

Judge Bernice B. Donald



Hon. Bernice B. Donald (Ret.) is a nationally recognized retired Federal Judge providing mediation, arbitration, special master, moot court strategy and advisory services in high profile, complex matters in national and international litigation. Based in Memphis, Judge Donald's expertise broadly spans many areas of law, including commercial, appellate, bankruptcy, class actions, corporate contract, employment, securities, antitrust, pharmaceutical, e-discovery, insurance, intellectual property, product liability, trade secrets and trademark disputes.

Judge Donald retired from the United States Court of Appeals for the Sixth Circuit in January 2023 after serving for more than 10 years. Prior to that, Judge Donald was appointed in 1995 to the U.S. District Court for the Western District of Tennessee. She previously served as Judge of U.S. Bankruptcy Court for the Western District of Tennessee, becoming the first African American woman in the history of the United States to serve as a bankruptcy judge.

As a former judge of the U.S. Court of Appeals, U.S. District Court, and U.S. Bankruptcy Court, Judge Donald tried, decided and authored hundreds of opinions in all matters that came before the federal courts, including appellate, bankruptcy, class actions, ERISA, corporate contract, employment, insurance, banking & financial institutions, securities, antitrust, trade secrets, pharmaceutical development and licensing, patent and other intellectual property litigation and licensing, merger and acquisition transactions, partnership disputes as well as other cases under federal Statutes and Laws.

Her diversified and extraordinary law career acquired through more than 40 years of private practice and while serving in the federal judiciary makes her exceptionally well-qualified to assist parties and their counsel in resolving cases through arbitration, mediation and other dispute resolution processes.

Areas of Expertise:

- ANTITRUST
- APPELLATE
- BANKING/LENDER LIABILITY
- BANKRUPTCY/RESTRUCTURING
- CIVIL RIGHTS
- CLASS ACTION
- COMMERCIAL DISPUTES
- COMPLEX LITIGATION
- CONSTRUCTION
- CONTRACTS

- CORPORATE INVESTIGATIONS/WHITE COLLAR
- EMPLOYMENT
- ENERGY, OIL, GAS & WATER
- ENVIRONMENTAL/CERCLA
- INSURANCE/REINSURANCE
- INTELLECTUAL PROPERTY
- INTERNATIONAL ARBITRATION
- MARITIME
- MASS TORTS
- MDL
- MONITORING
- PATENT/SEP
- PHARMACEUTICALS
- PRODUCT LIABILITY
- REAL ESTATE
- SECURITIES/FINANCIAL SERVICES
- SPECIAL MASTER
- TELECOMMUNICATION
- TRADE SECRET
- TRADEMARK & COPYRIGHT

Representative Cases

Antitrust

- *Boulevard Souvenirs v. Elvis Presley Ent.*, Antitrust action filed against Elvis Presley Enterprises, Inc.
- *Roberson v. Medtronic Inc.*, Medical Device Manufacturing case.
- *Memphis Zane May v. IBC Mfg. Co.* (1996), Landowner brought action against owners and former tenants of neighboring properties to recover response costs CERCLA and damages under tort theories of private nuisance, strict liability, negligence, and contamination based on environmental contamination.
- *In the Matter of Crouse Corporation, TVA v. Vulcan*, Tennessee Valley Authority (TVA) brought suit against barge fleeting service for damages to utility tower caused by a runaway barge colliding with the tower.
- *Schaeffner v. American Honda Co.* (1997), Automobile dealer brought action against manufacturer and competing dealers to recover for breach of contract and restraint of trades in violation of the Sherman Antitrust Act. Horizontal restraints of trade are per se illegal.

- *In re Great American Pyramid Joint Venture*, Managed the Chapter 11 restructuring of the Great American Pyramid, a sports and entertainment complex. Ultimately, there were six (6) cases including issues of contracts, construction, lender liability, financing, and governmental relations.

Class Action/Collective Action

- *Monroe v. FTS*, FLSA claim against employer parent company for implementing a company-wide policy that required employees to underreport their over-time. Case qualified as collective action, jury verdict, damage awarded, affirmed on appeal.
- *Ham v. Swift Transportation*, Class action litigation related to the issuance of commercial drivers' licenses in Tennessee. Case resolved through settlement with inter alia payments to qualifying class members along with remedial training.

Employment

- *Tam v. Harrah's Tunica Corp*, ADEA case resulting in summary judgment because of Plaintiff's failure to prove she was qualified for the job at the point of termination.
- *EEOC v. Ralph Jones*, EEOC made prima facie case under 42 U.S.C §2000e-2 by providing proof that company foreman referred to African American employees using the "N—" word, carried a gun, and made racist threats, provoking one employee to strike him.
- *Bower v. Federal Express Corporation*, Plaintiff asserted claims under the §12101-12213, the Rehabilitation Act of 1973, 29 USC §794, the Air Carriers Access Act of 1986 (ACCA), and the TN Handicap Discrimination Act. Whether proposed free third party commercial air for disabled employees was reasonable accommodation.
- *Swanigan v. Northwest Airlines, Inc.*, Employee estopped from pursuing employment discrimination because claim was not disclosed in the bankruptcy case.

Environmental Law/Class Action

- *Gatewood v. Velsicol Chem* (2008), Class certified involving alleged releases of chemical dieldrin from Velsicol's Memphis plant affecting 195 class members. \$2.1 million dollar settlement for class members, plus Cypress Creek Cleanup.

False Claims Act

- *United States ex rel. Whitecomb v. Physiotherapy Assoc.* (2008), Allegation that dependents knowingly or conspired to submit false and fraudulent claims to federal health care programs. After substantial discovery and motions to narrow issues, the case settled.

First Amendment

- *Entertainment Productions, Inc. v. Shelby County*, Although certain adult entertainments (strip clubs) might have sustained harm from adoption of the Tennessee Adult-Oriented Establishment Registration Act, injunction denied as plaintiffs could not show likelihood of success on the merits.

Financial Services

- *Jackson v. Novastar Mortgage, Inc.* (2007), Where a lender intentionally discriminated against minority subprime borrowers by offering loans on less favorable conditions than offered to similarly situated non-minority borrowers, which was accomplished via radio advertisements on gospel radio stations whose listeners were predominantly African American.
- *Commodity Futures v. FxTrade Financial, et al* (2007), Action alleging false representations to potential and actual investors of FxTrade, and that the investments were allegedly misappropriated. 7 U.S.C. § 2(c) 2(B) and (C).

Insurance

- *Alvord Investments, LLC v. Hartford Financial Services Group, Inc., et al* (2009), Insurance action regarding coverage of franchisees. Effect on former franchisees.
- *Health Link Services, LLC v. United States Risk Underwriters, Inc.* (2007), Insurance coverage case.

Intellectual Property

- *Asentinel, LLC v. AnchorPoint, et al.*, Patent infringement case.
- *Star Athletica, LLC v. Varsity Brands, Inc.*, Issue: Whether Varsity owned a valid copyright in the designs of certain cheerleading uniforms. Whether the uniform, as clothing “possessed both utilitarian and aesthetic value.” Court held that the designs could not be conceptually or physically separated from the uniforms.
- *Jacobs v. Memphis Convention & Visitors Bureau*, Copyright infringement action in photographs of public buildings.
- *Law v. Broheart* (2009), Construction of parties rights under a licensing agreement regarding cell transplant therapy amidst trials, and approval by FDA.
- *Federal Express Corp. v. United States Postal Service*, Landham Act Case. FedEx may sue United States Postal Service for false advertising. Case affirmed on appeal.
- *Marilyn Johnson v. City of Memphis*, Three consolidated cases challenging the police promotion process utilized by the City of Memphis. Disparate impact based on race. Promotions test inherently biased.
- *J Line Pump Co. v. Shimmick Construct Co.*
- *Blanc v. Morgan*, International Child Abduction (Hague Convention)

Judicial Service:

- Sept. 2011 – Jan. 2023: *Circuit Judge*, United States Court of Appeals for the Sixth Circuit
- Jan. 1996 – Sept. 2011: *District Judge*, United States District Court for the Western District of Tennessee

- Jun. 1988 – Jan. 1996: *Judge*, United States Bankruptcy Court for the Western District of Tennessee
- 1982 – 1988: *Judge*, Division IX, General Sessions Criminal Court for Shelby County, Memphis, Tennessee

ADR Experience and Qualifications:

- As a U.S. Court of Appeals and District Judge, she has tried and settled hundreds of cases involving the full array of matters subject to federal jurisdiction including class action, Multi District Litigation, complex corporate, commercial, employment, intellectual property, mass tort, and securities cases.
- Prior to being appointed to the District Court, Judge Donald was appointed a U.S. Bankruptcy Judge in 1988, where she oversaw large corporate reorganization and bankruptcy cases.
- Completed 40-Hour training course - National Judicial College, May 2021

Honors and Awards:

- Sandra Day O'Connor Award, The National Judicial College (2022)
- Honorary Chair of the National Bar Association, Judicial Council (2021)
- National Bar Association Lifetime Achievement Award (2021)
- Leadership Memphis Change Maker Award (2021)
- The Judge Bernice B. Donald Diversity, Equity, and Inclusion Award (2020)
- Martin Luther King Luminary Award, City of Memphis (2020)
- Martin Luther King, Jr. Be the Dream Legacy Award (2015)

Historical Achievements:

- Appointed First African American Female Judge for the Sixth Circuit Court of Appeals
- Appointed First African American Female District Court Judge in the history of the State of Tennessee
- Appointed First African American Female Bankruptcy Judge in the United States
- Elected First African American Female Judge in the history of the State of Tennessee

Education:

- Duke University School of Law LLM, 2018
- Suffolk University, Honorary Doctors in Law
- University of Memphis, Cecil C. Humphreys School of Law, Juris Doctor, 1979
- University of Memphis, Bachelor of Arts, 1974