively. They offer specialized jurisdiction focusing on business or commercial disputes, tailored case management and procedures, and specialized expertise for commercial cases. These courts have grown in popularity in recent decades, likely the result of business's demands for greater efficiency as well as the increasing complexity of commercial disputes requiring specialized expertise.

Delaware's Court of Chancery is the longest-standing and most prominent example,[2] having served as the nation's preeminent forum for corporate disputes for over a century. More recently, other states have followed suit. North Carolina's Business Court, established in 1996, was one of the first modern statewide business courts.[3] In 2024, the Texas Business Court[4] and the Utah Business and Chancery Court[5] were both launched.

Complex Dockets

Where some states use wholly separate business courts, others employ specialized dockets or tracks within existing civil court systems. These dockets provide dedicated resources and case management tools to address the unique needs of complex litigation.

Massachusetts Superior Court's Business Litigation Session is made up of two full-time sessions committed to timely resolution of complex business and commercial disputes.[6] Maryland's Business and Technology Case Management Program enables each circuit court to manage business cases "in a coordinated, efficient, and responsive manner."[7]

Alternative Dispute Resolution (ADR)

Methods such as mediation, arbitration, and negotiation can offer flexible, efficient, and potentially more cost-effective alternatives to traditional litigation.[8] These out-of-court options for dispute resolution are growing in availability and popularity.[9]

There is a range of hybrid and specialized ADR processes. For example, med-arb or arb-med combine mediation and arbitration into a single proceeding. Early neutral evaluation brings in a neutral expert to assess each side's likely outcome and jumpstart settlement talks. Dispute review boards resolve issues as they arise during a project. Parties can also turn to private judging, mini-trials, and special masters to resolve discrete or complex issues outside the traditional courtroom.

Each pathway brings unique strengths and challenges. While all of these tailored pathways for business dispute resolution have made great strides in tailoring procedures and promoting efficiency for business disputes, there remain opportunities to improve their effectiveness. The legal needs of businesses are constantly evolving as rapid technological advancements, globalization, and the increasing complexity of commercial disputes create new challenges and opportunities for businesses. This evolving landscape requires continuous assessment of whether existing processes and pathways meet the legal needs of businesses, continuous adaptation in response to that assessment, and collaboration with others doing similar work to develop standards and best practices.

The National Landscape

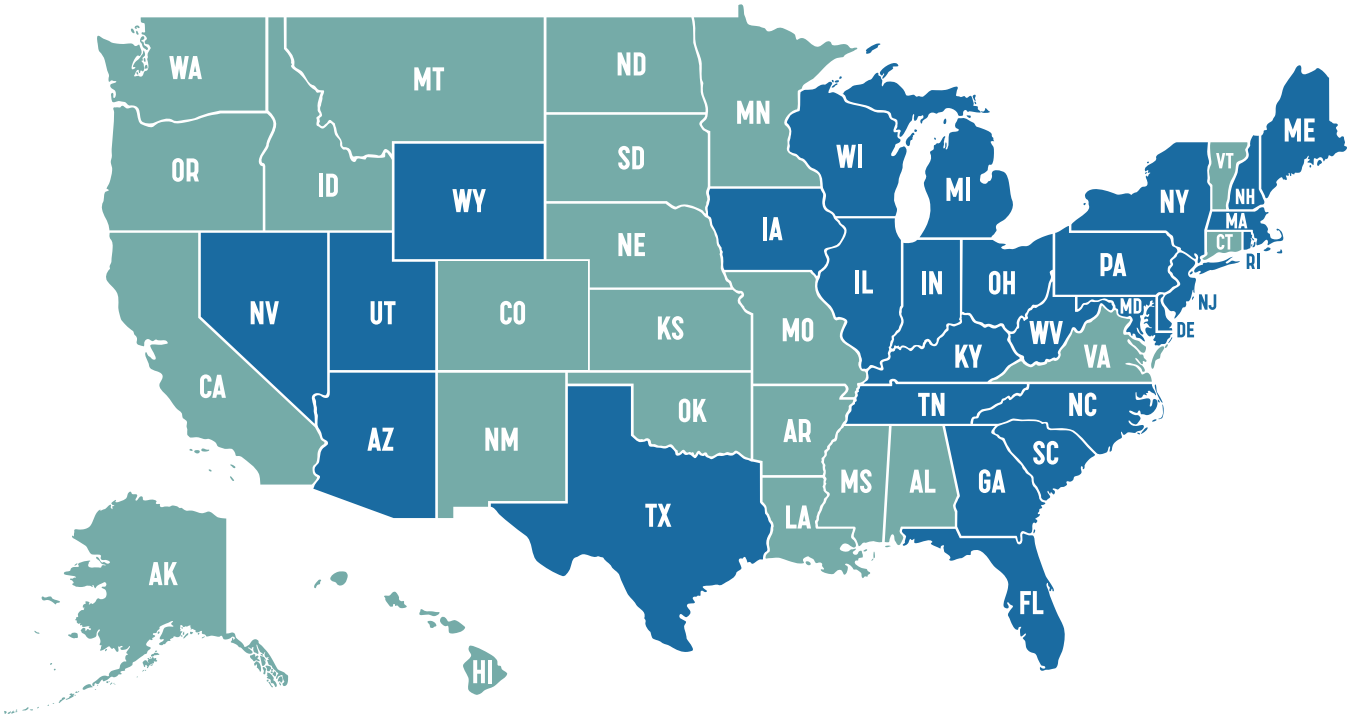
As of 2025, 27 states are operating some variety of business court (*see figure 1*). In addition, several states, including California, Connecticut, Minnesota, and Oregon, have dedicated complex litigation programs that encompass business and commercial cases along with other types of complex cases. Two states, Colorado and Alabama, previously had a business court in at least one jurisdiction, but have shuttered them.[10]

The courts fall into three models:[11]

1. An **objective model** where case type and amount in controversy determine if the case qualifies for the business court.
2. A **subjective model** where the business case must also be complex to qualify.
3. A **hybrid model** where there are identified case types and judicial discretion to add other cases to the docket.

Some courts operate state-wide and some within a specific jurisdiction within the state.[12] In some states, business cases will be assigned to the business docket.[13] In others, it can be initially filed in the business court.[14] And, in other courts, cases can only be transferred to the docket from another court.[15] Across states, the number of judges assigned to business courts ranges from one to ten,[16] and some have other case types on their docket, while some hear exclusively business case types.

Figure 1: States Operating Dedicated Business Courts in 2025



A CONVENING ON THE FUTURE OF BUSINESS DISPUTES

2

Recognizing this complex and ever-evolving landscape, IAALS convened a far-reaching conversation among experts on the future of business dispute resolution. IAALS is well-positioned to facilitate a dialogue on the future of business disputes given its industry reputation and commitment to bringing people together to cocreate practical solutions to the legal system's most challenging problems. IAALS does not just study problems, we bring people with different perspectives and vantage points together to solve them. Leveraging our past work in civil justice reform, we hosted the Future of Business Disputes convening on March 11–12, 2025, in Colorado Springs, Colorado.

Building on Past Work

This convening built on a foundation of prior IAALS research and reform efforts, including:

- **Empirical Research on Business Experiences:** In partnership with the Bohemian Foundation, IAALS interviewed small business owners to better understand their legal needs and experiences. While the sample size was modest, it offered an early, clarifying look at how the system can better serve this vital sector. In 2010, IAALS conducted a *Civil Litigation Survey of Chief Legal Officers and General Counsel*[17] belonging to the Association of Corporate Counsel on the state of civil litigation.

- **Research and Recommendations on Cost and Delay in Civil Litigation:** In 2014, IAALS and the American College of Trial Lawyers' Task Force on Discovery and Civil Justice released *Reforming Our Civil Justice System: A Report on Progress and Promise*,[18] which studied the cost and delay of civil litigation nationally and proposed a revised set of principles for reform.

- **Pilot Project Implementing Reforms:** That same year, IAALS evaluated Colorado's business pilot project in *Momentum for Change: The Impact of the Colorado Civil Access Pilot Project*,[19] which tested streamlined pretrial procedures in business cases across five state district courts.

- **National Recommendations on Discovery, Motions Practice, and Case Management:** In 2016, the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) adopted the recommendations of their Civil Justice Improvements Committee in *Call to Action: Achieving Civil Justice for All*,[20] the product of two years of research with IAALS and the National Center for State Courts, followed by a three-year, State Justice Institute-funded implementation effort.

About the Convening

Building on all of this work, the in-person Future of Business Disputes convening was designed to bridge the gap between the growing demand for specialized business dispute resolution pathways and the practical reality of how those models function. We saw a unique opportunity to assess what businesses actually need, identify where existing models fall short, and highlight promising innovations that can be scaled nationally.

Over two days of interactive discussion and workshops, participants addressed the following core themes:

- The primary obstacles businesses face when seeking legal resolution
- The strengths and weaknesses of current business dispute models
- Best practices for resolution and strategies for implementation
- Emerging trends and innovations for both in-court and out-of-court processes

For these discussions, we brought together 20 experts representing a broad array of perspectives and experiences, including:

- Attorneys and general counsel who represent businesses
- Judges and court administrators who manage and adjudicate business dockets
- Researchers and scholars specializing in business disputes
- ADR practitioners focused on commercial arbitration and mediation
- Innovation leaders at the forefront of court reform

By bringing together the people who decide cases, the people who litigate them, and the business leaders who are impacted by them, we were able to move beyond identifying problems to identifying solutions.

The next sections of this report outline key recommendations that reflect perspectives shared by convening participants. The recommendations also build on prior research and recommendations by IAALS and others.



3 SOLUTIONS FOR BUSINESS DISPUTES

The convening highlighted a path forward that challenges traditional models and embraces more innovative, tailored approaches to business dispute resolution. Some ideas discussed during the convening reflect emerging or aspirational approaches that warrant further testing and evaluation, while others build on practices already being implemented in jurisdictions across the country. Many of these strategies are specific to stand-alone business courts. Others can be applied to business court dockets or ADR. Together, these strategies should serve as a roadmap for moving toward a system that reflects the speed and complexity of modern business.

It is important to note that this is not a comprehensive or final framework of recommendations, nor does it represent a consensus position by attendees. Rather, it summarizes points raised in discussion, which serve as a foundational starting point for continued development of a formal recommendation framework for business dispute resolution.

Establish Clear Court Goals from the Outset

Participants repeatedly returned to the idea that a business court's goals should be established before its structure, jurisdiction, or procedures are built out. Attendees noted that these goals, whether centered on predictability, efficiency, economic development, or some combination, shape nearly every downstream decision a jurisdiction will make, from case-type eligibility to judicial selection to funding strategy. Several participants suggested that skipping this step, or leaving goals implicit, can lead to a court being pulled in inconsistent directions, which can undermine support and success.

Structure Business Courts to Meet the Unique Needs of Business Cases

A recurring theme in the discussion was that courts must understand what businesses actually need in order to earn their trust and use, namely speed, efficiency, confidentiality, and expert decision-making. Many attendees observed that businesses currently turn to ADR precisely because it delivers these things more reliably than traditional courts and suggested that this is a useful benchmark for business courts to aspire to. Participants discussed a range of ways courts might work toward this standard, including offering effective case management, protecting sensitive information such as trade secrets, and ensuring that judges act as engaged, knowledgeable managers of their dockets rather than passive arbiters of a schedule driven by attorneys. Several attendees framed this alignment with business needs as a goal that should inform every other structural and procedural choice discussed throughout the report, rather than a standalone best practice.

Let Goals Drive the Structure

The discussion focused on the need for the goals of any state's business court to influence its structure. Several attendees suggested that when a jurisdiction prioritizes predictability and efficiency, the structure often favors specialized dockets with a single judge assigned to a case

for its duration to ensure consistency. Others noted that when the goal is economic development, or using the court to attract businesses to the state, the structure may lean toward a broader, more inclusive jurisdictional reach to accommodate the types of disputes global industries prioritize. By defining these objectives early, some participants said states can ensure that everything from case-type eligibility to judicial selection is aligned with the court's core mission.

Design the Court Around the Distinct Nature of Business Cases

Many in the room pointed out that the design of a business court must account for the reality that commercial disputes are often paper-heavy and focused on monetary outcomes. Because these cases typically involve high volumes of motions and discovery documents, many felt the court's infrastructure should prioritize robust electronic filing systems and the integration of special masters or referees to handle technical bottlenecks. Furthermore, since the majority of business disputes result in settlement rather than trial, the court should be structured to facilitate early resolution and expert mediation. Several participants noted that by centering the court's resources on managing complex documentation and fostering settlement, the system can move at the same pace as the businesses it serves.

At the same time, participants also stressed the importance of "right-sizing" business disputes. Not every case requires the same level of process or judicial involvement, and business courts can build in flexible pathways that reflect the specific needs and complexity of each dispute. Tailoring procedures in this way can improve efficiency while reducing unnecessary burdens on litigants.

Some participants pointed out that small businesses often have different needs than large corporations, for example. Also, it is fairly common that the litigants in a business case are familiar partners who will want to continue their business relationship following litigation and are therefore mindful of preserving relationships while resolving their case in the courts. The discussion generally coalesced around the idea that judges have a critical role in managing the nuances of business cases, and high levels of judicial engagement are of benefit as cases move through the courts.

Carefully Consider What Types of Cases the Court Will Hear

Defining a court's jurisdiction is one of the most consequential structural decisions a business court can make. Specialization can be a strength. For example, Delaware's focus on corporate law is a model that many states are seeking to replicate. But it can also be a liability if drawn too narrowly. A few attendees cautioned that concentrating on a single industry, such as technology, risks limiting the court's reach and relevance. A number of participants emphasized that political climate matters too. In states that are not perceived as business-friendly, a dedicated business court may face an uphill battle for legitimacy. In those states, a complex litigation division within the existing court system, like in California, New Jersey, and Pennsylvania, may be a more pragmatic path. Whatever the scope, courts could consider publishing their decisions, as a body of accessible precedent can strengthen predictability and signal to potential litigants that the court is a reliable forum for resolution.

Prioritize Judicial Expertise

One theme that emerged was the quality of the judiciary as perhaps the most critical factor in a business court's success. Participants noted that technical knowledge matters, but it's not the whole picture. A judge's genuine interest in business cases and strong work ethic may be equally important. To promote a high-quality judiciary, states should develop clear criteria for selecting and evaluating business court judges. Delaware, North Carolina, and Texas offer useful models of designated expert appointments.[21] Judges should also be committed to continued learning, as business disputes are

often complex and the legal landscape shifts. Establishing clear performance expectations and regular evaluation processes can build public trust and supports judges in their professional growth. Attendees also emphasized that effective business court judges are not defined solely by prior business experience. Specialized training, engagement with the subject matter, and active case management were identified as equally important qualities.

IAALS on Judicial Performance Evaluation

- JPE 2.0: Recommendations for Modernizing Judicial Performance Evaluation[22]
- National Perspectives on Judicial Performance Evaluation[23]
- Judicial Performance Evaluation in the States[24]
- Leveling the Playing Field: Gender, Ethnicity, and Judicial Performance Evaluation[25]

Secure Support Early

A common thread was that establishing a business court requires deliberate groundwork, with funding and statutory approval being paramount. Several in the room emphasized that engaging the legislature early, both to secure resources and build political will, is essential. Others noted that educating legislators and frequent litigants about the court's value can create meaningful momentum. Courts can also anticipate and address skepticism directly. Concerns that business courts are pro-corporation or that their efficiency will reflect poorly on general-jurisdiction courts have surfaced in some jurisdictions and are worth getting ahead of. A number of attendees also stressed the importance of framing business courts as a system-wide efficiency measure rather than a benefit exclusively for corporations. Moving complex commercial disputes into specialized pathways can free up resources in general jurisdiction courts and improve case processing across the broader court system. Securing buy-in from the judiciary, the bar, and the client community from the outset can help lay a stronger foundation for long-term credibility and success.



Track Data to Inform Your Approach

Embrace Data Collection

Participants discussed the value of data at several distinct stages of a business court's development, from initial design through ongoing operation and evaluation.

Several attendees emphasized that early assessment is a critical first step before adopting any particular approach. Understanding the existing landscape in a given jurisdiction—including the types of business disputes present, the needs of local businesses, and how those cases currently move through the courts—allows any new pathway to be built on an accurate picture of local conditions rather than assumptions.

Once a pathway is established, participants noted the importance of building in ongoing data collection to support real-time tracking and monitoring at both the docket and individual case level. This kind of continuous data can help courts identify bottlenecks, manage caseloads, and make adjustments as cases progress, rather than relying solely on retrospective review or a hunch.

Finally, attendees pointed to evaluation as an opportunity to collect key data, one that builds on the data collected through the earlier stages. Meaningful evaluation should draw on both quantitative and qualitative measures. Numbers alone tell only part of the story, and litigant experience and public confidence in the process are as important as efficiency metrics. Key evaluation questions raised included what factors most affect time to resolution, how the court performs on appeal, and how many litigants are actually using the court. Participants suggested that answers to these questions can support internal improvement and also help make the case for continued investment and expansion.

Use Data to Inform and Revise Your Approach

Collecting data is useful only if it is acted upon. Courts might consider partnering with researchers and data analysts to identify which metrics are most meaningful and how findings can be shared to build public support. The discussion covered the importance of court staff being engaged in data collection from the outset. Findings could then be communicated regularly to the legislature so policymakers have the objective evidence they need to evaluate the court's impact and consider expansion. Data should also inform fee structures. Several participants suggested that a tiered menu of fees, such as the model used in Delaware, can generate revenue while offering litigants meaningful options. Attendees also noted the value of greater consistency in how business courts collect and evaluate data across jurisdictions, which could support broader comparisons, shared learning, and the development of national best practices.

IAALS on Building Support for Change

- Transforming Our Civil Justice System for the 21st Century: The Road to Civil Justice Reform[26]



Integrate ADR into the Process

Discussion of ADR ranged widely, from its use as a fully independent, private alternative to litigation, to more innovative models that integrate ADR tools directly into court processes. While participants generally shared enthusiasm about ADR's potential, the discussion also touched on concerns about cost, access, and whether ADR serves all litigants equally. The discussion around ADR explored what becomes possible when courts think creatively about where and how it can be layered onto (or offered alongside) traditional court processes. The themes that follow capture the range of the discussion.

Recognize ADR as a Faster, More Collaborative Path to Resolution

Several attendees described ADR as offering a fundamentally different approach to business conflict that prioritizes collaboration over confrontation and resolution over prolonged litigation. Many in the room pointed to the potential for ADR to save time and costs. Participants also noted that ADR can possibly offer greater privacy and expanded opportunities for negotiation, while also acknowledging limitations or drawbacks of confidentiality. Some attendees felt that courts and practitioners have a role to play in promoting ADR as a legitimate—and in some circumstances, superior—path to resolution, though others cautioned against overstating its advantages for every type of dispute or litigant.

Pay Special Attention to the Needs of Smaller Businesses

Participants noted that ADR may be particularly valuable for smaller businesses, which frequently lack the infrastructure to navigate formal court proceedings effectively. Attendees observed that small businesses often prioritize preserving ongoing business relationships over winning a dispute, which some felt made the collaborative nature of ADR especially well-suited to their needs. At the same time, some raised concerns about cost disparities between parties, noting that mandatory mediation costs can fall disproportionately on smaller businesses, particularly when mediation clauses drafted by larger corporations shift financial responsibility to the other side. A few attendees suggested that courts might consider offering free mediation services or using a second judge to mediate discrete issues. Others pointed to the value of encouraging small businesses to obtain an early case evaluation so they can make more informed decisions about their path to resolution.

Embed ADR Early in the Case Management Process

A recurring theme was that ADR works best when it is treated as an integral part of case management rather than a last resort. Participants also emphasized that ADR tends to be most effective when parties engage in the process meaningfully, rather than treating mediation or arbitration as a procedural formality. Some suggested that judges might regard ADR as a standing tool, with early mediation (ideally before expensive discovery begins) as a default consideration. The Wyoming Chancery Court, for example, builds structured settlement efforts into every case from the outset. Its standard case-management order requires three settlement conferences—initial, interim, and late-stage—with at least one conducted as a formal mediation.[27] Others discussed tailoring mandatory mediation orders to target specific issues, which several felt could reduce both the number of parties involved and the scope of the dispute. A few attendees noted that requiring parties and clients to appear in person at early hearings, where feasible, can strengthen engagement and increase the likelihood of meaningful progress. Early neutral evaluation and discovery referees were mentioned as additional case management tools that some participants felt could help move disputes toward resolution more efficiently.

Build Buy-In for ADR Across the Bench and the Business Community

Several attendees described judicial buy-in as critical

to ADR's success and expressed optimism that it is attainable, noting that ADR can reduce court caseloads, and that judges retain authority over the process since they remain responsible for enforcing any award. Participants also discussed how ADR and traditional litigation might work as complementary tools rather than competing ones, an idea connected to the broader discussion of integrating ADR mechanisms into court procedure rather than treating ADR as entirely separate from the court system. Some noted that this works particularly well when separate counsel is engaged for each track. A few attendees pointed to Chambers of Commerce and other business organizations as potential allies in promoting ADR within the business community, while acknowledging that not all stakeholders view ADR the same way.

Educate Attorneys, Judges, and the Public on ADR Options

Many participants identified education as one of the most important drivers of ADR adoption, noting that attorneys, judges, and the public often lack a full understanding of what ADR options exist and when they are most appropriate. Several observed that many litigants simply do not know these pathways are available to them. Some attendees raised the possibility of integrating AI into ADR processes to further reduce costs and discussed expanding the use of Online Dispute Resolution to improve accessibility, again pointing to the broader idea of innovating around how ADR connects to formal court processes. Others noted the value of developing in-house arbitration expertise, suggesting that having an attorney at your firm who understands arbitration can meaningfully improve the chances of settlement.

Build Trust and Credibility with the Community

Increase Transparency and Strategic Communication

Participants noted that building trust in a business court requires intentional effort, particularly because courts rarely have robust public relations support. The discussion highlighted the importance of business courts having a clearly-defined purpose and mission, as well as the need to communicate that purpose and mission from the outset. Several attendees reflected on the importance of prioritizing transparency and accessible communication about what types of cases the court handles and the goals it is intended to serve. Credibility is also built through the quality and consistency of the court's work. Legislative involvement in establishing the court can also lend early credibility.

Establish Specialized Training and Pilot Programs

Several attendees pointed out that pilot programs that provide targeted training in business court operations and complex case management can build confidence among both judges and the public. Many felt that while judges do not need a traditional business background to be effective, they do need preparation and a genuine commitment to the work. Structured training programs can signal to the legal community and litigants that the court takes its specialized role seriously. Courts might also consider establishing clear performance criteria and regular evaluation processes, which reinforce accountability and support continuous improvement.

Implement Tailored Procedures

Streamline Discovery and Disclosure Protocols

Discovery costs are a significant driver of litigation expense, and addressing them early is one of the most impactful steps a business court can take. Courts could consider establishing robust mandatory initial discovery disclosure requirements and applying proportional discovery standards to set a clear baseline from the outset. Courts could also consider using mediation specifically to negotiate the parameters of discovery, allowing parties to resolve friction points before they escalate and before significant costs are incurred.

Streamline Motions Practice

Motions practice was repeatedly flagged as an area in need of reform. For example, when asked what they would change if given a magic wand, one participant pointed directly to reducing motions to dismiss, and others noted more broadly that a high volume of motions is often what drives business cases toward settlement. Timeliness of rulings was a particular point of tension. While some proposed a 30-day rule for resolving motions, one judge noted that even a 60-day rule can be difficult for courts to meet given existing caseloads. Several participants agreed that motions practice, even when successful, often just delays rather than resolves a dispute.

Enhance Trial Efficiency and Evidence Management

There was discussion of procedural tools that can meaningfully reduce trial length without sacrificing fairness. For example, direct testimony by affidavit can streamline examination and allow judges to rule on objections efficiently. Courts could consider reasonable limits on expert witness testimony (e.g., one hour) to reduce unnecessary delays and keep proceedings focused, and the expert's CV could be provided to the judge in advance to reduce time on the stand. Courts could also explore holding limited evidentiary hearings on issues of material fact prior to trial, which can resolve pivotal questions earlier and help focus the proceedings. Participants noted that many of these approaches challenge traditional assumptions about how litigation must operate, while still preserving fairness and meaningful participation for litigants.

IAALS on Tailored Procedures

- Reforming Our Civil Justice System: A Report on Progress and Promise[28]
- Call to Action: Achieving Civil Justice for All[29]
- Efficiency in Motion: Recommendations for Improving Dispositive Motions Practice in State and Federal Courts[30]

Provide Financial and Scheduling Certainty

A number of participants noted that a firm trial date is one of the most effective tools available to a business court. It can focus the parties, discourage tactical delay, and often accelerate settlement. Some attendees suggested that courts could pair scheduling discipline with early ADR and structured fee agreements and noted that clearly defined parameters on attorney fees give litigants meaningful cost predictability. Attendees also emphasized that procedural tools can be applied flexibly, recognizing that not all business disputes require the same level of process or judicial involvement. Participants noted the judge can play a role in helping tailor the procedures through active case management.

Use Technology to Improve Administration

Modernize Statutory and Jurisdictional Frameworks

Much of the conversation centered on opportunities to modernize the laws. For example, some participants pointed out that business litigation is inherently well-suited to virtual processes, but outdated statutes in many jurisdictions have not kept pace. Some states still require in-person appearances or mandate that virtual proceedings occur within the courthouse, limiting the flexibility and efficiency that technology can provide. Several participants suggested that courts could actively work to update these frameworks, and advocate for statutory reform where necessary, to remove barriers to remote participation and fully realize the administrative benefits of a modern, digital court.

Adopt Virtual Solutions for Depositions and ADR

Attendees pointed to eliminating or reducing travel requirements for depositions as one of the most immediate ways courts can reduce litigation costs, noting that virtual depositions have proven to be an effective substitute.[31] This digital-first approach could

be extended to ADR as well. Both mediation and arbitration can be conducted in a hybrid format or entirely virtually. Participants posited that expanding the use of Online Dispute Resolution and exploring how AI can be integrated into case management and ADR processes could further reduce costs and improve accessibility for all parties. Technology can be used not only to replicate existing processes digitally, but to rethink workflow and reduce unnecessary administrative burdens throughout the dispute resolution process.

Demonstrate Proactive Judicial Case Management

Commit to Active and Individualized Oversight

Effective case management begins with the recognition that no two cases are alike. Participants urged judges to consider being active managers of both the calendar and the substance of the case, tailoring their approach to the specific demands of each matter. It may be helpful to adopt a "one judge, one case" approach to maximize efficiency and continuity. The discussion emphasized maintaining manageable caseloads as essential to this. Judges with overly burdensome caseloads may not have the capacity to provide the level of oversight that complex business cases require. Consistency in procedures creates the predictability that litigants depend on, while individualized attention addresses the particular barriers (court congestion, discovery delays, attorney inertia) that most commonly slow resolution.

IAALS on Case Management

- Redefining Case Management[32]
- Working Smarter Not Harder: How Excellent Judges Manage Cases[33]



Prioritize Early Intervention and Procedural Tools

Participants discussed that early engagement between the judge and the parties can be crucial for improving case management and suggested that Rule 16 conferences, pre-trial management orders, and robust meet-and-confer requirements are all tools that can be deployed early and consistently. In complex cases, getting more judicial resources involved at the outset can help surface issues before they become entrenched. Early evidentiary hearings can be particularly effective in surfacing the core disputes and focusing the proceedings. Judges can also consider requiring scheduling orders from the outset and pushing back when parties request distant trial dates without clear justification.

Enhance Transparency and Financial Accountability

Many attendees agreed that judges can play an important role in aligning the litigation process with the actual interests of business clients, not just their counsel. Asking attorneys about their fees or anticipated expert witness costs while the client is present, though understandably unpopular with attorneys, can create a level of accountability that clients often welcome. Some attendees said judges could also recognize that motions to dismiss often do not resolve disputes entirely and may instead prolong the litigation process if not managed strategically. Throughout the convening, proactive case management repeatedly emerged as one of the most significant drivers of efficiency and predictability, as well as litigant confidence in business dispute resolution.

Encourage Attorneys to Work Toward an Efficient and Accessible Process

Foster Transparency and Client Involvement

A few participants suggested that attorneys could consider making a practice of bringing clients to hearings and arbitration proceedings, particularly in high-stakes or high-dollar matters. When clients are present, they may develop a clearer understanding of the issues, the pace of litigation, and the real costs involved, including the fact that they are billed for every interaction. This transparency often shifts client priorities in ways that support earlier resolution. Direct conversations about costs and mediation options are more productive when clients are in the room, and their presence can be a meaningful catalyst for settlement. Participants noted that attorneys also play an important role in helping clients develop realistic expectations about cost and timing, as well as potential outcomes throughout the dispute resolution process.

Prioritize Early Resolution and Forward Motion

The conversation emphasized that getting in front of a judge early is one of the most effective things an attorney can do to move a case toward resolution. Attorneys can view resolution efforts as an ongoing part of the litigation process rather than a last resort. Attendees felt that the broader system works better when trial attorneys commit to realistic schedules and resist the temptation to use procedural mechanisms for tactical delay. A number of participants commented that firm trial dates drive efficiency when attorneys honor the process that produces them. The Wyoming Chancery Court's rules reflect one example of this approach, directing the court to convene the parties and issue a scheduling order within 14 days after any defendant answers or enters an appearance.[34]

Establish Clear Expectations About Options

A key takeaway from the discussion was that fee disputes and uncertainty can significantly increase friction and cost in business litigation. Attorneys can build clarity into their engagements from the start by including specific definitions of reasonable attorney fees in their agreements and reaching early consensus on fee-shifting parameters, whether in court or in arbitration. Several participants commented that attorneys have a responsibility to educate their clients about the full range of dispute resolution options available to them. Clients who

understand the landscape, including ADR, Online Dispute Resolution, and other alternatives, are better positioned to make informed decisions about how to proceed.

Collaborate and Educate

Develop Robust Judicial Selection and Training

Identifying and developing the right judges is foundational to a business court's success. The discussion covered many ways to do this. Selection processes may include a prioritization of judges who are genuinely engaged with business cases and interested in the specialized demands of the docket, whether through formal vetting, self-selection, or input from nominating commissions and local bars. Once in place, some attendees said it would be beneficial for judges to receive targeted training on business dockets and complex case management, and to be encouraged to engage continuously with evolving best practices. Given the relatively small number of business courts nationally, sharing knowledge and resources across jurisdictions is especially important.

Foster Strategic Partnerships and Funding

A key theme of the discussion was that business courts cannot succeed in isolation. Buy-in from the local bar is essential, and courts could consider establishing advisory committees or task forces that include local chambers of commerce and other business stakeholders. Partnerships between local and national business court organizations—for example, the American College of Business Court Judges[35] and the ABA Business Litigation Section[36]—can help build consistency and share lessons across jurisdictions. A few participants spoke to the importance of keeping legislators informed of the court's work and impact, both to sustain existing funding and to make the case for expansion. Several attendees commented that increasing filing fees is one practical funding mechanism worth exploring, and attorneys and the business community could be directly involved in the rule-making process to ensure the system remains workable and credible.

Commit to Continuous Outreach and Education

Building long-term public confidence in business courts requires sustained communication. Judges and court administrators could consider conducting regular speaking tours and engaging proactively with the legal community, the business community, and the public. Several attendees also noted that outreach to bar associations and arbitration groups helps demonstrate how business courts and ADR can work together, and builds the kind of cross-system consistency that benefits litigants everywhere.

Build the Case for Tailored Approaches

When seeking buy-in from skeptics, attendees shared that concrete evidence is the most persuasive tool available. Courts would do well to be prepared to demonstrate how much of the general docket business cases currently occupy and to then make clear that moving these cases into a specialized court benefits everyone, not just business litigants. Reduced caseloads in general jurisdiction courts mean faster resolution across the board. Framing the business court not as a privilege for corporations but as a practical efficiency measure for the entire system is a message that attendees felt would resonate with judges, legislators, and the public.

IAALS on Judicial Selection

- The O'Connor Judicial Selection Plan[37]
- Selection & Retention of State Judges: Methods from Across the Country[38]
- Cornerstones of State Judicial Selection[39]

4 WHAT'S NEXT?

The discussion at the Future of Business Disputes convening centered around the need for a streamlined, responsive, and predictable justice system. The practices and strategies outlined in the prior section represent examples of how to achieve that system. While traditional litigation often creates friction, the specialized pathways and proactive strategies discussed at the convening offer a route to transform dispute resolution into a streamlined business function.

The transition from business as usual to a modern, tailored system requires intentional and collaborative action across the following sectors.

Leaders and Innovators

- ***Lead by example.*** Pilot new approaches within existing systems and share results (both successes and failures) so promising models can be tested, refined, and scaled rather than reinvented in isolation.
- ***Build coalitions.*** Connect judges, attorneys, business leaders, and policymakers who might not otherwise collaborate, creating the cross-sector relationships needed to move ideas from concept to implementation.
- ***Champion the vision.*** Serve as vocal advocates for a more responsive dispute resolution system, using convenings, publications, and professional networks to keep the momentum for change alive between formal reform efforts.

Judges and Court Administrators

- ***Assess and adapt.*** Evaluate current dockets to identify opportunities for right-sizing cases, ensuring that court resources and procedures match the complexity of each specific dispute and that the court is modifying to meet the needs of the people who are served.
- ***Commit to data.*** Embrace rigorous data collection on filings, motions, and time-to-resolution to assess the return on investment of specialized courts and inform future legislative funding requests.
- ***Modernize infrastructure.*** Actively work toward updating rules, procedures, and court practices to allow for remote depositions, virtual mediation, and technology-driven case management.

Attorneys

- ***Prioritize transparency.*** Adopt a client-first approach by bringing clients to hearings and maintaining transparency regarding litigation costs and attorney fees.
- ***Focus on resolution.*** Shift the culture from tactical delay to proactive problem solving, using early ADR and mandatory initial disclosures to avoid high costs and extended time to resolution.
- ***Engage in policy.*** Participate in court advisory committees and the rulemaking process to ensure that new business court models remain practical and efficient.

Business Leaders

- ***Advocate for specialized pathways.*** Foster working relationships with the legislature to inspire funding and support for business courts and specialized dockets.
- ***Contract for efficiency.*** Ensure that business contracts include terms defining reasonable attorney fees and mandate the use of tailored ADR methods before litigation begins.
- ***Demand education.*** Support outreach initiatives that ensure the broader business community understands its options for resolving cases quickly and maintaining vital professional relationships.

As the convening drew to a close, attendees were asked what excited them about the discussions that took place. They shared that despite the diversity of stakeholders present, attendees repeatedly found common ground on the core challenges facing business dispute resolution and the need for more flexible, tailored approaches moving forward. They were optimistic that identifying these issues and working on them together would lead to a better system. They also appreciated the openness to exploring multiple pathways for resolving business disputes, including both in-court and out-of-court approaches, as well as opportunities to improve existing systems rather than simply replace them.

The foundation for the future of business dispute resolution is being laid now, and this convening represents an important step in that process. IAALS views this convening as the beginning of a longer conversation, not the end of one. As resources and partnerships allow, we intend to continue learning from the courts and communities testing new approaches, sharing what is working, and helping connect those who are ready to move these ideas forward.



ENDNOTES

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JUDGE
HEATHER WELCH (RET.)
JUDGE
LISA WALSH
LCH
JUDGE
LISA WALSH




JUDGE
GRANT DORFMAN
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