



Doing Business (Courts) in the Lone Star State:

Exploring Texas Business Courts in the New Frontier

Emma Cano

Lamont Jefferson

CORPORATE COUNSEL SECTION
POWER HOUR

MAY 14, 2024

JEFFERSONCANO

San Antonio, Texas

www.jeffersoncano.com

Why A New Business Court?

The Goal

- Make Texas more pro-business, like Delaware, NY and the 27 other states with specialized business courts
- One specialized court with statewide jurisdiction over complex business disputes and other commercial litigation
- Appointed Judges with Business or Judicial Experience
- Dedicated Resources—staff attorneys, technical experts, business consultants, etc.
- Promote judicial efficiency and predictability in business



The Texas Constitution: Article V, Section 1

Sec. 1. Judicial Power Vested in Courts; Legislative Power Regarding Courts.

The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

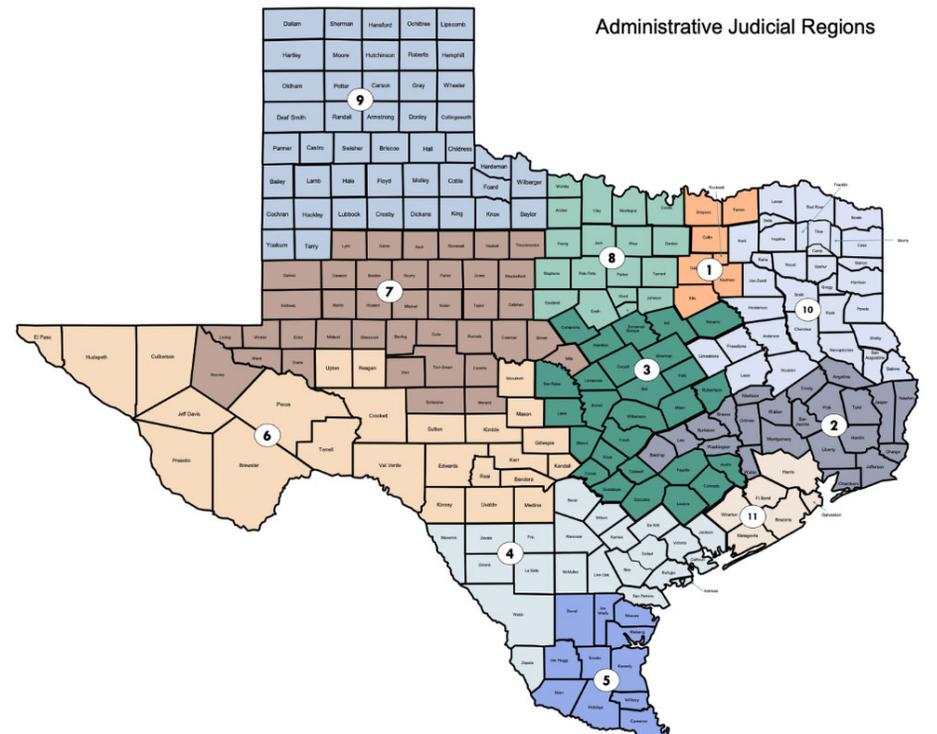
The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.

The Statute: Amended Texas Government Code Chapter 25A

- ▶ H.B. 19 (passed 2023) enabled formation of a single, specialized court (the “Texas Business Court”) responsible for hearing complex and business-related cases. Also created the Fifteenth Court of Appeals with exclusive jurisdiction over Business Court appeals (and more).
- ▶ Effective Date: September 1, 2023; applicable only to actions commencing on or after September 1, 2024
- ▶ 11 Operating divisions—corresponding to the 11 judicial administrative regions

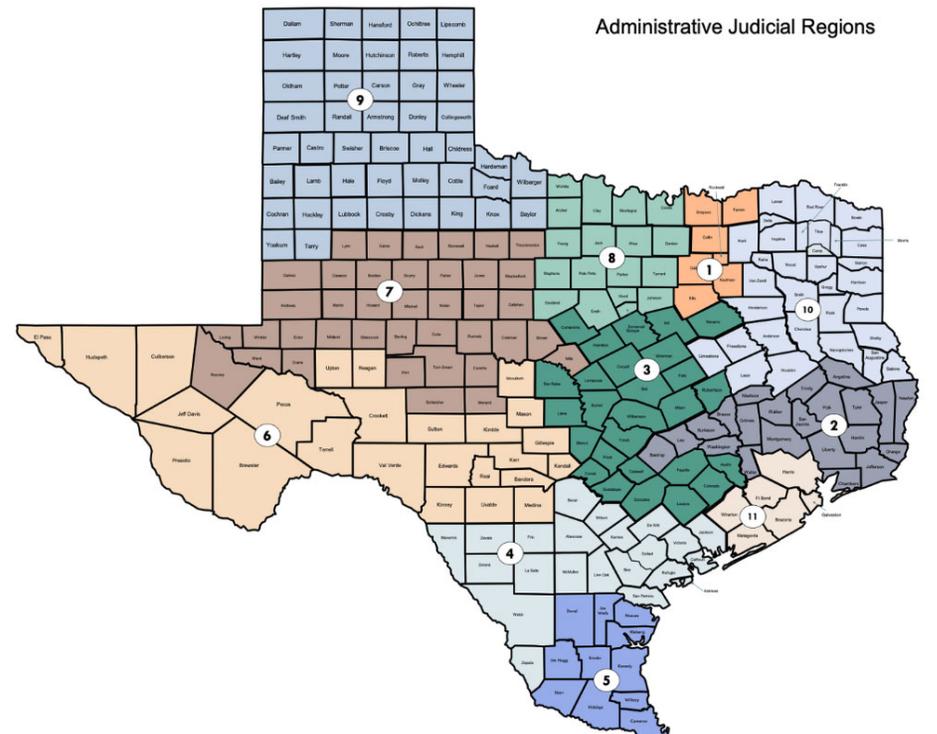
Logistics: The Business Court

- ▶ Initial Funding: Doors open for cases September 1, 2024, with five divisions:
 - ▶ Austin
 - ▶ Dallas
 - ▶ Fort Worth
 - ▶ Houston
 - ▶ San Antonio
- ▶ Additional six divisions *will not open absent* further legislative action to appropriate funding during the 2025 legislative session



Logistics: The Business Court

- ▶ Each urban division will have 2 judges
 - ▶ Rural Divisions (not yet funded)—will have only 1 judge
- ▶ Facilities will be provided locally
- ▶ Fees are to be charged to make the court self-supported (after initial funding)
- ▶ Texas Supreme Court is charged with adopting rules of procedure
 - ▶ e.g., removal, remand, issuance of written opinions



- ▶ Appointed by Governor; confirmed by the Senate
- ▶ 2-year terms
- ▶ U.S. citizen and at least 35 years of age
- ▶ Minimum 10 years of experience:
 - ▶ (A) Practicing complex civil business litigation;
 - ▶ (B) Practicing business transaction law;
 - ▶ (C) Serving as a judge of a Texas court with civil jurisdiction; or
 - ▶ (D) any combination of (A) to (C)
- ▶ 5-year residency in the county in the division
- ▶ Not have their license revoked, suspended or have received a probated suspension
- ▶ Administrative presiding judge is elected by other Business Judges and will appoint a clerk with physical facilities in Travis County

Logistics: The Business Court Judges



- ▶ HB 19 (Texas Gov't Code Chapter 25A):
 - ▶ SCOTX is to “set fees for filings and actions in the Business Court in **amounts sufficient to cover the costs of administering this chapter**, taking into account fee waivers necessary for the interest of justice.” Tex. Gov't Code § 25A.018 (emphasis added)
- ▶ Advisory subcommittee considered various fee options
- ▶ Ultimately could make no recommendations because zero data
- ▶ Office of Courts Administration is working on fee schedule

Logistics: Fees





Court's 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;
 - Think: Forum selection clause
 - Note: amount in controversy excludes interest, statutory damages, penalties, attorney's fees, and court costs
 - ▶ 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."
 - ▶ a "qualified transaction", defined as:
 - 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:
 - 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.

Concurrent Jurisdiction: Category 2

- ▶ \$5 million+ in controversy *plus* actions that involve corporate disputes, e.g.,
 - ▶ Derivative proceedings
 - ▶ Actions regarding corporate governance
 - ▶ Claims arising from state and federal securities or trade regulation laws
 - ▶ Actions against “controlling persons” regarding breach of a duty owed to the organization
 - ▶ Actions to hold an “owner or governing person” accountable for company obligations or debts
 - ▶ Suits “arising out of the Business Organizations Code”

Concurrent Jurisdiction: Category 3



Corporate disputes of **any value** if one party is **publicly traded**

Concurrent Jurisdiction: Exclusions

➤ Excluded disputes include:

- Probate law
 - Family law
 - Matters under Insurance code or claims related to “duties and obligations under an insurance policy”
 - DTPA/consumer complaints
 - Consumer Transactions (Tex. Bus. & Com. Code § 601.001)
 - Actions to “foreclose a lien on real or personal property” insurance, injury, death, or medical/ legal malpractice,
 - Suits “brought by or against governmental entity”
 - Sales of Farm Products
- Unless within the Business Court’s supplemental jurisdiction

Concurrent Jurisdiction: Exclusions

➤ Absolute Exceptions

- Medical liability claims under Tex. Civ Prac. & Rem. Code Chapter 74
- “[A] claim in which a party seeks recovery of monetary damages for bodily injury or death”
- Legal malpractice

Supplemental Jurisdiction

- The Business Court has 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”
 - All parties *and* Business Court judge of the division of the court where action is pending must agree.
 - Absent agreement, supplemental claims may proceed concurrently in another court and related claims remain in the Business Court.

- November 6, 2023: Proposed Rules submitted by SCAC to SCOTX
- February 6, 2024: Texas Supreme Court signs Order of Preliminary Approval of Rules for the Business Court
- May 1, 2024: Public Comment Period closes
- ...TBD
- September 1, 2024: Business Courts Open

Proposed Rules for Business Court and Fifteenth Court of Appeals



Pleading Standards (Preliminarily Approved Rules)

- Initial filings and removal papers:
 - are not subject to “due order of pleading”
 - do not waive a defect in venue or constitute an appearance
 - need to be specific enough to determine jurisdiction and venue
- TRCP 354: Jurisdictional and venue challenges be handled by motion with notice and opportunity to be heard

Original Filings (Preliminarily Approved Rules)

- TRCP 354: Can only be filed if matter is properly venued in one of the operating divisions
 - Business Court clerk will assign the action to that division (one of the two judges)
 - If Business Court does not have jurisdiction, it can (at filer's option):
 - transfer to a district or county court of proper venue or
 - dismiss without prejudice

Removal/Remand (Preliminarily Approved Rules)

- TRCP 354: Challenge to Business Court's authority must be filed within 30 days of the movant's appearance (pure subject-matter jurisdiction can be raised at any time)
- TRCP 355: Removal and remand practice is similar to federal removals;
 - Can remove to Business Court if action is within Business Court's jurisdiction
 - If no jurisdiction, Business Court must remand
- TRCP 356: If filed in wrong venue, Business Court can transfer internally if possible or transfer/dismiss

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

Effect on Statute of Limitations: TRCP 357



- ▶ Remote proceedings can be held ***as to anything but*** jury trials
- ▶ If oral testimony is to be heard, *court may not require remote participation*
- ▶ Business Court judge must be in courtroom or chambers

Remote Proceedings: TRCP 358



- ▶ Right to jury trial coexists with Texas Constitution

Jury Trials



- ▶ Rule 359 (which has received preliminary approval by the Texas Supreme Court):
 - ▶ Requires the judge issue a written opinion:
 - ▶ (1) in connection with a dispositive ruling, on the request of a party; and
 - ▶ (2) on an issue important to the jurisprudence of the state, regardless of the request.
 - ▶ Permits a written opinion “in connection with any order”

Written Opinions by the Business Court



- ▶ Business Court appeals will go to the newly created Fifteenth Court of Appeals
- ▶ Justices elected statewide
 - ▶ 1 Chief and 4 Justices
 - ▶ Initially, 3 will be appointed
- ▶ Opens its doors September 1, 2024;
- ▶ Procedure will be the same as other appeals and original proceedings

Fifteenth Court of Appeals



▶ Statewide jurisdiction:

- ▶ Exclusive jurisdiction as to:
 - ▶ Appellate matters from Business Court
 - ▶ Actions by or against state entities, employees, and officers “arising out of that officer’s or employee’s official conduct”
 - ▶ Actions challenging the constitutionality of a statute or rule where AG is a party
 - ▶ “[A]ny other matter as provided by law”

- ▶ Concurrent with all other Courts of Appeal

Fifteenth Court of Appeals (cont’d)



▶ Exclusions from jurisdiction

- ▶ Family Code proceedings
- ▶ Certain criminal proceedings
- ▶ Mental health commitments
- ▶ Civil asset forfeiture
- ▶ Condemnation
- ▶ Personal Injury/wrongful death
- ▶ Laundry list—must consult

Fifteenth Court of Appeals (cont'd)



- ▶ No existing infrastructure
- ▶ No separate administration
- ▶ Vast needs in order to be up and running
- ▶ Personnel: Appointments and staff hires
- ▶ Issues related to security, staffing and personnel

Logistical Concerns



- ▶ All challenges proceed directly to the Texas Supreme Court
- ▶ Rules not yet finalized
- ▶ Only 5 initial courts, with more to be added later

Other Challenges



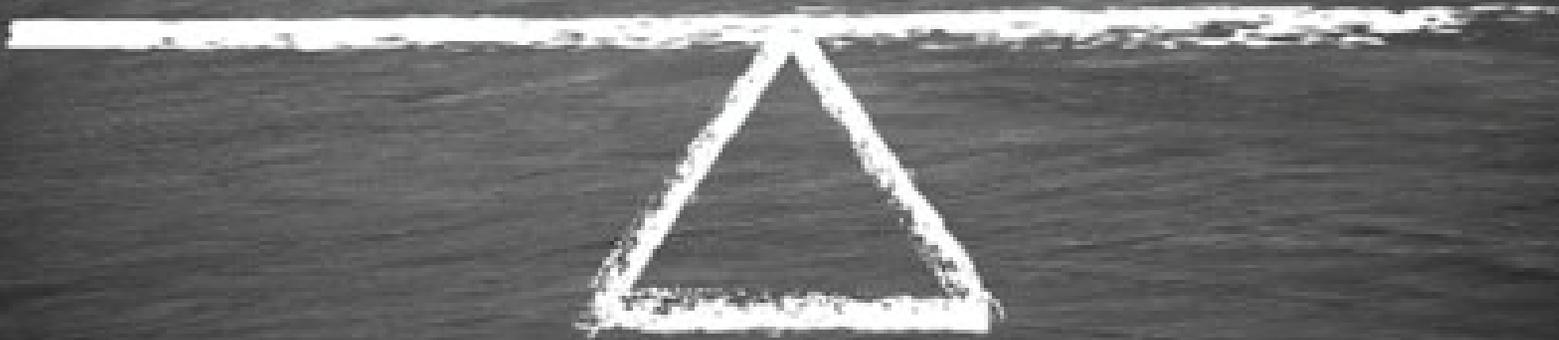
- ▶ Retains right to jury trial
- ▶ Judicial Pay
- ▶ Does it require the right experience for Judges?
- ▶ Two-year terms
- ▶ Will this really streamline business disputes?

Will Business Courts Be the Solution?



Pros

Cons



J E F F E R S O N **C A N O**



San Antonio, Texas

www.jeffersoncano.com

Questions?

Emma Cano:
ecano@jeffersoncano.com

Lamont Jefferson:
ljefferson@jeffersoncano.com