

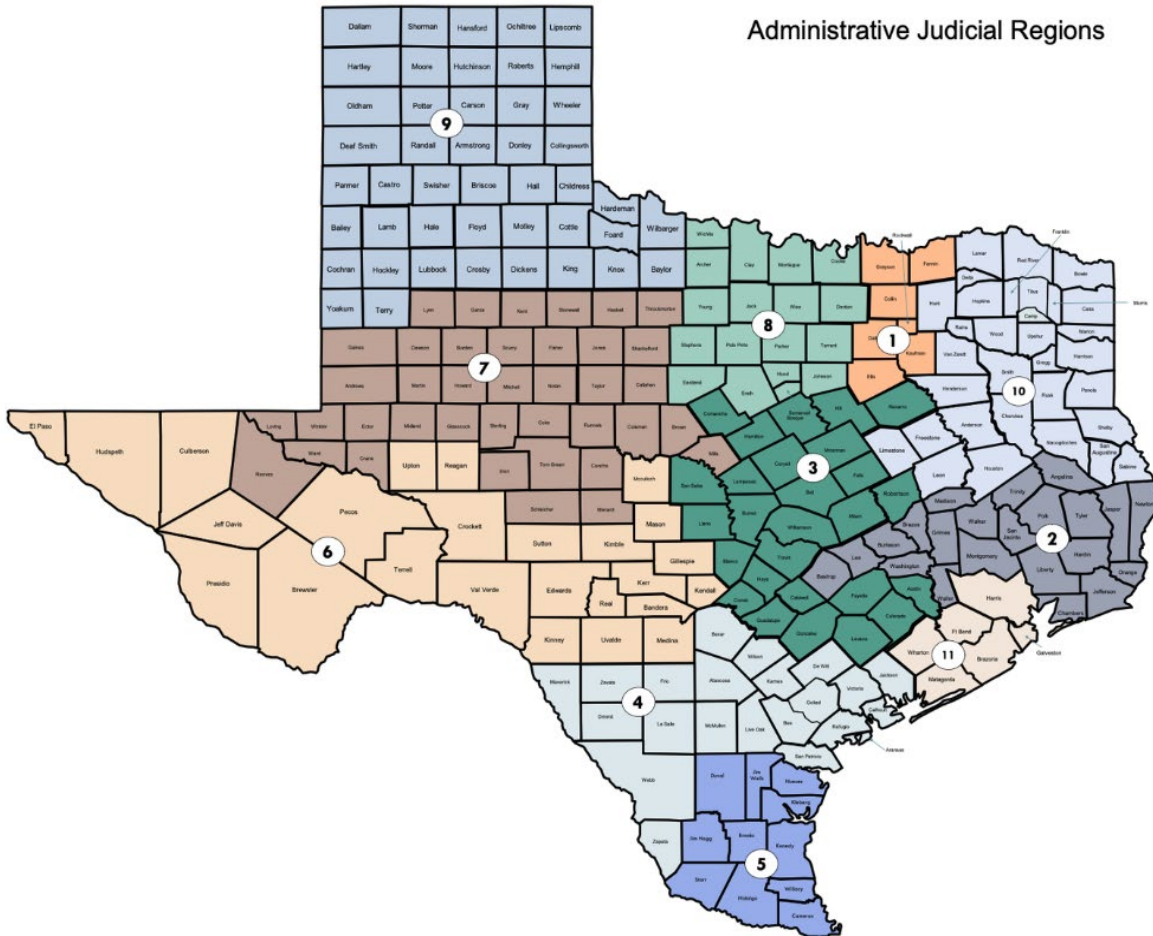
# The New Texas Business Court





# Texas Gov't Code Ch. 25A & Texas Rules of Jud. Admin.

- ▶ Enables formation of 11 geographically-divided specialty trial courts for resolving certain types of complex business disputes
- ▶ Effective date September 1, 2023 **BUT** applicable to actions commencing on or after September 1, 2024
- ▶ Five divisions commence operations on September 1, 2024; additional six divisions will not open absent further legislative action to appropriate funding

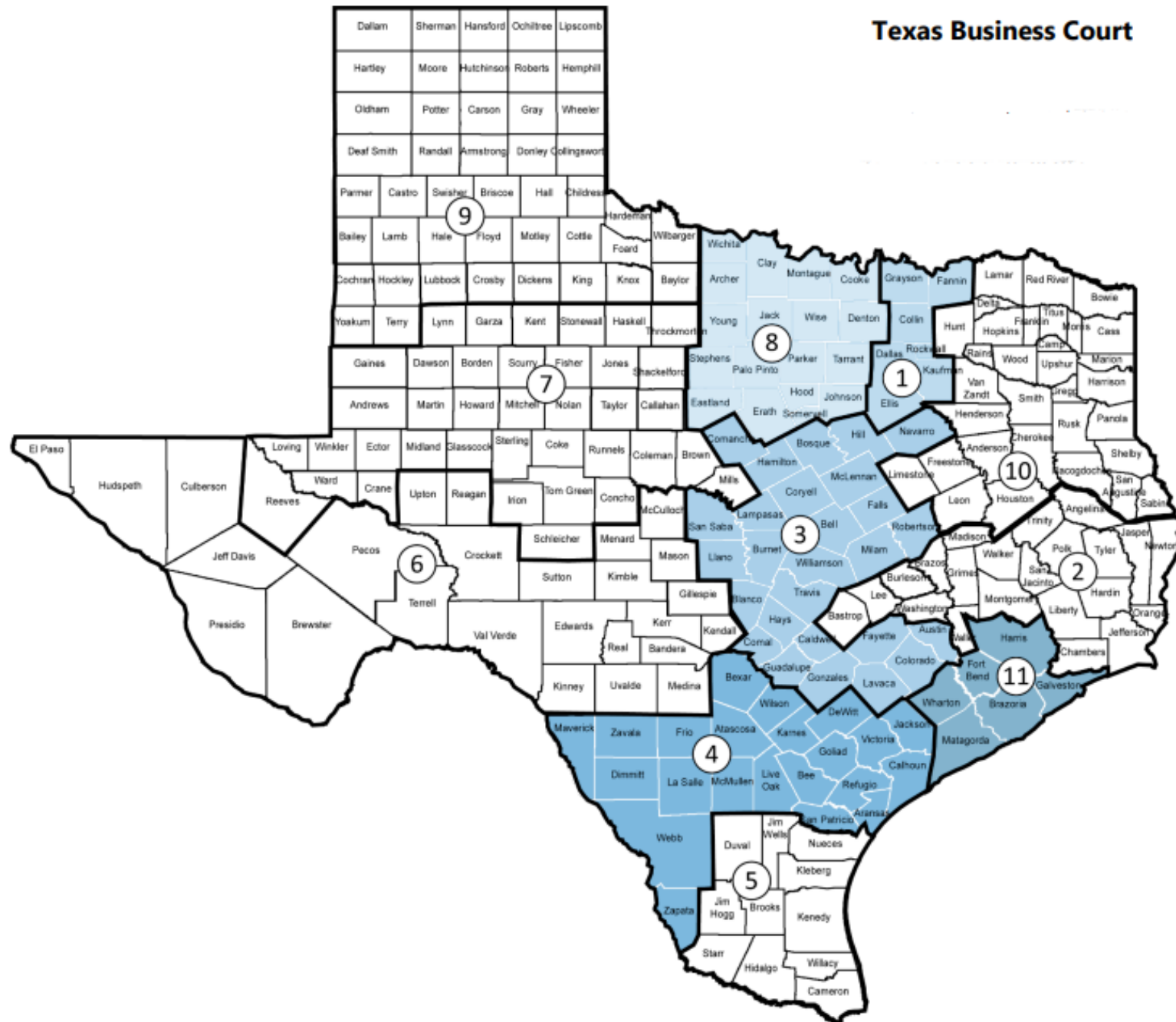


- ▶ Operations in remaining six divisions conditioned on passage of new appropriations and funding during the 2025 legislative session
- ▶ These rural divisions will have only one judge

[https://www.txcourts.gov/media/1441425/ajrs-04\\_25\\_18.pdf](https://www.txcourts.gov/media/1441425/ajrs-04_25_18.pdf)  
(last visited October \_\_, 2024).



100



# First Business Court Division in Dallas

Hon. Andrea Bouressa



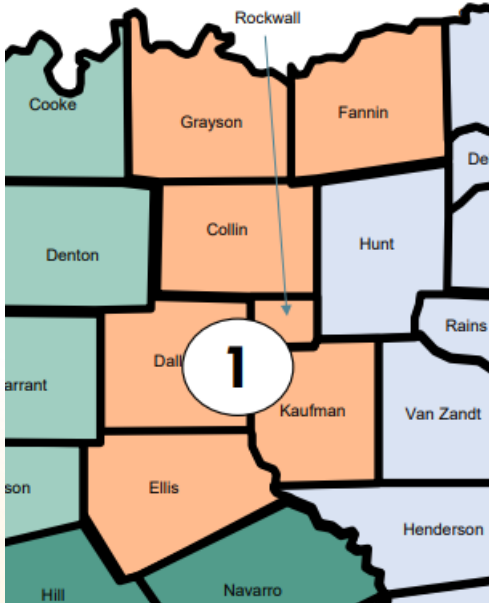
BCDivision1A@txcourts.gov

Hon. William Whitehill



BCDivision1B@txcourts.gov

## ► First Business Court Division, Dallas



Collin  
Dallas  
Ellis  
Fannin  
Grayson  
Kaufman  
Rockwall

The business court judges in Dallas have offices in commercial spaces in North Texas.

They may use local courtrooms for hearings at this time.

# Third Business Court Division in Austin

Hon. Melissa Andrews



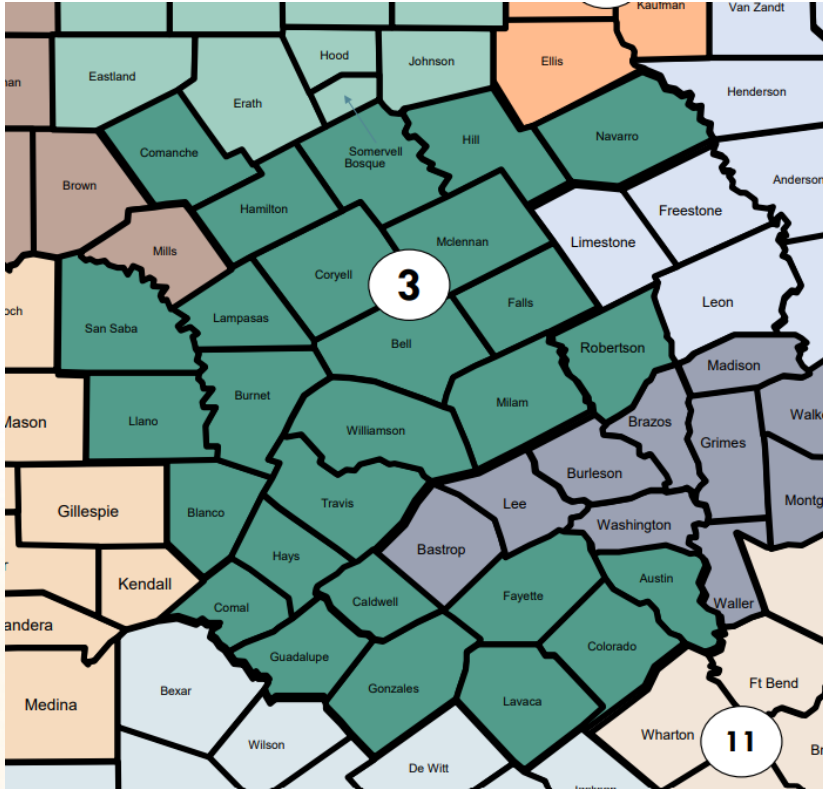
BCDivision3A@txcourts.gov

Hon. Patrick K. Sweeten



BCDivision3B@txcourts.gov

## ▶ Third Business Court Division, Austin



Austin  
Bell  
Blanco  
Bosque  
Burnet  
Caldwell  
Colorado  
Comal  
Comanche

Coryell  
Falls  
Fayette  
Gonzales  
Guadalupe  
Hamilton  
Hays  
Hill  
Lampasas

Lavaca  
Llano  
McLennan  
Milam  
Navarro  
Robertson  
San Saba  
Travis  
Williamson

- Court is located in Clements Building, 300 West 15th Street, Austin, Texas 78701
- Judges have access to hearing rooms from the State Office of Administration, but soon the court will have its own courtrooms



# Fourth Business Court Division in San Antonio

Hon. Marialyn Barnard



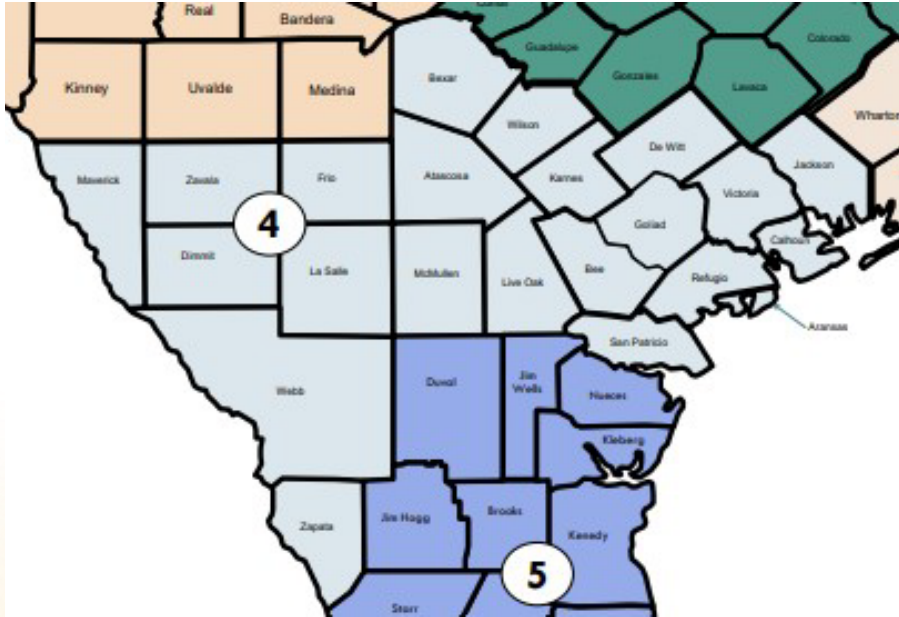
BCDivision4A@txcourts.gov

Hon. Stacy Roberts Sharp



BCDivision4B@txcourts.gov

## ► Fourth Business Court Division, San Antonio



Aransas	LaSalle
Atascosa	Live Oak
Bee	Maverick
Bexar	McMullen
Calhoun	Refugio
DeWitt	San Patricio
Dimmit	Victoria
Frio	Webb
Goliad	Wilson
Jackson	Zapata
Karnes	Zavala

- Offices are located in One Alamo Center, 106 South Saint Mary's Street, San Antonio, TX 7820
- This space will include a hearing room



# Eighth Business Court Division in Fort Worth

Hon. Jerry Bullard



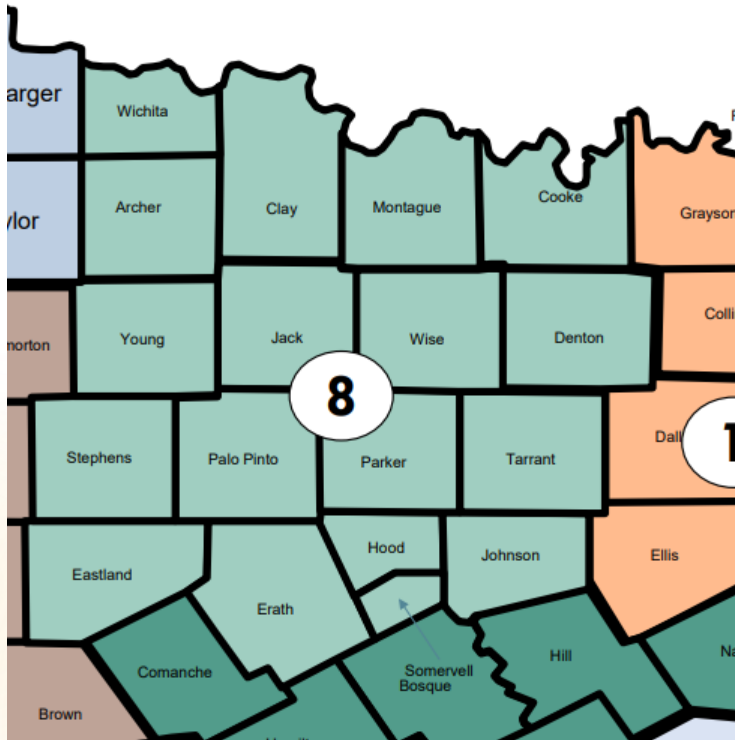
BCDivision8A@txcourts.gov

Hon. Brian Stagner



BCDivision8B@txcourts.gov

## ► Eighth Business Court Division, Fort Worth



Archer  
Clay  
Cooke  
Denton  
Eastland  
Erath  
Hood  
Jack  
Johnson

Montage  
Palo Pinto  
Parker  
Somervell  
Stephens  
Tarrant  
Wichita  
Wise  
Young

- Court is located at Texas A&M University School of Law, 1515 Commerce St, Fort Worth, TX 76102.
- Includes a courtroom



# Eleventh Business Court Division in Houston

Hon. Sofia Adrogué



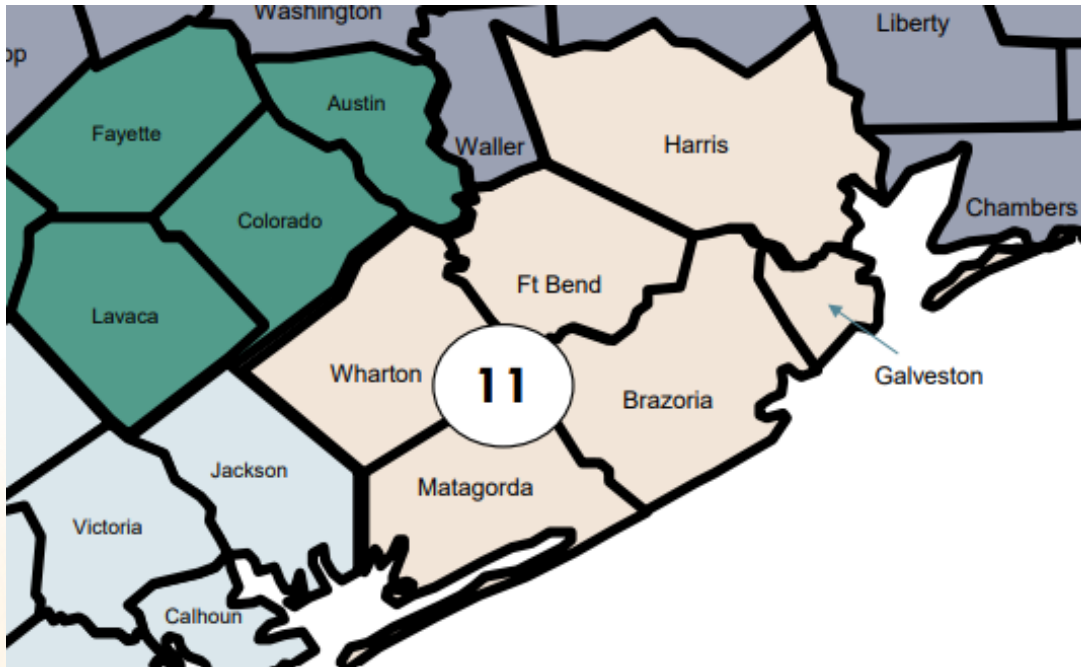
BCDivision11A@txcourts.gov

Hon. S. Grant Dorfman



BCDivision11B@txcourts.gov

## ► Eleventh Business Court Division, Houston



Brazoria  
Fort Bend  
Galveston  
Harris  
Matagorda  
Wharton

- Court is located at 1910 Harris County Courthouse, 301 San Jacinto St, Houston, TX 77002, currently being renovated
- Courtroom is available on Mondays and Fridays; court will use for motions practice and evidentiary hearings
- New civil district courthouse will have rooms that can be reserved for jury trials



# Judicial Appointments

- ▶ Appointed by the Governor
- ▶ Never elected
- ▶ Two-year terms



# Judicial Appointments

- ▶ **Qualifications:** at least 35 years old; U.S. citizen; resident of county within division for at least five years; licensed to practice law in Texas; at least 10 years experience in

- (1) complex commercial litigation,
- (2) business transactions law, or
- (3) service as a Texas civil court judge.



# Governing the Business Court



Chapter 25A Tex. Gov't Code

HB 19 – Business Court  
SB 1045 – 15th Court of Appeals



Texas Rules of Civil Procedure  
Part III: 352 to 360

Part I, II, III, and VI  
Conflict – Part III controls



Local Rules/Procedures and  
Opinions

**Released on October 18, 2024**  
Effective through February 28, 2025,  
unless revised



# Texas Gov't Code Ch. 25A

▶ Statute contains fifteen defined terms (plus subparts) including:

- ▶ “controlling person”
- ▶ “ownership interest”
- ▶ “governing documents”
- ▶ “managerial official”
- ▶ “officer”
- ▶ “internal affairs”
- ▶ “qualified transaction”

Tex. Civ. Prac. & Rem. Code § 25A.001

# Concurrent Jurisdiction



- ▶ Business Court shares concurrent civil jurisdiction with Texas District Courts
- ▶ Authority to grant the same relief: injunctive, mandamus, garnishment, etc.
- ▶ Amount in controversy excludes interest, statutory damages, penalties, attorney's fees, and court costs

# Categories

\$5 million

Publicly  
Traded  
Company

\$10 million

- Derivative proceeding
- Governance/internal affairs of org.
- State/federal securities or trade regulation law claim
- Owner/organization v. owner claim
- Bus. Org. Code action

- Qualified transaction
- Contract with venue provision, not insurance
- Violation Finance /Bus. & Com. Code



# Supplemental Jurisdiction

- ▶ Supplemental jurisdiction “over any other claim related to a case or controversy within the court’s jurisdiction that forms part of the same case or controversy”
  - ▶ Only upon agreement of all parties and a business court judge where action is pending
  - ▶ Otherwise claim proceeds in a court of original jurisdiction **concurrently**

# No jurisdiction *unless* Supplemental Jurisdiction

- ▶ a civil action brought by or against a gov. entity
- ▶ civil foreclosure on a lien on real or personal property;
- ▶ Monopoly/antitrust claim (Ch. 15 Bus. & Com. Code)
- ▶ DTPA (Ch. 15 Bus. & Com. Code)
- ▶ Estates Code;
- ▶ Family Code;
- ▶ Insurance Code; or
- ▶ Mechanic's Lien (Ch. 53 Propt. Code)
- ▶ Trusts (Title 9 Propt. Code)
- ▶ Farm products sales (Sec. 9.102, Bus. & Com. Code);
- ▶ Consumer transaction, arising out of a violation of federal or state law; or
- ▶ Insurance policy obligations

# *Never jurisdiction*

- ▶ Claim under Chapter 74, Civil Practice and Remedies Code
- ▶ Claim for monetary damages for bodily injury or death
- ▶ Claim for legal malpractice



## Right to Jury Trial (Rule 342)

- ▶ A party in an action pending in the business court possesses the right to a jury trial “when required by the constitution.”
- ▶ The drawing of jury panels, selection of jurors, and other jury-related practice/procedure will be the same as in district court in same county



# Remote Proceedings



- ▶ Remote proceedings permitted, **except for jury trials**
- ▶ **Unless the parties agree**, the business court may not require a party/attorney to remotely attend proceeding in which oral testimony heard



# Business Court TRCP Rules

- Transcripts of committee meetings available at: <https://www.txcourts.gov/scac/meetings/2021-2030/>
- Limited public comments included concerns about rules limiting remote proceedings; preference for “common law courts”
- Concerns raised by Chief Justice Tracy Christopher re: 15th COA:
  - who transfers?
  - what transfers?
  - notice of appeal/docket sheet notations



## Original filing – Rule 354

- Heightened pleading standard
- Challenges to Venue
- Challenges to Authority

## Venue Challenge

Motion to Transfer Venue under Rules 86 and 87

If Business Court division does not have proper venue:

- Transfer to another division if county within operating division of the Business Court
- If no operating division, then back to district court

## Authority Challenge - Motion or *sua sponte*

Motion needs to be filed within 30 days of movant's appearance

*Sua sponte*: court provides least 10 days' notice of the intent to transfer or dismiss and an opportunity to be heard

What to do: **party filing the action chooses:**

- transfer the action to a district court/county court at law
- dismiss action without prejudice

## Removal

### TRCP 355

- **Removal:** party to action originally filed in district court/county court may remove by filing notice of removal with court from which removal is sought and business court
- **Notice must** state whether all parties agree; plead facts to establish authority and venue; contain copy of docket sheet and all “process, pleadings, and orders in the action.”



# Removal

## TRCP 355

### Deadlines -

- **When agreed:** “at any time during the pendency of the action”
- **When not agreed:** notice of removal must be filed
  - A. within 30 days after the date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the business court’s authority to hear the action; or
  - B. if an application for temporary injunction is pending on date that party requesting removal discovers facts under subsection A, above, within 30 days after the date the application is granted/denied/denied by operation of law.

**Notice of removal to business court is not subject to due order of pleadings** (doesn’t waive venue challenge/constitute personal appearance for purposes of waiving personal jurisdiction challenge)

# Remand

- **Remand required** if business court determines, on motion or initiative, that removal was improper; action remanded to court from which it was removed. Court must provide 10 days' notice and opportunity to hear objections.
- **Motion to remand** for improper removal within 30 days after notice of removal is filed; but, if party served with process after notice of removal filed, motion to remand due 30 days after the party enters an appearance.

## Transfer

### TRCP 356

#### **Action Transferred to Business Court**

(A) court may on its own initiative request the presiding judge for administrative judicial region where court is located transfer an action pending in the court to business court if the business court has authority to hear action. "Regional presiding judge" = presiding judge for administrative judicial region in which court is located

(B) notice & hearing required upon objection; hearing coordinated with regional presiding judge, who self assigns to the court/conduct a hearing/rule on request

# Rules for the Business Court

## Transfer & Remand

### TRCP 356

#### Action Transferred to Business Court

- (C) Regional presiding judge may transfer action to business court if he/she finds the transfer will facilitate the fair and efficient administration of justice. Denials of motion to transfer challenged **by writ of mandamus \*in court of appeals district for the requesting court's county\***
- (D) Remand from business court sought under Rule 355; within 30 days after case is transferred
- (E) Business court clerk must assign action to appropriate operating division; if more than one judge in that division, clerk must “randomly assign the action” to specific judge



# Rules for the Business Court

## Effect of Dismissal/Limitations Tolloed

### TRCP 357

If business court dismisses an action or claim and same action/claim is filed in a different court **within 60 days after dismissal becomes final**, the applicable statute of limitations is suspended for the period between the filings

# Fees

- ▶ action originally filed - **\$2500**
  - ▶ additional filing fee - **\$137**
- ▶ action removed - **\$2500**
- ▶ counterclaim, cross-action, intervention, contempt action, adverse probate action, interpleader, motion for new trial, motion to reinstate, or third-party action - **\$80**
- ▶ any other motion - **\$50**
- ▶ fees for services performed by the clerk... same as fees in Gov't Code §§ 51.318–.319



Jury fee - **set in an order by the business court judge and will include**

- Fees**
- ▶ \$300 fee for staff time in summoning jurors and use of a jury summons system
  - ▶ fee for any needed security
  - ▶ fee for juror pay
  - ▶ fee for actual processing costs related to summoning jurors, including postage, printing costs, and copy costs



Jurisdiction providing the jury services must submit an invoice.

## **Fees**

Business court will allocate fees between the parties.

Fees will be paid directly to the jurisdiction providing the services.



## Rules on written opinions – Rule 360

**Required** - **must** issue a written opinion

- in connection with a dispositive ruling
- request of a party
- on an issue important to the jurisprudence of the state

**Permitted** – pretty much whenever

- in connection with any order.

Where to find written opinions? **ReSearchTX**

## Local Rules – Rule 1

- ▶ Rules supplement and clarify the application of the Texas Rules of Civil Procedure
- ▶ Citation format: BCLR [Number], such as BCLR 3
- ▶ Local Rules uniformly applied in the Texas Business Court

## Local Rules – Rule 4

- ▶ Every case will have a scheduling order
- ▶ Parties confer/jointly file, use form on Business Court's website
- ▶ 30 days – from defendant's first appearance or from removal filing/transfer order
- ▶ corporate-disclosure statement required - later-joined parties within 14 days of appearance

## Local Rules – Rule 2

A party is deemed to agree to this Court's supplemental jurisdiction of any claim **unless** that party moves to sever or otherwise objects within **30 days** after the **later** of:

- moving party's appearance in this Court; or
- filing of the first pleading or removal notice containing fair notice of the claim.

## Local Rules – Rule 3


A Business Court Case Information Sheet must be filed concurrently with any filing that initiates a new Business Court case.



## Local Rules – Rule 4 Discovery Disputes

- Before filing a motion, party must engage in a “thorough, good-faith attempt to resolve or narrow the dispute”
- Party must file letter summarizing the dispute, with:
  - certification that party “engaged in personal consultation with the other parties and diligent attempts to resolve or further narrow the dispute”
  - Include dates, specific results achieved, and “whether the parties discussed cost-shifting, proportionality, or alternative discovery methods that might resolve or narrow the dispute.”
- Response to letter allowed; no replies
- Letter and response may not exceed 700 words; certificate must not exceed 300 words
- Court may schedule a telephone conference with counsel, order a motion/briefing, or issue an order

**Only then may a party file a discovery motion**

 **Parties can still seek an immediate ruling by telephone on any dispute arising during a deposition (if justified).**



## Local Rules – Rule 5

### ○ **Word Limits**

- Discovery motions and responses: 3000 words
  - Discovery replies: 1250 words
  - All other motions and responses: 7500 words
  - All other replies: 3000 words
- 
- Pinpoint citations to legal authority and evidence
  - Specific requirements for Appendices – one PDF, bookmarks, TOC, page numbers

**Oral hearings are at court's discretion**

## Local Rules – Rule 8

- Removal does not alter any deadline imposed by the Texas Rules of Civil Procedure
- Deadlines under an existing scheduling order remain in place until a new scheduling order is entered by Business Court. removal notice filed under TRCP 355

## Local Rules – Rule 9

- Pro hac admission allowed
- Vacation letter allowed – but not more than a month of vacation
- Artificial intelligence allowed but subject to all legal and ethical duties

# Anticipated Challenges

- ▶ Statute requires any challenge to proceed directly to the Texas Supreme Court (has exclusive jurisdiction)
- ▶ If appointment process fails such challenge, certain criteria will ensure elected judges meet statutory qualifications

## Update

- ▶ As of 10/21/24 – 33 cases filed in all Divisions
- ▶ Zoom hearings
- ▶ TRO/Injunction hearings
- ▶ **Big issue**: case filed before September 1, 2024 BUT removed to business court after September 1, 2024





## 15th Court of Appeals

“Notwithstanding any other law and except... when the supreme court has concurrent or exclusive jurisdiction, the Fifteenth Court of Appeals has exclusive jurisdiction over an appeal from an order or judgment of the business court or an original proceeding related to an action or order of the business court.” (emphasis added)



# 15th Court of Appeals

The 15th Court's district extends to all counties in Texas:

“The Court of Appeals for the Fifteenth Court . . . shall be held in the City of Austin” but “may transact its business in any county in the district as the court determines is necessary and convenient.”





# 15th Court of Appeals

Court has civil jurisdiction over:

- matters brought by or against the state (with many statutory exceptions; e.g., cases brought under the Family Code, personal injury claims, employment discrimination etc.)
- Challenges to the constitutionality or validity of a state statute or rule—if the attorney general is involved





# 15th Court of Appeals

For first three years, court will consist of one chief justice and two additional judges—same panel will hear all appeals

Chief Justice  
Scott Brister



Justice  
Scott Field



Justice  
April Farris



In 2027 will increase to one chief justice and four additional justices





# 15th Court of Appeals

Justices will be **appointed** by the governor for a six-year term and **thereafter will run for statewide election**

Unlike business-court judicial appointments, the statute requires **no minimum business-experience qualifications** for 15th Court justices



# 15th Court of Appeals Challenge

Case No. 24-0426, *In re Dallas County, Texas*

## Is the Fifteenth Court of Appeals unconstitutional?

- Does the Fifteenth Court (with exclusive, statewide jurisdiction over cases against state officials) violate Article V, Section 6?
- Should it be enjoined?
- Should the Third Court of Appeals be enjoined from transferring certain appeals to the Fifteenth?





# 15th Court of Appeals Challenge

Expedited Briefing:

- July 5 – Petitioner Brief
- July 25 – Respondent Brief
- August 2 – Petitioner Reply Brief

Opinion issued August 23 (Justice Young)  
Injunction denied

Legislature's creation of specialized court of appeals with exclusive, statewide jurisdiction--consistent with the Texas Constitution's text and history.

# 15th Court of Appeals Update

## Denied Attorney General twice:

- Case No. 15-24-00078-CV (City of Austin/Austin Transit) – no “implicit denial” of plea to the jurisdiction
- Case No. 15-24-00103-CV (Dallas, State Fair) – denial of emergency relief, but case pending

## Oral Arguments at Crim Court of Appeals Court – October 30, 2024

15-24-00087-CV and 15-24-00090-CV *In re Google*

15-24-00010-CV *Texas DPS et al. v. Texas Tribune et al.*

15-24-00051-CV *Crowley Indep. Sch. Dist. v. Carl Stoneham et al.*

**Cases set for submission on briefs – October 23 to December 5**



Thank  
you!

