

The New Texas Business Court

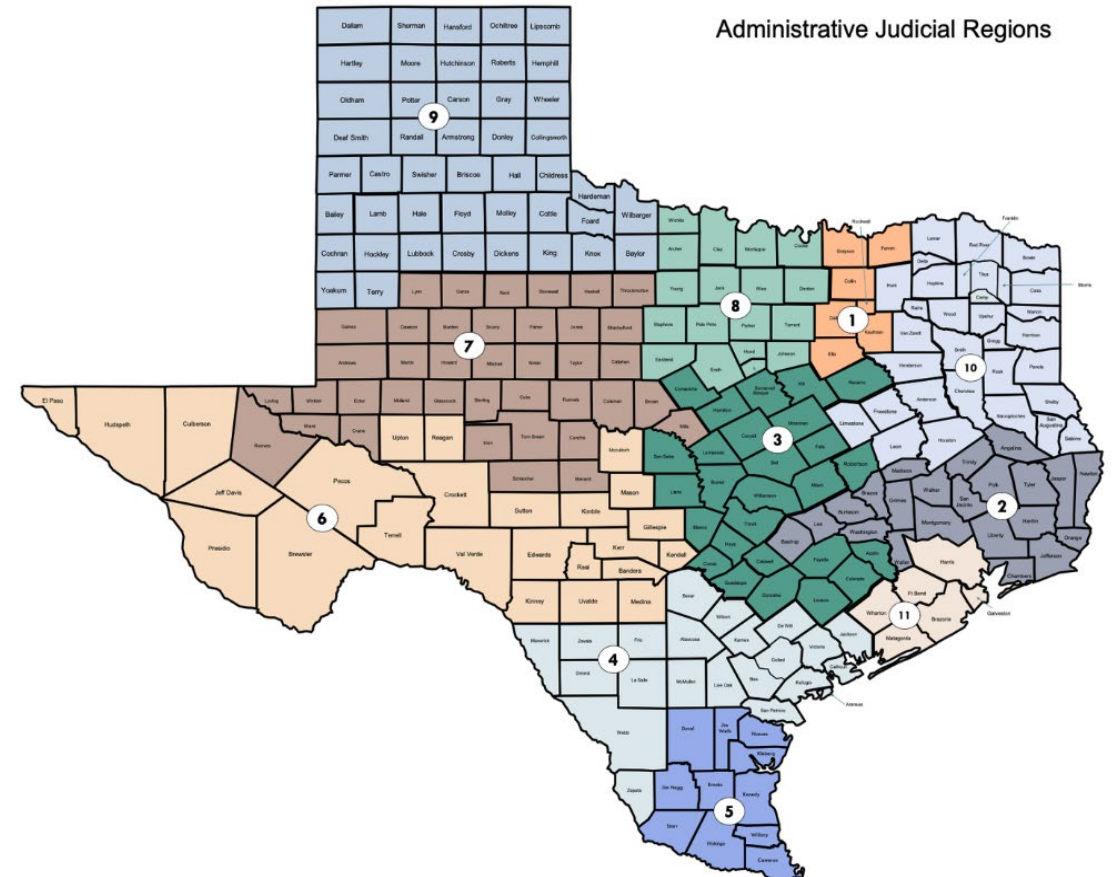
**ENOCH
KEVER**

Amy Prueger
Sara Berkeley Churchin
Chris Kirby

State Bar of Texas
Public Utility Law Section
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Overview

- ▶ Jurisdiction
- ▶ Judicial Divisions
- ▶ Judicial Appointments
- ▶ Procedural Rules
- ▶ 15th Court of Appeals
- ▶ Anticipated Challenges & Logistical Concerns



https://www.txcourts.gov/media/1441425/ajrs-04_25_18.pdf
(last visited May 3, 2024).

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; applicable only to actions commencing on or after September 1, 2024
- ▶ Five divisions commence operations on Sept. 1, 2024; additional six divisions (including El Paso) will not open absent further legislative action to appropriate funding

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

Statute contains fifteen defined terms (plus subparts) including:

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

See Tex. Civ. Prac. & Rem. Code § 25A.001.



Concurrent Jurisdiction

The Texas Business Court shares concurrent civil jurisdiction with Texas District Courts in three general categories of controversies:

Concurrent Jurisdiction

Category 1:

- ▶ \$10 million+ in controversy plus enumerated action:
 - contract disputes, **provided the parties agree** to the Business Court's jurisdiction;
 - (Note that amount in controversy excludes interest, statutory damages, penalties, attorney's fees, and court costs)

Concurrent Jurisdiction

Category 1:

- ▶ \$10 million+ in controversy plus enumerated action:
 - contract disputes, provided the parties agree to the Business Court's jurisdiction;
 - certain disputes brought under the Texas Finance & Business Codes "by an organization or an officer or governing person acting on behalf of an organization other than a bank, credit union, or savings and loan association."

Concurrent Jurisdiction

Category 1:

- ▶ \$10 million+ in controversy plus enumerated action:
 - contract disputes, provided the parties agree to the Business Court's jurisdiction;
 - certain disputes brought under the Texas Finance & Business Codes . . .
 - a “qualified transaction”

Concurrent Jurisdiction

- ▶ “**qualified transaction**” (Rule 339(o)) - a transaction, **other than** a transaction involving a loan or an advance of money or credit by a bank, credit union, or savings and loan institution under which a party:

Concurrent Jurisdiction

- ▶ **“qualified transaction”** –
 - ... under which a party:
 - A. pays or receives or is obligated to pay or is entitled to receive consideration with an aggregate value of at least \$10 million; or
 - B. lends, advances, borrows, receives, is obligated to lend or advance, or is entitled to borrow or receive money or credit with an aggregate value of at least \$10 million. (Rule 339(o)).

Concurrent Jurisdiction

Category 2:

- ▶ \$5 million+ amount in controversy plus actions that involve **corporate disputes**
 - e.g., governance, derivatives, securities claims

Category 3:

- ▶ corporate disputes of **any value** if one party is **publicly traded**

Concurrent Jurisdiction

- ▶ Excluded disputes include:
 - probate law
 - family law
 - DTPA/consumer complaints
 - insurance, injury, death, or medical/ legal malpractice
 - matters brought by or against governmental entities

Supplemental Jurisdiction

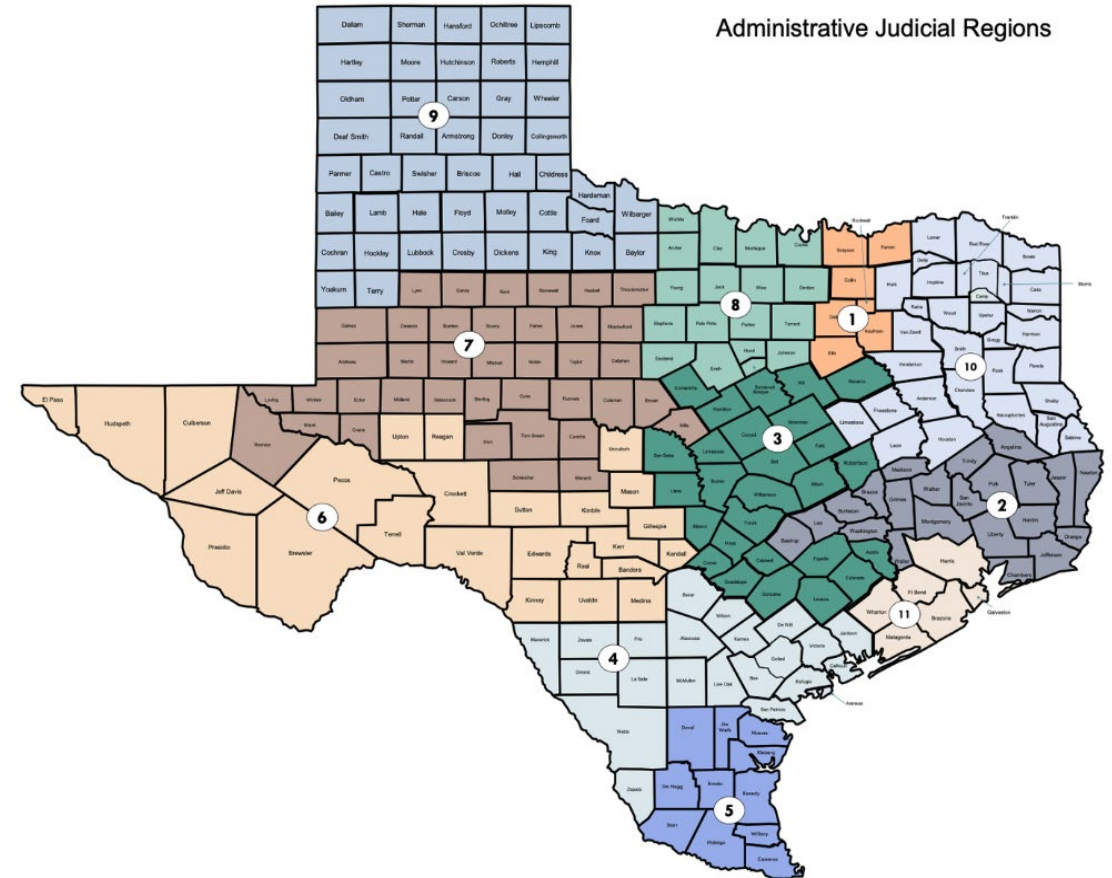
- ▶ supplemental jurisdiction “**over any other claim related to a case or controversy** within the court’s jurisdiction that forms part of the same case or controversy.”
 - claim proceeds in the Business Court **only upon agreement of all parties and a Business Court judge** of the division of the court where action is pending
 - If no agreement, claim proceeds in a court of original jurisdiction concurrently with any related claims proceeding in the Business Court

Judicial Divisions

▶ Eleven geographical divisions align with the current Administrative Regions for Texas Appellate Courts →

▶ Five largest urban divisions commence operations in 2024 and will have two judges:

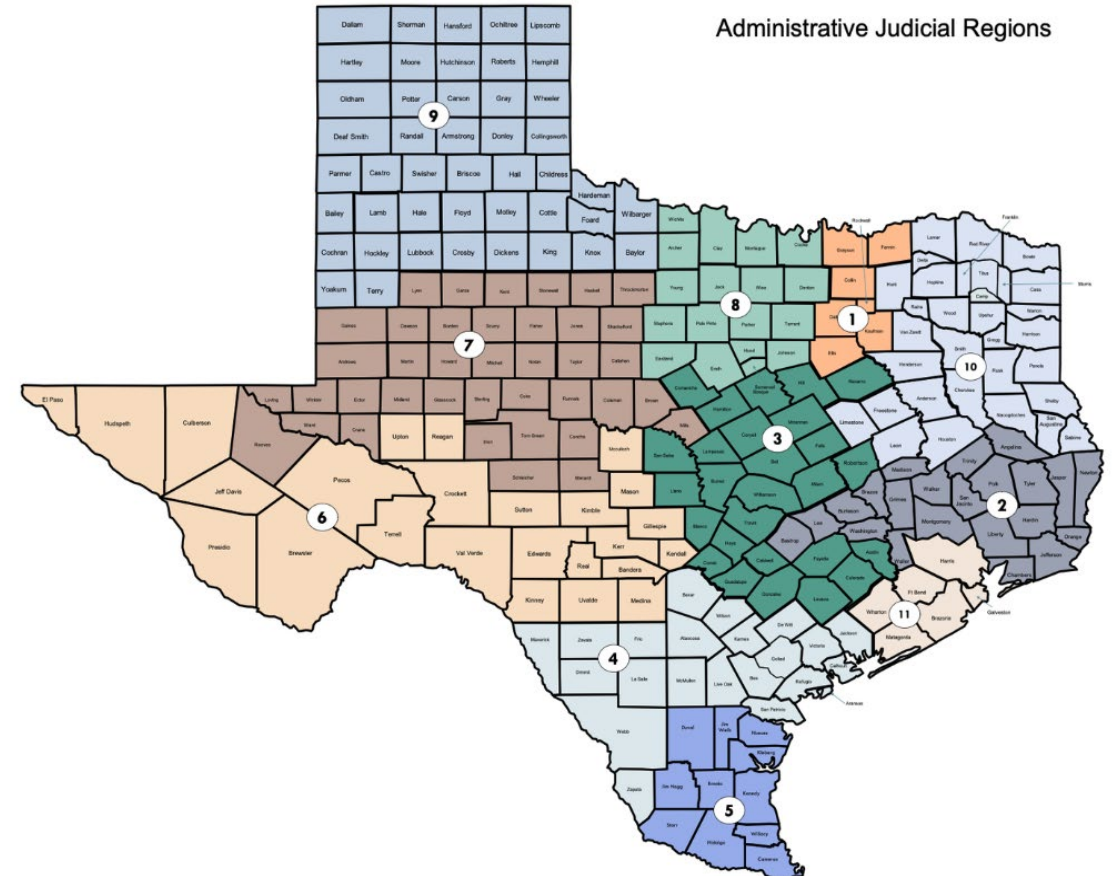
Austin, Dallas, Fort Worth, Houston & San Antonio



https://www.txcourts.gov/media/1441425/ajrs-04_25_18.pdf
(last visited May 3, 2024)

Judicial Divisions

- ▶ 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
(last visited August 29, 2023)

Judicial Appointments



- ▶ As of Sept. 1, 2023, Governor Greg Abbott began accepting applications for the ten judges he will **appoint** to preside over Dallas, Austin, San Antonio, Houston, and Fort Worth divisions
- ▶ Appointments are subject to Senate approval
- ▶ Up to sixteen judges will serve a **two-year term** and **be eligible for reappointment**

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.

Judicial Authority

on matters over which the Business Court has statutory jurisdiction, Business Court judges may provide injunctive, mandamus, garnishment, and **any other relief that a district court may grant**

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.

Tasks Assigned to SCOTX – Step One: Supreme Court Advisory Committee (SCAC)

Rules on written opinions

- balancing benefits with judicial efficiency
- **SCAC submitted Proposed Rules on October 13, 2023**

Rules on fees

- the Business Court is self-funded
- **SCAC postponed setting fees**

Rules on removal and remand

- modeled after FRCP? MDL?
- heightened pleading standard?
- assignment of cases to judges
- assignment of visiting judges
- Section 25A.20

SCOTX Rulemaking -

SCAC

- Business Court Subcommittee proposals and discussions (June, Aug., Oct. 2023)
- SCAC made final recommendations to SCOTX (Oct. 2023)

SCOTX

- Study/discussion
- Preliminary order issued on Feb. 6, 2024
- Public-comment period ended May 1, 2024
- Revisions and final order (summer 2024)
- Effective Sept. 1, 2024

SCOTX's Preliminary Approval of Rules for Bus. Courts (Misc. Docket No. 24-9004)

What governs?

- TRCP governs procedures (**new TCRP 352-359**)
- See *also* Tex. Gov't Code Ch. 25A, parts I, II, III, VI
 - (part III controls conflicts)

Rules on fees

- Office of Court Administration to publish fee schedule (SCAC deferred for lack of data)
- Bus. Ct. **must waive fees** for inability to afford payment of costs (Rule 145); **may waive fees** "in the interest of justice"

Written opinions

- **Required** "in connection with a dispositive ruling"/ request of "a party"/issue important to state's jurisprudence (regardless of request)
- **Permitted** "in connection with any order"

SCOTX's Preliminary Approval of Rules for Bus. Courts (Misc. Docket No. 24-9004)

Pleading Standards

TRCP Rule 354

- originally filed actions (petition/counterclaim/cross-claim, third-party claim) “must, in addition to pleading requirements specified in Part II, **plead facts to establish the business court’s authority to hear the action.**”
- original petition “**must also plead facts to establish venue in a county in an operating division of the business court.**”

SCOTX's Preliminary Approval of Rules for Bus. Courts (Misc. Docket No. 24-9004)

Asserting Venue & "Authority" Challenges

TRCP 354

- **Venue Challenges:** must comply with Rules 86 & 87
- **Authority Challenges** – motion challenging “the business court’s authority to hear an action must be filed within **30 days** of movant’s appearance.”

SCOTX's Preliminary Approval of Rules for Bus. Courts (Misc. Docket No. 24-9004)

Resolving Venue & "Authority" Challenges

- **Venue Challenges** - if business court determines upon motion that its geographic territory does not include a county of proper venue, court must:
(A) transfer to operating division of the court that includes county of proper venue or (B) if no operating division of proper venue, at the filing party's request, transfer to a district court or county court in county of proper venue.
- **Authority Challenges** – if business court determines that it lacks authority to hear the action
(A) **if on court's own initiative**, must provide 10 days' notice of intent to transfer or dismiss & provide an opportunity to hear objections; and
(B) **if on party request**, transfer action to district court/county court in county of proper venue **or** dismiss the action without prejudice to parties' claims.

SCOTX's Preliminary Approval of Rules for Bus. Courts (Misc. Docket No. 24-9004)

Removal

TRCP 355

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

SCOTX's Preliminary Approval of Rules for Bus. Courts (Misc. Docket No. 24-9004)

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)

SCOTX's Preliminary Approval of Rules for Bus. Courts (Misc. Docket No. 24-9004)

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.

SCOTX's Preliminary Approval of Rules for Bus. Courts (Misc. Docket No. 24-9004)

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

SCOTX's Preliminary Approval of Rules for Bus. Courts (Misc. Docket No. 24-9004)

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 & 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.

SCOTX's Preliminary Approval of Rules for Bus. Courts (Misc. Docket No. 24-9004)

Effect of Dismissal/limitations tolled

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



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



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

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

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

Logistical Concerns

- ▶ no existing infrastructure -
- ▶ needs a case management system, supplies, furniture, technology, etc.

Logistical Concerns

- ▶ Appointments and staff hires (40 full-time employees?)
- ▶ issues related to security, staffing, and personnel



SCAC Meetings & Comments

- Transcripts of committee meetings available at:
<https://www.txcourts.gov/scac/meetings/2021-2030/>
- limited public comments include concerns about rules limiting remote proceedings; preference for “common law courts”
- Concerns raised by Chief Justice Tracy Christopher re: 15th COA

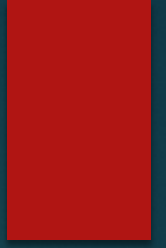
Chief Justice Christopher (14th Court) Public Comment re: logistics of transferring cases:



- ▶ Does the district court make the transfer to the 15th COA or does original COA make the transfer? Need for comment in rules.
- ▶ If original COA handles transfer, it must have sufficient information for making that determination: “At a minimum, . . . the appealing party [should] state in the notice of appeal that the case should or should not transfer to the 15th.”
- ▶ Does the entire case transfer to the 15th COA, such as in “a multi-party case where only one party’s case belongs in the 15th? Should we transfer the entire case to the 15th court when one cause of action belongs in the 15th and one cause of action is excluded (example—breach of contract and wrongful termination)?”



Questions?



Thank
you!

