

Commercial Litigation Process: Federal vs. State Court

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Your business faces a major contract dispute, intellectual property theft, or partnership disagreement that cannot be resolved through negotiation. Now you need to file a lawsuit, and one critical strategic decision arises: should you pursue your commercial litigation in federal court or state court? This choice fundamentally shapes how your dispute unfolds.

The commercial litigation process differs significantly between federal and state courts—this can affect timeline, costs, jury composition, procedural complexity, and ultimately your chances of achieving favorable business outcomes. Federal courts offer consistent nationwide procedures and experience with complex commercial matters, while state courts may provide faster resolution, specialized business dockets, and juries familiar with local business practices.

Why this forum choice matters for commercial disputes goes beyond legal technicalities. The right court can provide industry-experienced judges, business-focused juries, streamlined procedures for commercial cases, and stronger precedent for your specific business claims. For companies engaged in interstate commerce, intellectual property disputes, or complex commercial matters, the federal court often provides advantages. For local business disputes, contract claims, or matters requiring quick resolution, the state court may offer superior results.

Consider a typical commercial scenario. A software company discovers that a former business partner is using proprietary technology in violation of licensing agreements and federal trade secrets law. The company could file in state court, focusing on breach of contract and misappropriation, or in federal court, emphasizing trade secrets protection and potential copyright issues. State courts might resolve contract claims faster with a local jury understanding regional business practices. A federal court could provide broader remedies, nationwide injunctive relief, and judges experienced with complex technology disputes.

As litigation attorneys who have handled commercial disputes in both federal and state courts, we have seen how forum selection shapes outcomes. A reactive approach files wherever is most convenient, missing opportunities to leverage procedural advantages; a strategic approach analyzes the litigation requirements, business objectives, and jurisdictional considerations before

selecting the forum. The difference is not just legal knowledge—it is understanding how court systems handle business disputes in practice.

Understanding Jurisdiction in Commercial Litigation

Federal Courts: Where Interstate Business Disputes Are Heard

Federal courts handle commercial litigation in two main ways: through federal question jurisdiction (disputes involving federal issues specifically – including federal business laws or issues such as patent infringement, which are exclusive to the federal system) and diversity jurisdiction (business disputes between parties from different states involving more than \$75,000).

Common federal commercial cases include:

- Intellectual property disputes (patents, copyrights, trademarks)
- Securities fraud and federal securities law violations
- Antitrust and competition claims
- Federal tax disputes
- RICO (Racketeer Influenced and Corrupt Organizations Act) claims
- Interstate contract disputes exceeding \$75,000
- Federal regulatory compliance matters
- Bankruptcy proceedings (exclusive federal jurisdiction)

Federal courts are courts of limited jurisdiction. They must dismiss commercial cases they lack jurisdiction to hear, regardless of complexity or business importance. Such cases often become the province of the state courts.

State Courts: The Primary Forum for Most Business Disputes

State courts handle the majority of commercial litigation, including most day-to-day business disputes. By contrast with federal courts, state courts are courts of general jurisdiction, meaning they can hear virtually any commercial matter unless it's specifically reserved for federal courts.

Typical state commercial litigation includes:

- Breach of contract between in-state businesses
- Business partnership and LLC disputes
- Commercial real estate litigation
- Fraud and misrepresentation claims
- Breach of fiduciary duty

- Trade secret misappropriation (when no federal claims)
- Unfair competition under state law
- Commercial lease disputes
- Vendor and supplier contract disputes
- Most business tort claims

State courts also handle cases that mix state and federal issues, though defendants might try to move such cases to federal court. In some situations, both state and federal courts may have concurrent jurisdiction over the same dispute, particularly in cases involving both constitutional claims and state law violations, allowing parties to make strategic choices about which system to use.



The Commercial Litigation Process: Strategic Decision Framework

Step 1: Assess Your Jurisdiction Options for Business Disputes

Can you file your commercial litigation in federal court? Ask these questions:

- Does your dispute arise under federal business law (patents, securities, antitrust)?
- Are all plaintiffs from different states than all defendants, with more than \$75,000 at stake?
- Does your case involve exclusive federal jurisdiction (bankruptcy, patents)?
- Do you have both federal and state claims that could be heard together?
- Is there a forum selection clause in any prevailing contract?

If federal court isn't available for your commercial matter, state court is your only option. If both forums are available for your business dispute, you need a strategic analysis of which offers better advantages for commercial litigation.

Step 2: Evaluate Practical Considerations in Commercial Cases

Business Court Specialization:

- Some states operate specialized business courts (Delaware Chancery Court, North Carolina Business Court, New York Commercial Division)
- Judges with deep commercial law expertise
- Streamlined procedures designed for business disputes
- Faster resolution of complex commercial matters

Jury Pools for Commercial Litigation:

- Federal juries draw from entire districts, providing diverse business perspectives
- State juries typically come from single counties, and can reflect local business culture
- Consider whether your commercial case benefits from urban vs. rural business attitudes, and where the case would be brought
- Evaluate jury sophistication with complex business concepts and financial issues

Timeline for Commercial Litigation Process:

- Federal judges often actively manage complex commercial cases with strict deadlines
- Some state business courts operate faster dockets for commercial matters
- Federal discovery in commercial cases tends to be very comprehensive but also very expensive
- State procedures may phase commercial discovery differently, affecting settlement timing
- Urban state courts often face severe case backlogs that can delay business trials for years

Judge Experience:

- Federal judges typically see more complex cases and may be more comfortable with intricate legal issues
- State judges often have deeper experience with local law and community-specific disputes
- State judges in states with dedicated courts may have significant experience with those issues, and offer focused expertise

Step 3: Consider Legal Advantages

Precedent and Law:

- Federal courts provide a wide-ranging and nationwide interpretation of federal law
- State courts may have more favorable precedent for state-specific claims, and vary by state
- Mixed federal/state cases can be complicated—where do you want them decided?

Procedural Rules:

- Federal Rules of Civil Procedure are substantially uniform nationwide, though details of implementation may vary by district

State rules often vary significantly and may offer tactical advantages or disadvantages, with motion practice and pretrial procedures differing not only between states but often between counties within the same state

- Discovery rules, motion practice, and trial procedures can differ significantly

Settlement Leverage:

- Forum choice can affect how defendants view the case
- Your forum choice signals case strategy and settlement expectations



The Commercial Litigation Process: Filing Your Business Dispute

Federal Court Filing Process for Commercial Cases

Before filing your commercial litigation:

1

Confirm federal jurisdiction for your business dispute

2

Identify the correct federal district for your commercial matter

3

Verify all procedural requirements are met

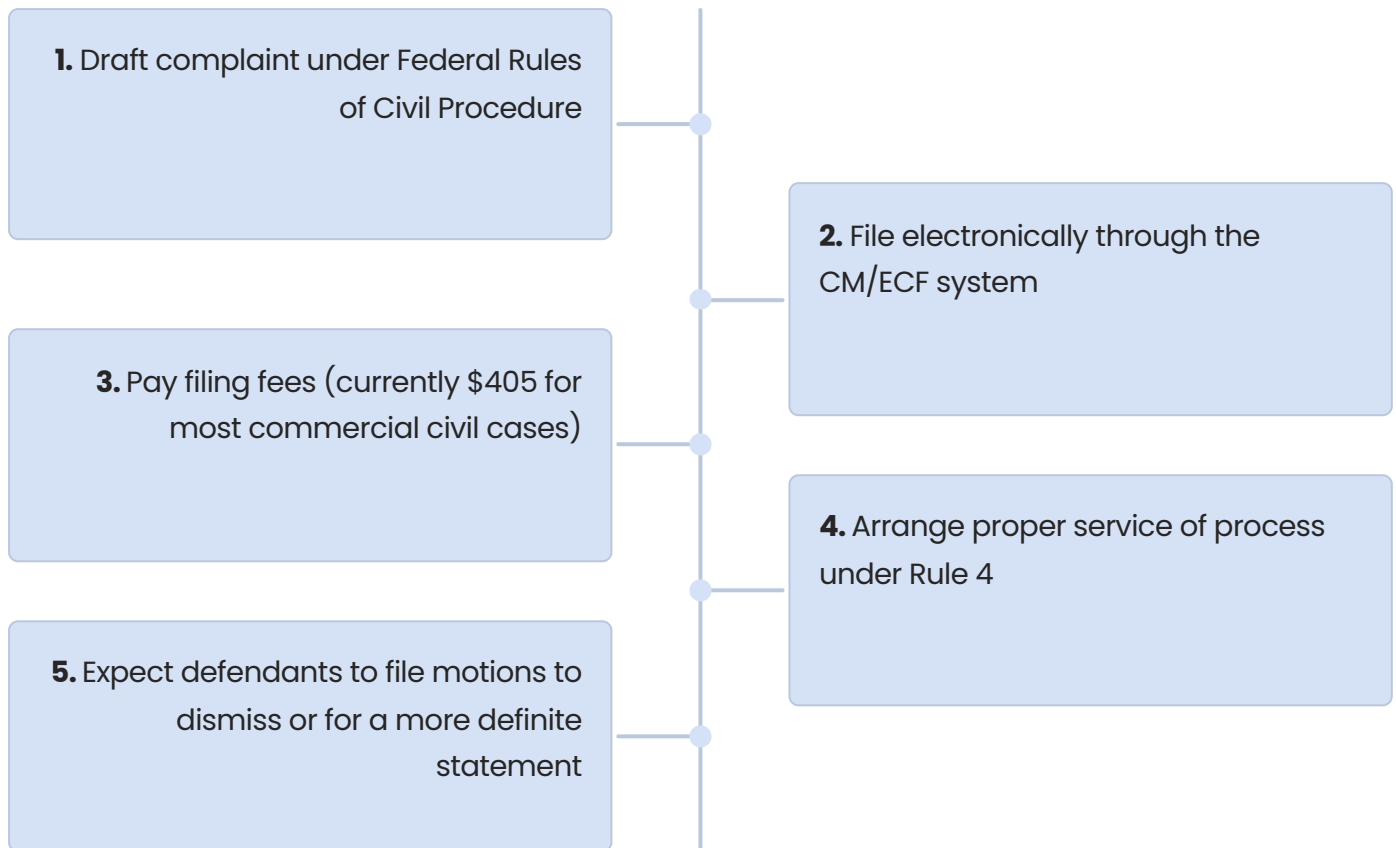
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Estimate damages accurately for diversity jurisdiction commercial cases

5

Research local rules specific to commercial litigation in that district

Commercial litigation filing steps:



What to expect in federal commercial litigation:

- Rule 26(f) conference held at least 21 days before the scheduling conference is held or the scheduling order is due, with the court's scheduling order issuing within 90 days after any defendant is served (or 60 days after any defendant appears)
- Scheduling order setting commercial case timeline
- Active case management by a magistrate or a district judge
- Structured discovery process with mandatory initial disclosures
- Regular status conferences for complex commercial matters

State Court Filing Process for Business Disputes

Requirements vary by state for commercial litigation, but generally:

1. Check state-specific jurisdiction and venue requirements for business cases
2. Research whether specialized business courts are available
3. Draft complaint under state pleading rules
4. File with the appropriate court clerk (increasingly electronic)
5. Pay state filing fees (varies widely by state and commercial case type)
6. Arrange service under state rules



State commercial litigation variations:

- Some states require more detailed pleadings for business disputes than the federal court
- Certain commercial case types may require pre-suit notice or administrative procedures
- Local rules can significantly affect commercial litigation procedure, and in large states like California, New York, and Texas, these variations can differ dramatically even between counties within the same state
- Some states offer expedited tracks specifically for commercial disputes

Removal and Remand: The Forum Fight

When Defendants Can Move Cases to Federal Court

Defendants can "remove" cases from state to federal court if:

- The case could have been filed in federal court originally
- All defendants agree to removal (with limited exceptions) or they prevail on a contested motion for removal
- They must act quickly—usually within 30 days of being served

Strategic removal considerations:

- Defendants often prefer the appropriate federal court's procedures and broader jury pools
- Removal can delay cases and increase costs

How Plaintiffs Can Keep Cases in State Court

Plaintiffs who want to stay in state court can:

- Avoid pleading federal claims
- Structure parties to prevent complete diversity
- Sue local defendants to destroy diversity
- Sue defendants in their home state to prevent removal
- In rare cases, limit damages to under the federal limit

Federal Court Economics

Typical costs in federal cases are higher because:

- More extensive discovery requirements
- Earlier and more comprehensive document production
- Higher attorney fees due to complexity
- Longer cases due to thorough procedures

But federal courts may offer:

- More predictable timelines
- Consistent procedural rules
- Experienced judges handling complex matters
- Better case management to prevent runaway costs

State Court Variables

Costs vary dramatically by:

- State procedural rules
- Local court efficiency
- Case complexity and local practices

Timeline factors include:

- Court backlogs (varies enormously by location)
- Local scheduling practices
- Complexity of state procedural rules
- Judicial resources and case management approaches



Strategic Considerations for Different Types of Commercial Litigation

Complex Business Contract Disputes

Federal court advantages:

- Largely consistent contract law interpretation
- Experience with multi-million dollar commercial cases
- Diverse jury pools less influenced by local business relationships
- Strong case management for document-intensive contract disputes
- Better resources for complex financial analysis

State court advantages:

- Specialized business courts with contract law expertise (in select states)
- Potentially faster resolution for straightforward breach claims
- Juries familiar with local business customs and trade usage
- Less expensive discovery procedures

Intellectual Property Commercial Litigation

Federal court generally required or preferred:

- Patents, federal trademarks and registered copyrights often require exclusive federal jurisdiction
- Federal judges more experienced with IP valuation and technical issues
- Nationwide injunctive relief available
- Substantially consistent application of federal IP law

Trade secrets can often be litigated under either federal or state law

State court considerations for trade secrets:

- Can be faster resolution when no federal claims exist
- Local juries may better understand regional industry practices
- State Uniform Trade Secrets Act can provide strong protection
- Can be combined with breach of contract and non-compete claims

Business Partnership and Corporate Disputes

State court advantages:

- State law governs most LLC, partnership, and corporate disputes
- Delaware Chancery Court provides unparalleled expertise for corporate matters
- Specialized business courts in several states handle these efficiently
- Faster resolution without federal procedural complexity
- Judges familiar with state business entity statutes

Federal court is possible when:

- Diversity jurisdiction exists (parties from different states, >\$75,000)
- Federal securities law violations alleged
- RICO claims included in business dispute
- Bankruptcy proceedings affect partnership dissolution

Making the Strategic Choice

Questions to Ask Yourself

1. **Where can I legally file?** (Jurisdiction requirements)
2. **Which court offers better procedural advantages?** (Rules, timeline, discovery)
3. **Where will I find a more favorable jury?** (Geographic and demographic considerations)
4. **Which court has better precedent for my claims?** (Case law advantages)
5. **What are my priorities?** (Speed, cost, publicity, precedent value)
6. **How will defendants likely respond?** (Removal possibilities, forum preferences)

Red Flags and Common Mistakes

Avoid these errors:

- Filing in federal court without proper jurisdiction
- Ignoring removal possibilities when filing in state court
- Choosing forum based on convenience rather than strategy or requirements
- Failing to research local rules and practices
- Missing critical deadlines for removal or remand motions

The Bottom Line

Forum selection is one of the most critical strategic decisions in litigation. The right choice can provide procedural advantages, better juries, favorable precedent, and stronger settlement leverage. The wrong choice can doom an otherwise strong case.

Federal courts offer consistency, experience with complex matters, and broad geographic reach. State courts offer local expertise, potentially expedited resolution, and a more nuanced understanding of community-specific issues. Neither is inherently better. Success depends on matching your case to the right forum.

The key is to think strategically before filing. Once you're in court, changing forums becomes much more difficult and expensive. Invest time upfront analyzing your options, researching local practices, and understanding how forum choice affects your overall case strategy.

Remember that litigation is ultimately about achieving your client's business or personal objectives, not just winning legal arguments. Choose the forum that best positions you to achieve those broader goals.

Strategic Legal Partnership

At Dunlap Bennett & Ludwig, we help clients navigate complex forum selection decisions that can determine case outcomes. Our litigation team has extensive experience in both federal and state courts across multiple jurisdictions.

Facing a forum selection decision or complex litigation challenge? Contact our experienced trial attorneys to discuss how strategic forum selection can improve your chances of success and support your broader business objectives.



Dunlap Bennett & Ludwig is a veteran-owned law firm with offices across multiple states. Our team understands both the strategic and procedural challenges of forum selection and commercial litigation in federal and state courts.

To learn more about Dunlap Bennett & Ludwig, call [888-306-4030](tel:888-306-4030) or email clientservices@dbllawyers.com.