

Brand New Rules for a Brand New Business Court

Justice Emily Miskel
5th Court of Appeals, Dallas, TX

HB 19 – The Business Court

- <https://capitol.texas.gov/tlodocs/88R/billtext/html/HB00019F.htm>
- Creates Gov't Code Ch. 25A
- Applies to civil actions *commenced* on or after 9/1/2024

HB 19 – The Business Court

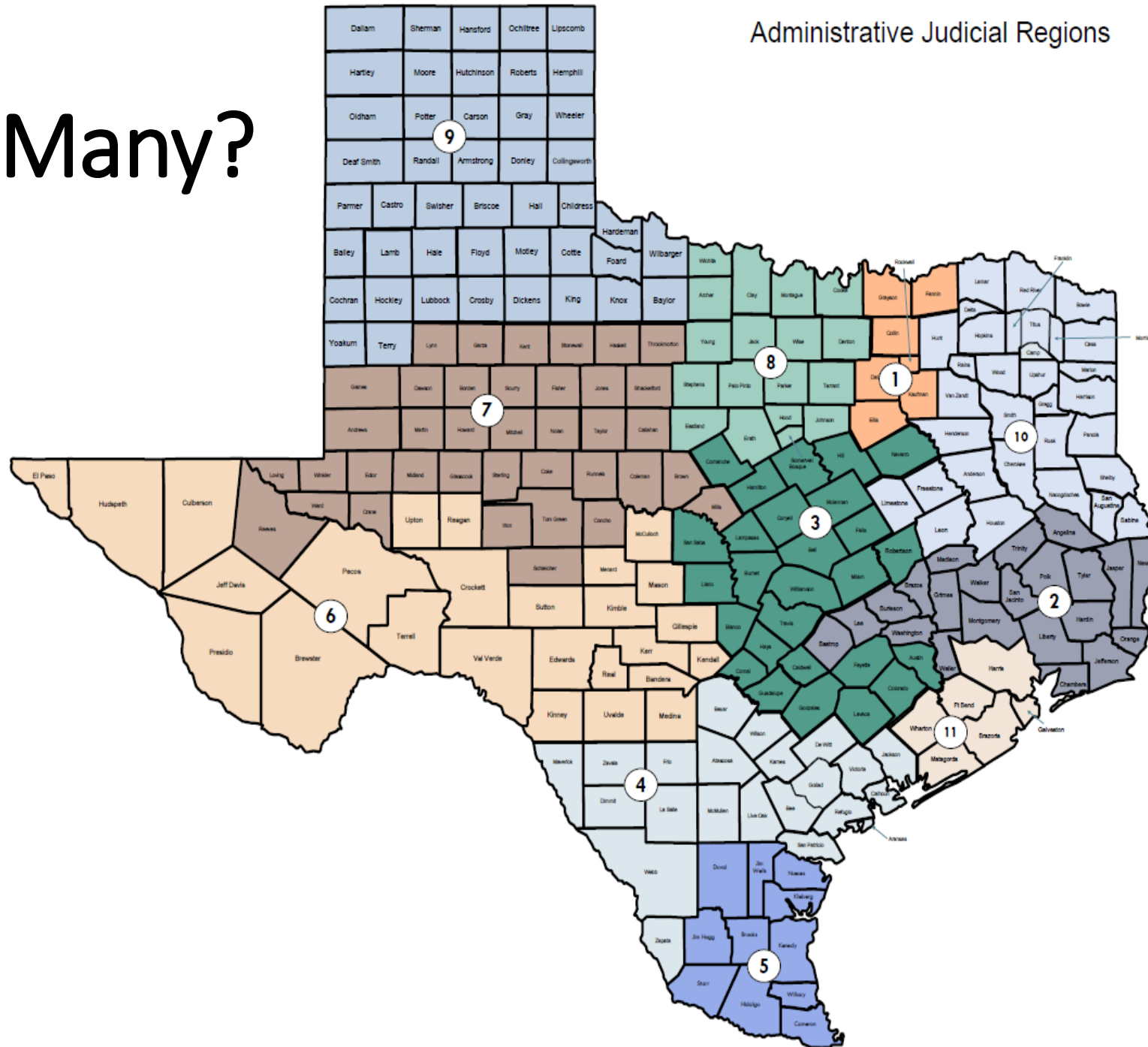
- Art 5, Sec 1 of TX Const – “The Legislature may establish such other courts”
- SCOTX has original & exclusive jurisdiction over challenges
- If appointment is unconstitutional, retired/former judges will be appointed

How Many?

- One business court, with a judicial district that is composed of all counties
- Divided into potentially 11 divisions:
 - 5 definitely now, with 2 judges each
 - 6 maybe later, with 1 judge each
- The biz court Clerk will be in Travis County

How Many?

Administrative Judicial Regions



How Many?

- 1st Division – includes Dallas
- 3rd Division – includes Austin
- 4th Division – includes San Antonio
- 8th Division – includes Fort Worth
- 11th Division – includes Houston

Judges

- Appointed by the Governor
- 2-year terms beginning 9/1 of even years
- All powers, duties, immunities, and privileges of a district judge
- Same procedures for recusal, disqual, visiting judges, exchange of benches, etc.

Judges

- 35 years old
- US citizen & resident of division for 5 years
- Licensed attorney with 10+ years experience in complex civil biz litigation, biz transaction law, serving as judge with civil jurisdiction
- No disciplinary actions

Appeals

- All appeals go to new 15th Court of Appeals
- (A different presentation!)

Jurisdiction – Amt. in Controversy >\$5m

- | | |
|----------------------------------|--|
| 1. Derivative proceeding | 5. Official breached a duty |
| 2. Governance & internal affairs | 6. Veil piercing |
| 3. Securities law | 7. An action “arising out of” the Biz Org Code |
| 4. Official acts and omissions | |

Jurisdiction – Publicly Traded Co. (>\$0)

- | | |
|----------------------------------|--|
| 1. Derivative proceeding | 5. Official breached a duty |
| 2. Governance & internal affairs | 6. Veil piercing |
| 3. Securities law | 7. An action “arising out of” the Biz Org Code |
| 4. Official acts and omissions | |

Jurisdiction – Amt. in Controversy >\$10m

1. Qualified transaction (>\$10m)
2. Contract or commercial transaction
(except insurance contract)
3. Org or officer violated Finance Code
or Biz & Comm Code

Jurisdiction

Also, relating to prev. claims:

- Injunctions
- Declaratory judgments
- Mandamus, sequestration, attachment, garnishment and supersedeas

Supplemental Jurisdiction

- By agreement: any other related claim that forms part of the same case or controversy
- What if no agreement? Claims proceed concurrently in 2 courts

Excluded from Jurisdiction – Unless Agreed Supplemental

- By or against gov't
- Foreclosure
- Antitrust
- DTPA
- Estates Code
- Family Code
- Liens
- Trusts
- Farm Products
- Consumer Transactions
- Insurance Code & ins policies

Excluded from Jurisdiction – No Matter What

- Medical Liability
- Bodily injury or death
- Legal malpractice

Fees

- Self-funded
- Fee schedule to be set by SCOTX Order
- Waivers necessary for interest of justice

New Rules 331-345

- Supreme Court Advisory Committee proposed rules 10/13, transcript & materials - <https://www.txcourts.gov/scac/meetings/2021-2030/>
- SCOTX will issue Preliminary Approval of new rules for public comment
- SCOTX will issue Final Approval of new rules

**RULE 333. BUSINESS COURT REMOTE
PROCEEDINGS**

- (a) For the purposes of proceedings in the business court, “remote proceeding” means a proceeding before the business court in which one or more of the participants, including a judge, party, attorney, witness [or] court reporter, ~~or other individual~~ attends the proceeding remotely through the use of technology.
- (b) The business court may conduct a proceeding other than a jury trial as a remote proceeding to facilitate the resolution of a matter before the court. [However, [t]he business court may not require a party or attorney to remotely attend a court proceeding in which oral testimony is heard, absent the agreement of the parties.
- (c) The business court shall conduct a remote proceeding from a courtroom or the facilities provided to a business court judge by this state.
- (d) The business court shall provide reasonable notice to the public that a proceeding will be conducted remotely and an opportunity for the public to observe the remote proceeding.

Notes and Comments

Comment to 2024 change: New Rule to implement Texas Government Code Sec. 25A.017 (H.B. 19, 88th Legislature, Regular Session). These rules apply to civil actions commenced on or after September 1, 2024.

RULE 334. INITIAL FILINGS IN BUSINESS COURT

- (a) An action within the jurisdiction of the business court may be filed in the business court. A party filing an action in a business court must plead facts to establish [jurisdiction and] venue in a county in a division of the business court, and the business court [clerk] shall assign the action to that division. Venue may be established as provided by law or, if a written contract specifies a county as venue for the action, as provided by the contract.
- (b) If, [after the action is assigned to a business court judge pursuant to these rules and on the motion of any defendant, the court determines that] it does not have jurisdiction of the action, the court shall, ~~at the option of~~ [at the request of the party filing the action]:
 - (1) transfer the action to a district court or county court at law in a county of proper venue; or
 - (2) dismiss the action without prejudice to the party's rights.
- (c) [A defendant to an action originally filed in business court may file a motion to challenge the jurisdiction of the business court no later than 30 days after the answer date (or 30 days after service or 30 days after the party enters an appearance)].

Notes and Comments

Comment to 2024 change: New Rule to implement Texas Government Code Sec. 25A.006 (H.B. 19, 88th Legislature, Regular Session). These rules apply to civil actions commenced on or after September 1, 2024.

**RULE 335. ASSIGNMENT AND TRANSFER OF BUSINESS COURT ACTIONS
AND EXCHANGE OF BUSINESS COURT BENCHES**

- (a) [In divisions of the State with more than one business court judge, cases filed in, transferred to, or removed to the business court for that division shall be assigned randomly by the business court clerk.]
- (b) [The business court administrative presiding judge may reassign cases or equalize the caseload within a division as necessary or in the interests of justice.]
- (c) To promote the orderly and efficient administration of justice, the business court judges may exchange benches and sit and act for each other in any matter pending before the court.

- (d) The judge of a court in which an action is filed may request the presiding judge for the court's administrative region to transfer the action to the business court if the action is within the business court's jurisdiction. The [presiding] judge shall notify all parties of the transfer request and [set] request a hearing on the transfer request. After a hearing on the request, the presiding judge may transfer the action to the business court if the presiding judge finds the transfer will facilitate the fair and efficient administration of justice. The business court clerk shall assign an action transferred under this subsection to the appropriate division of the business court.

Notes and Comments

Comment to 2024 change: This new Rule incorporates Texas Government Code Section 25A.006 and 25A.009(f) (H.B. 19, 88th Legislature, Regular Session). These rules apply to civil actions commenced on or after September 1, 2024.

RULE 336. MOTIONS TO CHALLENGE VENUE IN BUSINESS COURT

- (a) If, after an action is assigned to a division of the business court, that court, [upon the motion of any party,] determines the division's geographic territory does not include a county of proper venue for the action, the business court shall:
 - (1) if an operating division of the [business] court includes a county of proper venue, transfer the action to that division; or
 - (2) if there is not an operating division of the [business] court that includes a county of proper venue, at the option of the party filing the action, transfer the action to a district court or county court at law in a county of proper venue.
- (b) [Except as provided in this rule, the rules governing challenges to venue in district court proceedings will apply, including the timing of filing motions challenging venue.]

Notes and Comments

Comment to 2024 change: This new Rule incorporates Texas Government Code Section 25A.006 (H.B. 19, 88th Legislature, Regular Session). These rules apply to civil actions commenced on or after September 1, 2024.

RULE 337. REMOVAL OF CASES TO BUSINESS COURT

- (a) A party to an action filed in a district court or county court at law that is [asserted by that party to be] within the jurisdiction of the business court may remove the action to the business court.
- (b) [If there is no operating division of the business court in the county of venue, then the action may not be removed to the business court.] ~~A party to an action filed in a district court or county court at law in a county of proper venue that is not within an operating division of the business court or the judge of the court in which the action is filed may not remove or transfer the action to the business court.~~
- (c) [The Notice of Removal shall contain a short and plain statement of the grounds for removal, including the basis for the jurisdiction of the business court and a statement whether all parties agree to the removal of the action. The removing party will also file with the business court clerk a copy of the court docket, all process, pleadings and orders served upon the defendant or defendants in the action.]

- (d) A party may file an agreed notice of removal [reflecting agreement of all the parties to the action] at any time during the pendency of the action.
- (e) If all parties to the action have not agreed to remove the action, the notice of removal must be filed:
 - (1) not later than the 30th day after the date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the business court's jurisdiction over the action; or
 - (2) if an application for temporary injunction is pending on the date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the business court's jurisdiction over the action, not later than the 30th day after the date the application is granted, denied, or denied as a matter of law.
- (f) The notice of removal must be filed with the business court and the court in which the action was [removed] originally filed. On receipt of the notice, the clerk of the court in which the action was [removed] originally filed shall immediately transfer the action to the business court in accordance with rules adopted by the supreme court, and the business court clerk shall assign the action to the appropriate division of the business court.

- (g) [Pleadings related to] [r]emoval of a case to the business court [are] is not subject to the statutes or rules governing the due order of pleading.
- (h) [Pleadings related to] [r]emoval of a case does not waive a defect in venue or constitute an appearance to determine personal jurisdiction.

Notes and Comments

Comment to 2024 change: This new Rule incorporates Texas Government Code Section 25A.006 (H.B. 19, 88th Legislature, Regular Session) and also adopts removal procedures found in federal statutes. The filing of an action or a notice of removal in the business court is subject to Section 10.001 of the Texas Civil Practice and Remedies Code. For purposes of subsection (e) of this rule and consistent with federal law, notice to a party does not occur until a party is served with process in the action. See *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999). Subparts (g) and (h) are intended to clarify that responding to a motion to remand is related to the removal of an action and does not constitute an appearance or otherwise waive a motion to transfer venue. [Federal case law on removal and remand may be instructive to the Texas Business Court where applicable.]. These rules apply to civil actions commenced on or after September 1, 2024. {*Derived from 28 U.S.C. §§ 1447 and 1448}

**RULE 338. REMAND OF IMPROPERLY
REMOVED BUSINESS COURT ACTIONS**

- (a) {A motion to remand the case on the basis of improper [removal] must be made within 30 days after the filing of the notice of removal ~~other than lack of subject matter under [this Rule.]~~}
- (b) {Any party upon whom process is served after removal may ~~maintains the right to move~~ to remand the case no later than 30 days after the answer date (or 30 days after service or 30 days after the party enters an appearance) for that party.}
- (c) [If pursuant to this rule, the business court, after notice and hearing, determines that it does not have jurisdiction of the removed action, that court shall remand the action to the court from which the action was removed.]

Notes and Comments

Comment to 2024 change: This new Rule incorporates Texas Government Code Section 25A.006 (H.B. 19, 88th Legislature, Regular Session) and also adopts remand procedures found in federal statutes. [Federal case law on removal and remand may be instructive to the Texas Business Court where applicable]. These rules apply to civil actions commenced on or after September 1, 2024. {*Derived from 28 U.S.C. §§ 1447 and 1448}

RULE 339. DEFINITIONS APPLICABLE TO BUSINESS COURT ACTIONS

[The following definitions are applicable to actions in the business court:]

Notes and Comments

Comment to 2024 change: New Rule to incorporate Texas Government Code Section 25A.001 (H.B. 19 passed by the 88th Legislature, Regular Session). These rules apply to civil actions commenced on or after September 1, 2024.

RULE 342. JURY TRIALS IN BUSINESS COURT CASES

- (a) A party in an action pending in the business court has the right to a trial by jury when required by the constitution.
- (b) Subject to Subsection (d), a jury trial in a case filed initially in the business court shall be held in any county in which the case could have been filed under Section 15.002, Civil Practice and Remedies Code, as chosen by the plaintiff.
- (c) Subject to Subsections (b) and (d), a jury trial in a case removed to the business court shall be held in the county [from] ~~in~~ which the action was [removed] ~~originally~~ filed.

- (d) A jury trial for a case in which a written contract specifies a county as venue for suits shall be held in that county.
- (e) The parties and the business court judge may agree to hold the jury trial in any other county. A party may not be required to agree to hold the jury trial in a different county.
- (f) The drawing of jury panels, selection of jurors, and other jury-related practice and procedure in the business court shall be the same as for the district court in the county in which the trial is held.
- (g) The business court judge on establishment of jurisdiction and venue over an action shall by order declare the county in which any jury trial for the action will be held as determined under [this rule] Section 25A.015.

Notes and Comments

Comment to 2024 change: New Rule implementing Texas Government Code Sec. 25A.015, (H.B. 19, 88th Legislature Regular Session). These rules apply to civil actions commenced on or after September 1, 2024.

RULE 343. WRITTEN OPINIONS IN BUSINESS COURT CASES

- (a) [The business court judge should issue a written opinion on significant issues of law or procedure. An issue is significant if it, for example,] addresses any of the following:
 - (1) establishes a new rule of law, alters or modifies an existing rule of law, or applies an existing rule to a novel fact situation likely to recur in future cases;
 - (2) involves issues of constitutional law or other legal issues important to the jurisprudence of Texas [or the business court];
 - (3) criticizes existing law; or
 - (4) resolves an apparent conflict of authority).
- (b) [If the business court judge issues a written opinion, it should be no longer than necessary to advise the parties of the court's decision and reasoning.]

- (c) [A party to a business court proceeding may file a request that the judge of the business court issue a written opinion on a disposition of a motion on the basis that the issue being decided is significant.]
- (d) [Decisions of business court judges are considered persuasive authority and not precedential.]
- (e) (All opinions of the business court are open to the public and must be made available to public reporting services, print or electronic).

Notes and Comments

Comment to 2024 change: New Rule implementing Texas Government Code Sec. 25A.016, (H.B. 19, 88th Legislature Regular Session). It is anticipated that Business Court judges will issue written opinions on dispositive motions. This rule is based on TRAP Rule 47.4. These rules apply to civil actions commenced on or after September 1, 2024.

RULE 345. BUSINESS COURT LOCAL RULES

[Subject to Rule 3a], [t]he business court may adopt rules of practice and procedure consistent with the Texas Rules of Civil Procedure and Texas Rules of Evidence.

Notes and Comments

Comment to 2024 change: New Rule implementing Texas Government Code Sec. 25A.020(b), (H.B. 19, 88th Legislature Regular Session).