

**SCAC MEETING AGENDA**  
**Friday, October 13, 2023**  
*In Person at South Texas College of Law*  
*1303 San Jacinto*  
*Houston, TX 77002*

**FRIDAY, October 13, 2023:**

**I. WELCOME FROM DEAN MICHAEL BARRY AND C. BABCOCK**

**II. STATUS REPORT FROM CHIEF JUSTICE HECHT**

Chief Justice Hecht will report on Supreme Court actions and those of other courts related to the Supreme Court Advisory Committee since the August 18<sup>th</sup> & 19<sup>th</sup>, 2023 meeting.

**III. BUSINESS COURT**

*Business Court Subcommittee:*

*Marcy Greer – Chair*  
*Hon. R.H. Wallace – Vice Chair*  
*Rusty Hardin*  
*Hon. Peter Kelly*  
*Hon. Emily Miskel*  
*Chris Porter*  
*Hon. Maria Salas Mendoza*  
*Hon. Cathy Stryker*  
*Hon. John Warren*  
*Hon. David Evans*  
*Hon. Harvey Brown*  
*Robert Levy*

1. October 2, 2023 Subcommittee Report re: Business Court
  - A. October 2, 2023 Proposed Rule Amendments Based on H.B. 19
  - B. October 1, 2023 Analysis of H.B. 19
  - C. October 5, 2023 Comment from C.J. Christopher
  - D. October 10, 2023 Comment from Prof. Carlson
  - E. H.B. 19

**IV. FIFTEENTH COURT OF APPEALS**

*Fifteenth Court of Appeals Subcommittee:*

*Marcy Greer – Chair*

*Hon. R.H. Wallace – Vice Chair*

*Rusty Hardin*

*Hon. Peter Kelly*

*Hon. Emily Miskel*

*Chris Porter*

*Hon. Maria Salas Mendoza*

*Hon. Cathy Stryker*

*Hon. John Warren*

*Robert Levy*

*Hon. David Evans*

*Hon. Harvey Brown*

*Robert Levy*

2. October 2, 2023 Subcommittee Report re: 15<sup>th</sup> Court of Appeals
  - A. October 2, 2023 Proposed Rule Amendments Based on S.B. 1045
  - B. October 2, 2023 Analysis of S.B. 1045
  - C. October 5, 2023 Comment from C.J. Christopher
  - D. October 10, 2023 Comment from C.J. Christopher
  - E. S.B. 1045

# TAB 1

## MEMORANDUM

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**TO:** Supreme Court Advisory Committee

**FROM:** Business Court Subcommittee

**RE:** Proposed Amendments to the TRCP Rules for the Business Court (HB 19) and June 3, 2023, Referral Letter

**DATE:** October 2, 2023

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### *Matters referred to subcommittee*

The Court's June 3, 2023, Referral Letter instructed:

HB 19, by adding Government Code Chapter 25A, creates a business court and gives it jurisdiction over certain business matters. HB 19 includes several rulemaking directives. First, new § 25A.016 directs the Court to adopt rules "for the issuance of written opinions by the business court." Second, new § 25A.018 directs the Court to set fees for filings and actions in the business court. Finally, new § 25A.020 directs the Court to "adopt rules of civil procedure as the Court deems necessary," including rules "for the timely and efficient removal and remand of cases to and from the business court" and "the assignment of cases to judges of the business court." The Committee should draft recommended procedural and administrative rules.

Per this request, we have extensively analyzed HB 19 and submit the attached Exhibit A as proposed amendments to the Texas Rules of Civil Procedure and Rules of Judicial Administration.

### *Process*

The Subcommittee as originally appointed: Marcy Greer, Chair, Judge R.H. Wallace, Vice Chair, Rusty Hardin, Justice Peter Kelly, Justice Emily Miskel, Chris Porter, Judge Maria Salas-Mendoza, Judge Kathy Stryker, and John Warren. We expanded the Subcommittee to include fellow SCAC members the Hon. David L. Evans, Robert Levy, and the Hon. Harvey Brown, whose contributions to the work have been tremendous. We also invited Jerry Bullard, Melissa Davis Andrews, and David Shank to join our discussions, and they have also provided significant input.

We first analyzed HB 19 section by section to determine whether a rule or guidance was needed and if so, where it should be placed. The chart attached as Exhibit B tracks the provisions of HB 19 showing where the statutory sections are incorporated into these proposed rules. The Subcommittee concluded that certain provisions of the statute need not be implemented through rules or should be addressed in the Rules of Judicial Administration (RJA) or local rules of the

business court. The Subcommittee focused on proposing rules that we believe will aid the courts and practitioners with respect to business court proceedings and the interplay between the business court and other courts.

We then began drafting provisions and had extensive and robust discussions as a group in weekly Zoom meetings. We have vetted and exchanged multiple drafts of the proposed rules and believe the process has greatly enhanced the final product.

### ***Recommendations***

1. **Proposed placement of the business court rules.** Other than a proposed amendment to Rule 2, the Subcommittee recommends placement of the proposed business court rules at the end of Part II of the Texas Rules of Civil Procedure<sup>1</sup> (Rules of Practice in District and County Courts) and to replace repealed Section 12 (Review By District Courts of County Court Rulings). We considered, alternatively, replacing the repealed Part III (Rules of Procedure for the Courts of Appeals) with the business court rules. With either placement, they would replace repealed Rules 331-345.

2. **Remote proceedings in business court.** Proposed Rule 333(c) incorporates HB 19's provisions for remote proceedings in the business court. It includes language requiring the business court judge to be located in a courtroom or chambers of the court, including for remote proceedings. This is explicit in the text of HB 19, *see* TEX. GOV'T CODE § 25A.017(f), and in the Subcommittee's view reflects the legislative intent.

3. **Initial filings.** Proposed Rule 334 addresses initiating a lawsuit in the business court. Although not explicitly addressed in HB 19, the Subcommittee recommends that initial pleadings be required to allege sufficient facts to establish jurisdiction and venue in the business court. While recognizing that this recommendation may depart from Texas' notice pleading standards in some cases, the Subcommittee considers it necessary to assist the court and practitioners in navigating these threshold matters and potentially avoiding disputes about jurisdiction and venue.

Proposed Rule 334 also addresses motions to challenge jurisdiction filed by a defendant in an action originally filed in the business court. Motions to remand, addressed in Proposed Rule 338, are the proper vehicle for challenging jurisdiction in a removed case. The Subcommittee recommends that a challenge to jurisdiction be raised by motion rather than decided *sua sponte* by the business court and that these motions should be filed within 30 days after the defendant's answer date or 30 days after the defendant enters an appearance.

4. **Assignment and transfer of business court cases.** Proposed Rule 335 covers both assignments within the business court and court-initiated transfers to the business court. Generally, where assignments are necessary, they should be made randomly unless necessary to equalize caseloads or in the interests of justice.

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<sup>1</sup> References to "Rule" or "Rules" in this memo are to the Texas Rules of Civil Procedure.

The statute does not specify whether court-initiated transfer requests under § 25A.006(k) will be heard by the presiding judge of the administrative region or the court requesting the transfer. The Subcommittee concluded that the presiding judge would be best positioned to determine these transfers and should notify the parties and hold a hearing on the request, at least in the initial few years after September 1, 2024, as the process is vetted through the court system.

Rule 335 also incorporates the statutory language permitting bench exchanges. We understand this procedure as allowing a business court judge to sit for a different business court judge without requiring an actual transfer of the action to the new judge.

5. **Venue challenges.** Rule 336(a) tracks the statutory language in HB 19 and does not include a requirement that motions to transfer venue should be verified like Rule 86. Proposed Rule 336(b) indicates that the Texas rules on venue challenges will otherwise apply.

The Subcommittee proposes that the business court's determination of venue should be made upon a motion of a party rather than a court's sua sponte determination. The statute does not provide clear guidance on this issue, and the Subcommittee recommends being consistent with current Texas practice requiring a motion before a court reviews and determines venue.

Proposed Rule 336(a) also references the "operating division" of the business court. This is intended to address situations where removal should not take place if there is not an active business court for the division where the case was originally removed. The term "operating" is not defined, and the Subcommittee felt it did not need to be defined for the purposes of this rule.

6. **Removal.** Proposed Rule 337 is also taken largely from HB19, with some slight rewording the statutory language for clarity.

The proposed rule also includes a requirement for a written notice of removal that should include a statement of the grounds for removal, including the basis for business court jurisdiction. This language tracks the federal statute on removal, *e.g.*, 28 U.S.C. § 1446(a).

Subsection (e) of this proposed rule is from HB19, TEX. GOV'T CODE § 25A.006(f) and is consistent with federal law that 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).

The proposed language for Rules 337(g) and (h) are intended to clarify that pleadings in connection with the removal of a matter to business court, including responding to a motion to remand, do not constitute a general appearance or waive a party's right to challenge venue.

The proposed removal rule 337 does not address timing issues that could arise when a matter is removed to business court after a TRO is entered but before a hearing is held on the injunction. It is anticipated that federal court precedent on this issue would be helpful to address how injunctions or other district court orders would be handled.

Sections 25A.006(d) and (g) and 25A.015(c) of the Government Code (from HB 19) use the term "the court in which the action was originally filed." The Subcommittee recommends revising this language to clarify that it is "the court from which the action was removed" because an action could have been transferred from one district court to another court (including on a

motion to transfer venue) prior to the removal of the action and the Subcommittee does not believe that this change alters the legislative intent. This language change is consistent throughout Rules 337 (removal), 338 (remand), and 342 (jury trials).

The Notes and Comments to Proposed Rule 337 (removal) and Proposed Rule 338 (remand) should indicate that federal court precedent on these topics is instructive in applying the rules given the lack of Texas precedent on removal or remand procedures. The Supreme Court might want to indicate here that federal precedent “is” instructive as opposed to “may be” instructive.

7. **Remand.** The Subcommittee recommends having a 30-day limit on motions to remand similar to the federal practice so that the issue is joined at the outset of the litigation and before either the business court or the court from which it was removed have invested considerable time and resources in the case. This matches the proposed Rule 333(d) setting a 30 day limit for filing a motion to challenge jurisdiction.

We also included in Proposed Rule 338 language that permits a party to seek a remand within 30 days after that party enters an appearance in the case when a party is served after the case is removed to the business court.

The Subcommittee considered but did not include language from the federal remand statutes restricting the ability of a plaintiff to join additional claims or defendants to defeat the business court’s jurisdiction, *i.e.*, 28 U.S.C. § 1447(e). Additionally, the Subcommittee discussed but decided not to include a provision that addressed whether a plaintiff may amend its petition to remove business court jurisdiction as a basis to seek a remand,. The Subcommittee does not anticipate a scenario where this would be possible in light of the provisions of HB 19 that permit actions to proceed in district and business courts simultaneously.

We also considered—but do not recommend—including a provision for awarding costs and attorneys’ fees like 28 U.S.C. § 1447(c).

8. **Definitions.** Proposed Rule 339 incorporates verbatim the definitions section of HB 19, TEX. GOV’T CODE § 25A.001, except for the noted changes of “and” to “or” that, in the Subcommittee’s view, better capture the apparent intention of the legislature that the language was not intended to list all the required elements of a claim.

9. **Proceedings in the business court.** The jurisdiction and authority conferred on the business court in Proposed Rule 340 is taken directly from HB 19, TEX. GOV’T CODE 25A.004. The Subcommittee notes that the statutory language adopted into proposed Rule 340(b)(7) (based on TEX. GOV’T CODE 25A.004(b)(7)) pertaining to “an action arising out of the Business Organizations Code” is potentially overbroad. The Subcommittee suggests that the scope of this provision should be further defined through business court decisions rather than a Proposed Rule.

10. **Removal, disqualification, and recusal.** The Subcommittee considered not including a proposed rule on the removal, disqualification, or recusal of business court judges as set out in HB 19, TEX. GOV’T CODE 25A.012, because these topics are included in other rules of general application. But the Subcommittee concluded that it will likely aid attorneys practicing in

the business court to have ready access to the standards for removal, disqualification, and recusal in the Rules specific to the business court.

11. **Jury trials.** Proposed Rule 342 implements HB 19, TEX. GOV'T CODE § 25A.015 with the same language changes described above in Recommendation 6 (substituting “the court from which the action was removed” for “the court in which the action was originally filed”).

12. **Opinions.** The Subcommittee discussed whether written opinions of the business court should have precedential value. We understand that versions of HB 19 with language suggesting they should be precedent were considered in the 88th Legislative Session. The Subcommittee concluded that orders and opinions of individual judges should be considered persuasive but not precedential—in the same manner as federal district court opinions are not considered binding on other judges in that division or district. *See, e.g., United States v. Articles of Drug Consisting of 203 Paper Bags*, 818 F.2d 569, 572 (7th Cir. 1987).

The Subcommittee discussed whether Rule 343 should explicitly encourage business court judges to write opinions on dispositive orders that do not resolve the matter. The Subcommittee does not believe it is necessary to include a directive in the Rule and instead suggests a comment to that effect.

The Subcommittee concluded that the definition of “significant issue of law or procedure” in Rule 343(a) should not be exclusive, but instead should give the judge the discretion to write on issues that are significant to the parties even if not necessarily to business court or to Texas jurisprudence generally.

We used Texas Rule of Appellate Procedure 47.4 as a proxy for helping define “significant issue of law or procedure.” That rule uses language similar to HB 19 to guide appellate courts on writing opinions and instructs that opinions are to be designated as memorandum opinions *unless* a list of special categories applies. One of those categories is when the opinion “establishes a new rule of law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases.” TEX. R. APP. P. 47.4(a). A question has been raised as to whether the legislature intended to give the business court authority to “alter[] or modif[y] an existing rule of law.” Overall, the Subcommittee felt that the legislature’s intent to have the business court develop a body of law was clear and that opinions that “alter[] or modif[y] an existing rule” are sufficiently close enough to the other alternatives of TRAP 47.4(a) that this language should be included in Proposed Rule 343.

13. **Fees for business court proceedings.** The Subcommittee does not feel that it has enough information at this time to suggest a fee schedule for the business court. We recommend that the fees be set in a separate schedule by administrative order to enable the Supreme Court to have flexibility to adjust fees as appropriate.

Currently, we have only very limited information as to the number of actions anticipated to be filed in the business court, and without it, it is impossible to set fees designed to allow the business court to be self-supported over time. We are also concerned that setting fees too high may have unintended consequences, such as discouraging filing cases in the business court. The Supreme Court might consider setting an initial fee schedule based on a multiplier of the current



district court fee schedule—*e.g.*, the cost of an initial action or removal would be x times the amount to file an original action in district court.

14. **Business Court local rules.** Rule 345 codifies HB 19’s express directive for the business court to have local rules. *See* TEX. GOV’T CODE § 25A.020(b). This statute differs from Rule 3a in a few respects, so the Subcommittee thought it best to include Proposed Rule 345 with the business court rules.

We considered, but decided not to include, proposed business court rules for pretrial management conferences for case-management orders and discovery control plans similar to Federal Rules of Civil Procedure 16 and 26(f). HB 19 did not include any such provisions, and we thought it best for the business court to address these matters through local rules or individual practices of the business court judges to get some experience at least at the outset.

15. **Amendment to the Texas Rules of Judicial Administration.** Rule 9(c). The Subcommittee recommends adding Rule 9(c) to the Rules of Judicial Administration to note that the administrative presiding judge of the business court will have similar duties as local administrative judges, particularly the provisions set out in TEX. GOV’T CODE § 25A.017(b).

### *Other rules provisions*

In connection with the work we have done on the business court rules, we have identified some other rules changes that we believe would be beneficial although they are beyond the scope of our assignment. We offer them as suggestions for the Court and other Subcommittees to consider. The topics are:

- Removing superfluous language in TRCP 2 that pertains to statutes in effect when the rules were adopted. This language is:

Where any statute in effect immediately prior to September 1, 1941, prescribed a rule of procedure in lunacy, guardianship, or estates of decedents, or any other probate proceedings in the county court differing from these Rules, and not included in the “List of Repealed Statutes,” such statute shall apply; and where any statute in effect immediately prior to September 1, 1941, and not included in the “List of Repealed Statutes,” prescribed a rule of procedure in any special statutory proceeding differing from these rules, such statute shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in bond or recognizance forfeitures in criminal cases are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in tax suits are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply; provided, however, that Rule 117a shall control with respect to citation in tax suits.

October 2, 2023

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- Amending Rule 9 to permit more than two counsel to be heard in complex cases, including business court cases.

# TAB 1A

**Supreme Court Advisory Committee: Business Court Subcommittee**  
***Proposed Rules Amendments based on HB 19***

**TEXAS RULES OF CIVIL PROCEDURE**  
**WITH BUSINESS COURT PROVISIONS**

General Drafting guidance:

- Proposed additions are shown in underline.
- Generally, unless otherwise noted in [brackets], the proposed amendments are from HB 19.
- Verbiage from HB 19 not included in the rule is noted in ~~striketrough~~.
- \*Language from federal statutes on removal and remand 28 U.S.C. §§ 1447 and 1448 are shown with { }.
- Language from TRAP 47 is shown with (parentheses).

**RULE 2. SCOPE OF  
RULES**

These rules shall govern the procedure in the justice, county, and district courts, and the business court, of the State of Texas in all actions of a civil nature, with such exceptions as may be hereinafter stated. Where any statute in effect immediately prior to September 1, 1941, prescribed a rule of procedure in lunacy, guardianship, or estates of decedents, or any other probate proceedings in the county court differing from these Rules, and not included in the “List of Repealed Statutes,” such statute shall apply; and where any statute in effect immediately prior to September 1, 1941, and not included in the “List of Repealed Statutes,” prescribed a rule of procedure in any special statutory proceeding differing from these rules, such statute shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in bond or recognizance forfeitures in criminal cases are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in tax suits are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply; provided, however, that Rule 117a shall control with respect to citation in tax suits.

Notes and Comments

Comment to 2024 change: The addition of business courts in this Rule is to confirm that except as specified in Section 12 of the Rules, these Rules govern the procedures in the business court in Texas..

**SECTION 12. REVIEW BY DISTRICT COURTS OF COUNTY COURT RULINGS THE BUSINESS COURT RULES OF PRACTICE AND PROCEDURE**

**RULE 331. THE BUSINESS COURT GENERALLY**

[Unless otherwise specified in the Government Code Section 25A or these Rules], the practice, procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials, hearings, and other business in the business court are governed by the laws and rules prescribed for district courts unless otherwise provided by this chapter. A business court judge has all powers, duties, immunities, and privileges of a district court judge.

Notes and Comments

Comment to 2024 change: This change incorporates Texas Government Code Sec. 25A.015(g) and 25A.005 (H.B. 19, 88th Legislature, Regular Session). These rules apply to civil actions commenced on or after September 1, 2024.

**RULE 332. BUSINESS COURT LOCATION**

- (a) The clerk of the business shall be located in Travis County. The clerk shall:
  - (1) accept all filings in the business court submitted pursuant to Rules 21 and 21a; and
  - (2) fulfill the legal and administrative functions of a district clerk.
  
- (b) Each business court judge shall maintain chambers in the county the judge selects within the geographic boundaries of the division to which the judge is appointed in facilities provided by this state. For purposes of this section, the Office of Court Administration of the Texas Judicial System may contract for the use of facilities with a county.
  
- (b) Subject to Rule 338-Section 25A.015, a business court judge may hold court at any courtroom within the geographic boundaries of the division to which that judge is appointed as that judge the court determines necessary or convenient for a particular civil action. To the extent practicable, a county using existing courtrooms and facilities shall accommodate the business court in the conduct of the court's hearings and other proceedings.

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 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, 88<sup>th</sup> 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, 88<sup>th</sup> 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, 88<sup>th</sup> 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, 88<sup>th</sup> 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:]

- (a) “Controlling person” means a person who directly or indirectly controls a governing person, officer, or organization.
- (b) “Derivative proceeding” means a civil action brought in the right of a domestic or foreign corporation, a domestic or foreign limited liability company, or a domestic or foreign limited partnership, to the extent provided by the Business Organizations Code.
- (c) “Governing documents” means the instruments, documents, or agreements adopted under an organization’s governing law to govern the organization’s formation and internal affairs. The term includes:
- (1) a certificate of formation, articles of incorporation, and articles of organization;
  - (2) bylaws;
  - (3) a partnership agreement;
  - (4) a company agreement or operating agreement;
  - (5) a shareholder agreement;
  - (6) a voting agreement or voting trust agreement; ~~and~~[or]
  - (7) an agreement among owners restricting the transfer of ownership interests.
- (d) “Governing law” means the law governing the formation and internal affairs of an organization.
- (e) “Governing person” means a person who is entitled, alone or as part of a group, to manage and direct an organization’s affairs under the organization’s governing documents and governing law. The term includes:
- (1) a member of the board of directors of a corporation or other organization;
  - (2) a general partner of a general or limited partnership;
  - (3) a manager of a limited liability company that is managed by its managers;

- (4) a member of a limited liability company that is managed by its members;
  - (5) a trust manager of a real estate investment trust; and[or]
  - (6) a trustee of a business trust.
- (f) “Governmental entity” means:
- (1) Th[e] state of Texas is state; or
  - (2) a political subdivision of Texas this state, including a municipality, a county, or any kind of district.
- (g) “Internal affairs” means:
- (1) the rights, powers, and duties of an organization’s governing persons, officers, owners, and members; and[or]
  - (2) matters relating to the organization’s membership or ownership interests.
- (h) “Managerial official” means a governing person or officer.
- (i) “Officer” means a person elected, appointed, or designated as an officer of an organization by the organization’s governing persons or governing documents.
- (j) “Organization” means a foreign or domestic entity or association, regardless of whether the organization is for profit or nonprofit. The term includes:
- (k)
- (1) a corporation;
  - (2) a limited partnership;
  - (3) a general partnership;
  - (4) a limited liability partnership;
  - (5) a limited liability company;
  - (6) a business trust;
  - (7) a real estate investment trust;
  - (8) a joint venture;
  - (9) a joint stock company;
  - (10) a cooperative;
  - (11) a bank;
  - (12) a credit union;
  - (13) a savings and loan association;
  - (14) an insurance company; and[or]
  - (15) a series of a limited liability company or of another entity.
- (l) “Owner” means an owner of an organization. The term includes:
- (1) a shareholder or stockholder of a corporation or other organization;
  - (2) a general or limited partner of a partnership or an assignee of a partnership interest in a partnership;

- (3) a member of, or an assignee of a membership interest in, a limited liability company; and[or]
- (4) a member of a nonprofit organization.
- (m) “Ownership interest” means an owner’s interest in an organization, including an owner’s economic, voting, and management rights.
- (n) “Publicly traded company” means an entity whose voting equity securities are listed on a national securities exchange registered with the United States Securities and Exchange Commission under Section 6, Securities Exchange Act of 1934 (15 U.S.C. Section 78f) and any entity that is majority owned or controlled by such an entity.
- (o) “Qualified transaction” means 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:
  - (1) pays or receives, or is obligated to pay or is entitled to receive, consideration with an aggregate value of at least \$10 million; or
  - (2) 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.

Notes and Comments

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

**RULE 340. BUSINESS COURT PROCEEDINGS**

- (a) Subject to Subsections (b), (c), (d), (e) and (f), [Except as provided in this Rule], the business court has the powers provided to district courts by Chapter 24 [of the Texas Government Code], including the power to:
  - (1) issue writs of injunction, mandamus, sequestration, attachment, garnishment, and supersedeas; and
  - (2) grant any relief that may be granted by a district court.
- (b) Subject to Subsection (c), the business court has civil jurisdiction concurrent with district courts in the following actions in which the amount in controversy exceeds \$5 million, excluding interest, statutory damages, exemplary damages, penalties, attorney’s fees, and court costs:
  - (1) a derivative proceeding;
  - (2) an action regarding the governance, governing documents, or internal affairs of an organization;

- (3) an action in which a claim under a state or federal securities or trade regulation law is asserted against:
  - a. an organization
  - b. a controlling person or managerial official of an organization for an act or omission by the organization or by the person in the person's capacity as a controlling person or managerial official
  - c. an underwriter of securities issued by the organization; or
  - d. the auditor of an organization;
- (4) an action by an organization, or an owner of an organization, if the action:
  - a. is brought against an owner, controlling person, or managerial official of the organization; and
  - b. alleges an act or omission by the person in the person's capacity as an owner, controlling person, or managerial official of the organization;
- (5) an action alleging that an owner, controlling person, or managerial official breached a duty owed to an organization or an owner of an organization by reason of the person's status as an owner, controlling person, or managerial official, including the breach of a duty of loyalty or good faith;
- (6) an action seeking to hold an owner or governing person of an organization liable for an obligation of the organization, other than on account of a written contract signed by the person to be held liable in a capacity other than as an owner or governing person; [or]
- (7) an action arising out of the Business Organizations Code.
- (c) The business court has civil jurisdiction concurrent with district courts in an action described by Subsection (b) [of this Rule] regardless of the amount in controversy if a party to the action is a publicly traded company.
- (d) The business court has civil jurisdiction concurrent with district courts in the following actions in which the amount in controversy exceeds \$10 million, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs:
  - (1) an action arising out of a qualified transaction;
  - (2) an action that arises out of a contract or commercial transaction in which the parties to the contract or transaction agreed in the contract or a subsequent agreement that the business court has jurisdiction of the action, except an action that arises out of an insurance contract; and [or]
  - (3) subject to Subsection (g), an action that arises out of a violation of the Finance Code or Business & Commerce Code 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.

- (e) The business court has civil jurisdiction concurrent with district courts in an action seeking injunctive relief or a declaratory judgment under Chapter 37, Civil Practice and Remedies Code, involving a dispute based on a claim within the court's jurisdiction under Subsection (b), (c), or (d) [of this rule].
- (f) Except as provided by Subsection (h), 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. A claim within the business court's supplemental jurisdiction may proceed in the business court only on the agreement of all parties to the claim and a judge of the division of the court before which the action is pending. If the parties ~~involved in a~~ [to the] claim within the business court's supplemental jurisdiction [and the business court judge to whom the case is assigned] do not agree on the claim proceeding in the business court, the claim may proceed in a court of original jurisdiction concurrently with any related claims proceeding in the business court.
- (g) Unless the claim falls within the business court's supplemental jurisdiction, the business court does not have jurisdiction of:
  - (1) a civil action:
    - a. brought by or against a governmental entity; or
    - b. to foreclose on a lien on real or personal property;
  - (2) a claim arising out of:
    - a. Subchapter E, Chapter 15, and Chapter 17, Business & Commerce Code;
    - b. the Estates Code;
    - c. the Family Code;
    - d. the Insurance Code; or
    - e. Chapter 53 and Title 9, Property Code;
  - (3) a claim arising out of the production or sale of a farm product, as that term is defined by Section 9.102, Business & Commerce Code;
  - (4) a claim related to a consumer transaction, as that term is defined by Section 601.001, Business & Commerce Code, to which a consumer in this state is a party, arising out of a violation of federal or state law; or
  - (5) a claim related to the duties and obligations under an insurance policy.

- (h) The business court does not have jurisdiction of the following claims regardless of whether the claim is otherwise within the court’s supplemental jurisdiction under Subsection (g):
- (1) a claim arising under Chapter 74, Civil Practice and Remedies Code;
  - (2) a claim in which a party seeks recovery of monetary damages for bodily injury or death; or
  - (3) a claim of legal malpractice.

Notes and Comments

Comment to 2024 change: This new rule implements Texas Government Code Section 25A.004 (H.B. 19, 88<sup>th</sup> Legislature, Regular Session). These rules apply to civil actions commenced on or after September 1, 2024.

**RULE 341. REMOVAL, DISQUALIFICATION AND RECUSAL  
OF BUSINESS COURT JUDGES**

- (a) A business court judge may be removed from office in the same manner and for the same reasons as a district court judge.
- (b) A business court judge is disqualified and subject to mandatory recusal for the same reasons a district judge is subject to disqualification or recusal in a pending case. Disqualification or recusal of a business court judge shall be governed by the same procedure as disqualification or recusal of a district judge.

Notes and Comments

Comment to 2024 change: This new rule implements Texas Government Code Section 25A.012 (H.B. 19, 88<sup>th</sup> 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, 88<sup>th</sup> 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, 88<sup>th</sup> 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 344. FEES FOR BUSINESS COURT ACTIONS**

[The Supreme Court shall establish a schedule of fees for business court proceedings with the intention to set fees sufficient to cover the costs of administering Chapter 25A of the Government Code. The schedule of fees will be published by the Business Court Clerk on its website. A business court shall have the authority to waive any or all fees necessary for the interest of justice.]

Notes and Comments

Comment to 2024 change: New Rule implementing Texas Government Code Sec. 25A.018, (H.B. 19, 88<sup>th</sup> Legislature Regular Session). 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, 88<sup>th</sup> Legislature Regular Session).

**TEXAS RULES OF JUDICIAL ADMINISTRATION  
WITH BUSINESS COURT AMENDMENTS**

**Rule 9. Local Administrative Judges.**

a. In any county in which there are two or more district courts, the judges of those courts shall elect one of the district judges as the local administrative district judge. In any county in which there are two or more statutory county courts, the judges of those courts shall elect one of the statutory county court judges as the local administrative statutory county court judge. If a local administrative district judge or a local administrative statutory county court judge is not so chosen, the Presiding Judge of the administrative region shall designate one of the qualified judges of the county as the local administrative district judge or the local administrative statutory

county court judge. The local administrative judges shall be responsible to the Presiding Judge of the administrative region for the expeditious dispatch of business in the district and statutory county courts of the county.

b. Under the direction of the local administrative judge, the district and statutory county court judges of the county shall adopt rules to provide for the orderly administration of the affairs of the district and statutory county courts of the county. The rules shall employ a uniform and consistent numbering system approved by the Supreme Court and the Council of Presiding Judges. These rules shall provide, among other matters, for the orderly discharge of the local judicial responsibilities for matters relating to:

- (1) docket management of the local courts;
- (2) regular meetings to address the matters set forth in Rule 3.e.;
- (3) judicial budget matters;
- (4) adult and juvenile probation matters;
- (5) County Auditor matters;
- (6) county purchasing matters;
- (7) relationship with other governmental bodies, the public, and the news media;
- (8) such other matters necessary to provide for the orderly, prompt, efficient, and effective administration of justice in the county;
- (9) court reporters and timely preparation of records; and
- (10) dismissals for want of prosecution so as to achieve and maintain compliance with the time standards of Rule 6

c. The administrative presiding judge of the Texas business court as set out in the Texas Government Code Chapter 25A shall, to the extent applicable, be responsible for carrying out the duties of the local administrative judges as they pertain to the Texas business court. These duties include:

- (1) managing administrative and personnel matters on behalf of the business court;  
and
- (2) appointing a clerk of the business court.

# TAB 1B

SCAC Business Courts Subcommittee

Analysis of SB 19

Provision	Rule Needed?	TRCP General	TRCP Business Court Rules ("BCR")	Comment/Other	BC Local Rule	Proposed new Rule
<b>SECTION 1</b>						
<b>25A.001 Definitions</b>	Yes		BCR			TRCP 339
<b>25A.002 Creation</b>	No					
<b>25A.003 Divisions</b>	No					
<b>25A.004 Jurisdiction and Powers</b>	Yes	Rule 2	BCR			TRCP 2 TRCP 340
<b>25A.005 Judicial Authority</b>	Yes			Privileges and immunities (Judicial Conduct & Rules of Judicial Administration ("RJA"))		RJA2(e) & 9(c)
<b>25A.006 Initial Filing/Removal &amp; Remand</b>	Yes		BCR			TRCP 334-Initial Filing

Provision	Rule Needed?	TRCP General	TRCP Business Court Rules ("BCR")	Comment/Other	BC Local Rule	Proposed new Rule
						TRCP 335- Assignment and Transfer TRCP 336-Venue challenges TRCP 337-Removal TRCP 338-Remand
<b>25A.007 Appeals</b>	Yes			15th COA Rules		TRAP 25.3(b)(3)
<b>25A.008 Qualifications of Judge</b>	No			Leave in Gov't Code		
<b>25A.009 Appointment of Judges</b>	Only (d) and (f)		BCR (f) exchanging benches	Remaining leave in Gov't Code	(d) BC Local Rule	(f) TRCP 335(d)
<b>25A.010 Vacancy</b>	No			leave in Gov't Code		
<b>25A.011 Judge's Salary</b>	No			leave in Gov't Code		
<b>25A.012 Removal/ Disqualification &amp; Recusal</b>	Yes		BCR			TRCP 341
<b>25A.013 Private Practice</b>	No			leave in Gov't Code		
<b>25A.014 Visiting Judge</b>	No			leave in Gov't Code		

Provision	Rule Needed?	TRCP General	TRCP Business Court Rules ("BCR")	Comment/Other	BC Local Rule	Proposed new Rule
25A.015 Jury Practice	Yes		BCR			TRCP 342
25A.016 Written Opinions	Yes		BCR (similar to TRAP 47.1, 47.4)			TRCP 343
25A.017 Court Location/Staffing	(a), (b), (d)-(g)		BCR	RJA9. Otherwise, leave in Gov't Code		(a) TRCP 333(a) (b) TRCP 332(a) (d) TRCP 332(b) (e) TRCP 333(b) (f) TRCP 333(c) (g) TRCP 333(d)
25A.0171 Administrative Attachment/OCA	No			leave in Gov't Code		
25A.018 Fees	Yes		BCR	Fee schedule in SCOTX order		Rule 344
25A.019 Seal	No			Leave in Gov't Code		
25A.020 Rules	Yes		BCR			TRCP 335, 337-338 TRCP 345-BC local rules
<b>SECTION 2</b>	No			Leave in Gov't Code		
<b>SECTION 3</b>	No			Leave in Gov't Code		

Provision	Rule Needed?	TRCP General	TRCP Business Court Rules ("BCR")	Comment/Other	BC Local Rule	Proposed new Rule
<b>SECTION 4</b>	No			Leave in Gov't Code		
<b>SECTION 5</b>	No			Leave in Gov't Code		
<b>SECTION 6</b>	No			Leave in Gov't Code		
<b>SECTION 7</b>	No			Leave in Gov't Code		
<b>SECTION 8</b>	Yes			Comment		Added to comments to new rules.
<b>SECTION 9</b>	No			Leave in Gov't Code		

# TAB 1C



## Zamen, Shiva

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**From:** Tracy Christopher <[REDACTED]>  
**Sent:** Thursday, October 5, 2023 10:36 AM  
**To:** mgreer@adjtlaw.com  
**Cc:** Babcock, Chip; Jaclyn Daumerie  
**Subject:** business court rules

**\*\*RECEIVED FROM EXTERNAL SENDER – USE CAUTION\*\***

Hi Marcy, the committee has really done a lot of good work. These are my initial comments and questions.

1. Clerk of business court in Travis County and filings. What if someone shows up for a hearing with a pleading, memo, jury question etc and asks that it be filed? Just not allowed anymore? Local clerks need to be able to handle these filings. I know the statute is silent on this but the judges and litigants will need answers.
2. The statute and rules say that another business court judge can sit for a business court judge. But it also provides for visiting judges. I would include that in the rules if you are including the one provision. At some point the SCT will need to create a list of potential visiting judges that meet the criteria.
3. As to RJA 9 (c) and R. 335—shouldn't you spell out how the administrative presiding judge of the business court is selected rather than referring back to statute.
4. Supplemental jurisdiction—should this be fleshed out more? Severance? Should one case proceed first? Judgment credits? Lots of potential problems with this if not agreed.
5. Rule 342 about jury trials—I know the statute is vague on this issue—but do you anticipate that the business court judge will just ask the county for a panel? Or do you anticipate that the business court clerk will be responsible for sending out jury notices? There are a lot of statutes involving how a clerk does this. I think this should be spelled out.
6. Abuse of discretion by the presiding judge for not transferring to the business court—where is the mandamus filed? Its not an order by the business court judge. I would spell that out too—let the 15<sup>th</sup> have it.
7. There are other clerk of court related issues that you might think are beyond the scope of your committee –I guess OCA will have to figure those out?

I will do a second email on the 15<sup>th</sup> Court of Appeals if necessary.

Tracy Christopher  
Chief Justice, 14th Court of Appeals  
Houston, TX 77002  
[REDACTED]

# TAB 1D

## Zamen, Shiva

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**From:** Elaine Carlson <ecarlson@stcl.edu>  
**Sent:** Tuesday, October 10, 2023 5:28 PM  
**To:** mgreer@adjtlaw.com  
**Cc:** Babcock, Chip; Jaclyn [REDACTED]  
**Subject:** Business Courts and 15th Court of Appeals

**\*\*RECEIVED FROM EXTERNAL SENDER – USE CAUTION\*\***

Inasmuch as the Court may not enact rules inconsistent with the statutes, my input is very limited. Proposed Rule 343 addressing Written Opinions in Business Court Cases uses "for example" a term not commonly used in our rules. I suggest the second sentence of Rule 343(a) state:

Among the factors the business court judge may consider in determining whether an issue is significant, includes the following:

...

I also note the use of the term "shall" versus "must", but understand that is consistent with the terminology used in the statute.

Best,  
Professor Elaine Carlson

# TAB 1E

## H.B. No. 19

AN ACT relating to the creation of a specialty trial court to hear certain cases; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

### SECTION 1.

Subtitle A, Title 2, Government Code, is amended by adding Chapter 25A to read as follows:

#### CHAPTER 25A. BUSINESS COURT

##### Sec. 25A.001. DEFINITIONS.

In this chapter:

- (1) "Controlling person" means a person who directly or indirectly controls a governing person, officer, or organization.
- (2) "Derivative proceeding" means a civil action brought in the right of a domestic or foreign corporation, a domestic or foreign limited liability company, or a domestic or foreign limited partnership, to the extent provided by the Business Organizations Code.
- (3) "Governing documents" means the instruments, documents, or agreements adopted under an organization's governing law to govern the organization's formation and internal affairs. The term includes:
  - (A) a certificate of formation, articles of incorporation, and articles of organization;
  - (B) bylaws;
  - (C) a partnership agreement;
  - (D) a company agreement or operating agreement;
  - (E) a shareholder agreement;
  - (F) a voting agreement or voting trust agreement; and
  - (G) an agreement among owners restricting the transfer of ownership interests.
- (4) "Governing law" means the law governing the formation and internal affairs of an organization.
- (5) "Governing person" means a person who is entitled, alone or as part of a group, to manage and direct an organization's affairs under the organization's governing documents and governing law. The term includes:
  - (A) a member of the board of directors of a corporation or other organization;
  - (B) a general partner of a general or limited partnership;
  - (C) a manager of a limited liability company that is managed by its managers;
  - (D) a member of a limited liability company that is managed by its members;
  - (E) a trust manager of a real estate investment trust; and
  - (F) a trustee of a business trust.
- (6) "Governmental entity" means:
  - (A) this state; or
  - (B) a political subdivision of this state, including a municipality, a county, or any kind of district.
- (7) "Internal affairs" means:
  - (A) the rights, powers, and duties of an organization's governing persons, officers, owners, and members; and
  - (B) matters relating to the organization's membership or ownership interests.
- (8) "Managerial official" means a governing person or officer.
- (9) "Officer" means a person elected, appointed, or designated as an officer of an organization by the organization's governing persons or governing documents.
- (10) "Organization" means a foreign or domestic entity or association, regardless of whether the organization is for profit or nonprofit. The term includes:
  - (A) a corporation;
  - (B) a limited partnership;
  - (C) a general partnership;
  - (D) a limited liability partnership;
  - (E) a limited liability company;
  - (F) a business trust;
  - (G) a real estate investment trust;
  - (H) a joint venture;
  - (I) a joint stock company;
  - (J) a cooperative;
  - (K) a bank;
  - (L) a credit union;
  - (M) a savings and loan association;
  - (N) an insurance company; and
  - (O) a series of a limited liability company or of another entity.
- (11) "Owner" means an owner of an organization. The term includes:
  - (A) a shareholder or stockholder of a corporation or other organization;
  - (B) a general or limited partner of a partnership or an assignee of a partnership interest in a partnership;
  - (C) a member of, or an assignee of a membership interest in, a limited liability company; and
  - (D) a member of a nonprofit organization.

- (12) "Ownership interest" means an owner's interest in an organization, including an owner's economic, voting, and management rights.
- (13) "Publicly traded company" means an entity whose voting equity securities are listed on a national securities exchange registered with the United States Securities and Exchange Commission under Section 6, Securities Exchange Act of 1934 (15 U.S.C. Section 78f) and any entity that is majority owned or controlled by such an entity.
- (14) "Qualified transaction" means 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.

**Sec. 25A.002. CREATION.**

The business court is a statutory court created under Section 1, Article V, Texas Constitution.

**Sec. 25A.003. BUSINESS COURT JUDICIAL DISTRICT; DIVISIONS.**

- (a) The judicial district of the business court is composed of all counties in this state.
- (b) The business court is composed of divisions as provided by this section.
- (c) The First Business Court Division is composed of the counties composing the First Administrative Judicial Region under Section 74.042(b).
- (d) The Second Business Court Division is composed of the counties composing the Second Administrative Judicial Region under Section 74.042(c), subject to funding through legislative appropriations. The division is abolished September 1, 2026, unless reauthorized by the legislature and funded through additional legislative appropriations.
- (e) The Third Business Court Division is composed of the counties composing the Third Administrative Judicial Region under Section 74.042(d).
- (f) The Fourth Business Court Division is composed of the counties composing the Fourth Administrative Judicial Region under Section 74.042(e).

- (g) The Fifth Business Court Division is composed of the counties composing the Fifth Administrative Judicial Region under Section 74.042(f), subject to funding through legislative appropriations. The division is abolished on September 1, 2026, unless reauthorized by the legislature and funded through additional legislative appropriations.
- (h) The Sixth Business Court Division is composed of the counties composing the Sixth Administrative Judicial Region under Section 74.042(g), subject to funding through legislative appropriations. The division is abolished on September 1, 2026, unless reauthorized by the legislature and funded through additional legislative appropriations.
- (i) The Seventh Business Court Division is composed of the counties composing the Seventh Administrative Judicial Region under Section 74.042(h), subject to funding through legislative appropriations. The division is abolished on September 1, 2026, unless reauthorized by the legislature and funded through additional legislative appropriations.
- (j) The Eighth Business Court Division is composed of the counties composing the Eighth Administrative Judicial Region under Section 74.042(i).
- (k) The Ninth Business Court Division is composed of the counties composing the Ninth Administrative Judicial Region under Section 74.042(j), subject to funding through legislative appropriations. The division is abolished on September 1, 2026, unless reauthorized by the legislature and funded through additional legislative appropriations.
- (l) The Tenth Business Court Division is composed of the counties composing the Tenth Administrative Judicial Region under Section 74.042(k), subject to funding through legislative appropriations. The division is abolished on September 1, 2026, unless reauthorized by the legislature and funded through additional legislative appropriations.
- (m) The Eleventh Business Court Division is composed of the counties composing the Eleventh Administrative Judicial Region under Section 74.042(l).
- (n) This subsection and Subsections (d), (g), (h), (i), (k), and (l) expire September 1, 2026.

**Sec. 25A.004. JURISDICTION AND POWERS.**

- (a) Subject to Subsections (b), (c), (d), (e), and (f), the business court has the powers provided to district courts by Chapter 24, including the power to:
  - (1) issue writs of injunction, mandamus, sequestration, attachment, garnishment, and supersedeas; and

- (2) grant any relief that may be granted by a district court.
- (b) Subject to Subsection (c), the business court has civil jurisdiction concurrent with district courts in the following actions in which the amount in controversy exceeds \$5 million, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs:
- (1) a derivative proceeding;
  - (2) an action regarding the governance, governing documents, or internal affairs of an organization;
  - (3) an action in which a claim under a state or federal securities or trade regulation law is asserted against:
    - (A) an organization;
    - (B) a controlling person or managerial official of an organization for an act or omission by the organization or by the person in the person's capacity as a controlling person or managerial official;
    - (C) an underwriter of securities issued by the organization; or
    - (D) the auditor of an organization;
  - (4) an action by an organization, or an owner of an organization, if the action:
    - (A) is brought against an owner, controlling person, or managerial official of the organization; and
    - (B) alleges an act or omission by the person in the person's capacity as an owner, controlling person, or managerial official of the organization;
  - (5) an action alleging that an owner, controlling person, or managerial official breached a duty owed to an organization or an owner of an organization by reason of the person's status as an owner, controlling person, or managerial official, including the breach of a duty of loyalty or good faith;
  - (6) an action seeking to hold an owner or governing person of an organization liable for an obligation of the organization, other than on account of a written contract signed by the person to be held liable in a capacity other than as an owner or governing person; and
  - (7) an action arising out of the Business Organizations Code.
- (c) The business court has civil jurisdiction concurrent with district courts in an action described by Subsection (b) regardless of the amount in controversy if a party to the action is a publicly traded company.
- (d) The business court has civil jurisdiction concurrent with district courts in the following actions in which the amount in controversy exceeds \$10 million, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs:
- (1) an action arising out of a qualified transaction;
  - (2) an action that arises out of a contract or commercial transaction in which the parties to the contract or transaction agreed in the contract or a subsequent agreement that the business court has jurisdiction of the action, except an action that arises out of an insurance contract; and
  - (3) subject to Subsection (g), an action that arises out of a violation of the Finance Code or Business & Commerce Code 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.
- (e) The business court has civil jurisdiction concurrent with district courts in an action seeking injunctive relief or a declaratory judgment under Chapter 37, Civil Practice and Remedies Code, involving a dispute based on a claim within the court's jurisdiction under Subsection (b), (c), or (d).
- (f) Except as provided by Subsection (h), 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. A claim within the business court's supplemental jurisdiction may proceed in the business court only on the agreement of all parties to the claim and a judge of the division of the court before which the action is pending. If the parties involved in a claim within the business court's supplemental jurisdiction do not agree on the claim proceeding in the business court, the claim may proceed in a court of original jurisdiction concurrently with any related claims proceeding in the business court.
- (g) Unless the claim falls within the business court's supplemental jurisdiction, the business court does not have jurisdiction of:
- (1) a civil action:
    - (A) brought by or against a governmental entity; or
    - (B) to foreclose on a lien on real or personal property;
  - (2) a claim arising out of:
    - (A) Subchapter E, Chapter 15, and Chapter 17, Business & Commerce Code;
    - (B) the Estates Code;
    - (C) the Family Code;

- (D) the Insurance Code; or
- (E) Chapter 53 and Title 9, Property Code;

- (3) a claim arising out of the production or sale of a farm product, as that term is defined by Section 9.102, Business & Commerce Code;
- (4) a claim related to a consumer transaction, as that term is defined by Section 601.001, Business & Commerce Code, to which a consumer in this state is a party, arising out of a violation of federal or state law; or
- (5) a claim related to the duties and obligations under an insurance policy.

(h) The business court does not have jurisdiction of the following claims regardless of whether the claim is otherwise within the court's supplemental jurisdiction under Subsection (f):

- (1) a claim arising under Chapter 74, Civil Practice and Remedies Code;
- (2) a claim in which a party seeks recovery of monetary damages for bodily injury or death; or
- (3) a claim of legal malpractice.

#### **Sec. 25A.005. JUDICIAL AUTHORITY.**

A business court judge has all powers, duties, immunities, and privileges of a district judge.

#### **Sec. 25A.006. INITIAL FILING; REMOVAL AND REMAND.**

(a) An action within the jurisdiction of the business court may be filed in the business court. The party filing the action must plead facts to establish venue in a county in a division of the business court, and the business court 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 the business court does not have jurisdiction of the action, the court shall, at the option 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) If, after an action is assigned to a division of the business court, the court determines that the division's geographic territory does not include a county of proper venue for the action, the court shall:

- (1) if an operating division of the court includes a county of proper venue, transfer the action to that division; or
- (2) if there is not an operating division of the 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.

(d) A party to an action filed in a district court or county court at law that is within the jurisdiction of the business court may remove the action to the business court. If the business court does not have jurisdiction of the action, the business court shall remand the action to the court in which the action was originally filed.

(e) 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.

(f) A party may file an agreed notice of removal at any time during the pendency of the action. 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.

(g) The notice of removal must be filed with the business court and the court in which the action was originally filed. On receipt of the notice, the clerk of the court in which the action was 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.

(h) The filing of an action or a notice of removal in the business court is subject to Section 10.001, Civil Practice and Remedies Code.

(i) Removal of a case to the business court is not subject to the statutes or rules governing the due order of pleading.



- (j) Removal of a case does not waive a defect in venue or constitute an appearance to determine personal jurisdiction.
- (k) 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 judge shall notify all parties of the transfer request and 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.

- (l) 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 Section 25A.015.

**Sec. 25A.007. APPEALS.**

- (a) Notwithstanding any other law and except as provided by Subsection (b) and in instances 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.
- (b) If the Fifteenth Court of Appeals is not created, 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 shall be filed in the court of appeals with appellate jurisdiction of civil cases for the county declared in an order under Section 25A.006(l).
- (c) The procedure governing an appeal or original proceeding from the business court is the same as the procedure for an appeal or original proceeding from a district court.

**Sec. 25A.008. QUALIFICATIONS OF JUDGE.**

- (a) A business court judge must:
  - (1) be at least 35 years of age;
  - (2) be a United States citizen;
  - (3) have been a resident of a county within the division of the business court to which the judge is appointed for at least five years before appointment; and
  - (4) be a licensed attorney in this state who has 10 or more years of experience in:

- (A) practicing complex civil business litigation;
- (B) practicing business transaction law;
- (C) serving as a judge of a court in this state with civil jurisdiction; or
- (D) any combination of experience described by Paragraphs (A)-(C).

- (b) A business court judge may not have had the judge's license to practice law revoked, suspended, or subject to a probated suspension.

**Sec. 25A.009. APPOINTMENT OF JUDGES; TERM; PRESIDING JUDGE; EXCHANGE OF BENCHES.**

- (a) The governor, with the advice and consent of the senate, shall appoint:
  - (1) two judges to each of the First, Third, Fourth, Eighth, and Eleventh Divisions of the business court; and
  - (2) one judge to each of the Second, Fifth, Sixth, Seventh, Ninth, and Tenth Divisions of the business court.
- (b) A business court judge shall serve for a term of two years, beginning on September 1 of every even-numbered year.
- (c) A business court judge may be reappointed.
- (d) Not later than the seventh day after the first day of a term, the business court judges by majority vote shall select a judge of the court to serve as administrative presiding judge for the duration of the term. If a vacancy occurs in the position of administrative presiding judge, the remaining business court judges shall select a judge of the court to serve as administrative presiding judge for the remainder of the unexpired term as soon as practicable.
- (e) A business court judge shall take the constitutional oath of office required of appointed officers of this state and file the oath with the secretary of state.
- (f) 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.

**Sec. 25A.010. VACANCY.**

If a vacancy occurs in an office of a business court judge, the governor, with the advice and consent of the senate, shall appoint, in the same manner as the original appointment, another person to serve for the remainder of the unexpired term.

**Sec. 25A.011. JUDGE'S SALARY.**

The salary of a business court judge is the amount provided by Section 659.012 and shall be paid in equal monthly installments.

**Sec. 25A.012. REMOVAL; DISQUALIFICATION AND RECUSAL.**

- (a) A business court judge may be removed from office in the same manner and for the same reasons as a district judge.
- (b) A business court judge is disqualified and subject to mandatory recusal for the same reasons a district judge is subject to disqualification or recusal in a pending case. Disqualification or recusal of a business court judge shall be governed by the same procedure as disqualification or recusal of a district judge.

**Sec. 25A.013. PRIVATE PRACTICE OF LAW.**

A business court judge shall diligently discharge the duties of the office on a full-time basis and may not engage in the private practice of law.

**Sec. 25A.014. VISITING JUDGE.**

- (a) A retired or former judge or justice who has the qualifications prescribed by Section 25A.008 may be assigned as a visiting judge of a division of the business court by the chief justice of the supreme court. A visiting judge of a division of the business court is subject to objection, disqualification, or recusal in the same manner as a retired or former judge or justice is subject to objection, disqualification, or recusal if appointed as a visiting district judge.
- (b) Before accepting an assignment as a visiting judge of a division of the business court, a retired or former judge or justice shall take the constitutional oath of office required of appointed officers of this state and file the oath with the secretary of state.

**Sec. 25A.015. JURY PRACTICE AND PROCEDURE; VENUE FOR JURY TRIAL.**

- (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 in which the action was 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) Practice, procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials, hearings, and other business in the business court are governed by the laws and rules prescribed for district courts, unless otherwise provided by this chapter.

**Sec. 25A.016. WRITTEN OPINIONS.**

The supreme court shall adopt rules for the issuance of written opinions by the business court.

**Sec. 25A.017. COURT LOCATION; STAFFING.**

- (a) In this section, "remote proceeding" means a proceeding before the business court in which one or more of the participants, including a judge, party, attorney, witness, court reporter, or other individual attends the proceeding remotely through the use of technology.
- (b) The administrative presiding judge of the business court shall manage administrative and personnel matters on behalf of the court. The administrative presiding judge of the business court shall appoint a clerk, whose office shall be located in Travis County in facilities provided by this state. The clerk shall:
  - (1) accept all filings in the business court; and
  - (2) fulfill the legal and administrative functions of a district clerk.
- (c) Each business court judge shall maintain chambers in the county the judge selects within the geographic boundaries of the division to which the judge is appointed in facilities provided by this state. For purposes of this section, the Office of Court Administration of the Texas Judicial System may contract for the use of facilities with a county.
- (d) Subject to Section 25A.015, a business court judge may hold court at any courtroom within the geographic boundaries of the division to which the judge is appointed as the court determines necessary or convenient for a particular civil action. To the extent practicable, a county using existing courtrooms and facilities shall accommodate the business court in the conduct of the court's hearings and other proceedings.

- (e) 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. The 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.
- (f) The business court shall conduct a remote proceeding from a courtroom or the facilities provided to a business court judge by this state.
- (g) 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.
- (h) In a county in which a division of the business court sits, the sheriff shall in person or by deputy attend the business court as required by the court. The sheriff or deputy is entitled to reimbursement from this state for the cost of attending the business court.
- (i) The business court may appoint personnel necessary for the operation of the court, including:
  - (1) personnel to assist the clerk of the court;
  - (2) staff attorneys for the court;
  - (3) staff attorneys for each judge of the business court;
  - (4) court coordinators; and
  - (5) administrative assistants.
- (j) Subject to Subsection (k), the court officials shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for the offices.
- (k) All personnel, including the business court clerk, appointed under this section are employees of the Office of Court Administration of the Texas Judicial System and are state employees for all purposes, including accrual of leave time, insurance benefits, retirement benefits, and travel regulations.

**Sec. 25A.0171. ADMINISTRATIVE ATTACHMENT TO OFFICE OF COURT ADMINISTRATION; REPORT.**

- (a) The business court is administratively attached to the Office of Court Administration of the Texas Judicial System.
- (b) The Office of Court Administration of the Texas Judicial System shall provide administrative support to the business court as necessary to enable the business court to carry out its duties under this chapter.

- (c) The Office of Court Administration of the Texas Judicial System may employ personnel necessary to provide administrative support to the business court under this chapter.
- (d) Only the business court may exercise the duties of the business court under this chapter. Except as otherwise provided by this chapter, the Office of Court Administration of the Texas Judicial System does not have any authority or responsibility related to the duties of the business court under this chapter.
- (e) Not later than December 1 of each year, the Office of Court Administration of the Texas Judicial System shall submit to the legislature a report on the number and types of cases heard by the business court in the preceding year.

**Sec. 25A.018. FEES.**

The supreme court shall 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.

**Sec. 25A.019. SEAL.**

The seal of the business court is the same as that provided by law for a district court except that the seal must contain the name "The Business Court of Texas."

**Sec. 25A.020. RULES.**

- (a) The supreme court shall adopt rules of civil procedure as the court determines necessary, including rules providing for:
  - (1) the timely and efficient removal and remand of cases to and from the business court; and
  - (2) the assignment of cases to judges of the business court.
- (b) The business court may adopt rules of practice and procedure consistent with the Texas Rules of Civil Procedure and the Texas Rules of Evidence.

**SECTION 2.**

Sections 659.012(a) and (e), Government Code, are amended to read as follows:

- (a) Notwithstanding Section 659.011 and subject to Subsections (b) and (b-1):
  - (1) a judge of a district court or a division of the business court is entitled to an annual base salary from the

state as set by the General Appropriations Act in an amount equal to at least \$140,000, except that the combined base salary of a district judge or judge of a division of the business court from all state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is \$5,000 less than the maximum combined base salary from all state and county sources for a justice of a court of appeals other than a chief justice as determined under this subsection;

- (2) a justice of a court of appeals other than the chief justice is entitled to an annual base salary from the state in the amount equal to 110 percent of the state base salary of a district judge as set by the General Appropriations Act, except that the combined base salary of a justice of the court of appeals other than the chief justice from all state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is \$5,000 less than the base salary for a justice of the supreme court as determined under this subsection;
- (3) a justice of the supreme court other than the chief justice or a judge of the court of criminal appeals other than the presiding judge is entitled to an annual base salary from the state in the amount equal to 120 percent of the state base salary of a district judge as set by the General Appropriations Act; and
- (4) the chief justice or presiding judge of an appellate court is entitled to an annual base salary from the state in the amount equal to \$2,500 more than the state base salary provided for the other justices or judges of the court, except that the combined base salary of the chief justice of a court of appeals from all state and county sources may not exceed the amount equal to \$2,500 less than the base salary for a justice of the supreme court as determined under this subsection.

(e) For the purpose of salary payments by the state, the comptroller shall determine from sworn statements filed by the justices of the courts of appeals, district judges, and business court judges that the required salary limitations provided by Subsection (a) are maintained. If the state base salary for a judge or justice prescribed by Subsection (a) combined with additional compensation from a county would exceed the limitations provided by Subsection (a), the comptroller shall reduce the salary payment made by the state by the amount of the excess.

### **SECTION 3.**

Section 837.001(a), Government Code, is amended to read as follows:

- (a) Membership in the retirement system is limited to persons who have never been eligible for membership in the Judicial Retirement System of Texas or the Judicial Retirement System of Texas Plan One and who at any time on or after the effective date of this Act are judges, justices, or commissioners of:
  - (1) the supreme court;
  - (2) the court of criminal appeals;
  - (3) a court of appeals;
  - (4) the business court;
  - (5) a district court; or
  - (6) a commission to a court specified in this subsection.

### **SECTION 4.**

- (a) The Texas Supreme Court has exclusive and original jurisdiction over a challenge to the constitutionality of this Act or any part of this Act and may issue injunctive or declaratory relief in connection with the challenge.
- (b) If the appointment of judges by the governor to the divisions of the business court under Section 25A.009, Government Code, as added by this Act, is held by the Texas Supreme Court as unconstitutional, the business court shall be staffed by retired or former judges or justices who are appointed to the court as provided by Section 25A.014, Government Code, as added by this Act.

### **SECTION 5.**

Except as otherwise provided by this Act, the business court is created September 1, 2024.

### **SECTION 6.**

- (a) As soon as practicable after the effective date of this Act, the governor shall appoint judges to the First, Third, Fourth, Eighth, and Eleventh Business Court Divisions as required by Section 25A.009, Government Code, as added by this Act.

- (b) On or before September 1, 2026, but not before July 1, 2026, the governor shall appoint judges to the Second, Fifth, Sixth, Seventh, Ninth, and Tenth Business Court Divisions as required by Section 25A.009, Government Code, as added by this Act.

## **SECTION 7.**

- (a) Notwithstanding Chapter 25A, Government Code, as added by this Act, the business court is not created unless the legislature makes a specific appropriation of money for that purpose. For purposes of this subsection, a specific appropriation is an appropriation identifying the business court or an Act of the 88th Legislature, Regular Session, 2023, relating to the creation of a specialty trial court to hear certain cases or of the business court.
- (b) Notwithstanding Section 25A.007(a), Government Code, as added by this Act, a court of appeals retains the jurisdiction the court had on August 31, 2024, if the business court is not created as a result of Subsection (a) of this section.

## **SECTION 8.**

The changes in law made by this Act apply to civil actions commenced on or after September 1, 2024.

## **SECTION 9.**

This Act takes effect September 1, 2023.

# TAB 2

## MEMORANDUM

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**TO:** Supreme Court Advisory Committee

**FROM:** Fifteenth Court of Appeals Subcommittee

**RE:** Proposed Amendments to the TRAP Rules for the Fifteenth Court of Appeals (SB 1045) and June 3, 2023, Referral Letter

**DATE:** October 2, 2023

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### *Matters referred to subcommittee*

The Court's June 3, 2023, Referral Letter instructed:

SB 1045 creates a Fifteenth Court of Appeals. Section 1.05 adds Government Code § 22.220(d) to give the Fifteenth Court of Appeals exclusive intermediate appellate jurisdiction over certain civil matters, including certain matters brought by or against the State and matters involving the Office of Attorney General that challenge the constitutionality or validity of a state statute or rule. Section 1.08 directs the Court, by adding Government Code § 73.001(c), to adopt rules for (1) transferring an appeal incorrectly filed in the Fifteenth Court of Appeals to the appropriate court of appeals and (2) transferring appeals incorrectly filed in the other courts of appeals to Fifteenth Court of Appeals. The Committee should make recommendations and draft recommended procedural and administrative rules.

Per this request, we have extensively analyzed SB 1045 and submit the attached Exhibit A as proposed amendments to the Texas Rules of Appellate Procedure. We also recommend that the Court issue an administrative order to provide guidance to the intermediate appellate courts during the transition phase of SB 1045 (September 1, 2023, to September 1, 2024) concerning the topics addressed below in Recommendation 4.

### *Process*

The Subcommittee as originally appointed: Marcy Greer, Chair, Judge R.H. Wallace, Vice Chair, Rusty Hardin, Justice Peter Kelly, Justice Emily Miskel, Chris Porter, Judge Maria Salas-Mendoza, Judge Kathy Stryker, and John Warren. We expanded the Subcommittee to include fellow SCAC members the Hon. David L. Evans, Robert Levy, and the Hon. Harvey Brown, whose contributions to the work have been tremendous. We also invited Jerry Bullard, Melissa Davis Andrews, and David Shank to join our discussions, and they have also provided significant input.

We first analyzed SB 1045 and the appeal provisions of HB 19 section by section to determine whether a rule or guidance was needed and if so, where it should be placed. The chart of our discussions, as revised by the drafting process, is attached as Exhibit B.

We then began drafting provisions and had extensive and robust discussions as a group in weekly Zoom meetings. We have exchanged multiple drafts of the rules and believe the process has greatly enhanced the final product.

### ***Recommendations***

1. **Proposed New Rule 25.3—the Fifteenth Court of Appeals rule.** The most substantive change is our proposed new Rule 25.3, which is designed to implement the operative provisions of SB 1045 with respect to the new court of appeals. We thought it best fit as new Rule 25.3 and recommend expanding the title of that rule to encompass “Perfecting and Prosecuting Appeals,” as it covers more than just perfection. We considered resurrecting currently repealed Rule 50, but concluded it was too far removed from the operative provisions for civil appellate courts generally.

2. **Proposed amendments to Rule 32.1.** We understand that the Office of Court Administration is revising the uniform docketing statement to include requests for information that it is required to collect for purposes of implementing SB 1045. *See, e.g.*, TEX. GOV’T CODE § 22.2152; *see also* SB 1045, §1.15(b). Rather than repeatedly amending Rule 32.1 to include each item of information for a docketing statement each time a legislative act or rules change requires it, we believe it is best to simplify the rule with reference to the OCA’s and appellate court’s authority and indicate where the docketing statement form is available.

3. **Proposed amendment to Rule 39.8.** Section 1.02(b) of SB 1045 allows the Fifteenth Court of Appeals to “transact its business in any county in the district as the court determines is necessary and convenient.” TEX. GOV’T CODE § 22.2151. Considering that the Fifteenth Court will have statewide jurisdiction, *id.* § 22.201(p), we believe the court should notify the parties as to the location of any oral argument and provide instructions for participating electronically if applicable. Further considering that the other intermediate appellate courts sometimes hold arguments either in remote locations (in docket-equalized appeals) or virtually, this amendment should benefit the oral-argument notice process for all appellate courts.

4. **Proposed items for Administrative Order.** A number of questions have been raised about how the intermediate appellate courts will handle cases that are designated to be transferred to the Fifteenth Court of Appeals on September 1, 2024, and shortly afterward. We believe these transitional issues are more appropriate for an Administrative Order than a rule amendment. They might also be handled by local rules or internal operating procedures of the intermediate appellate courts, and we are aware that the Chief Justices of the appellate courts have been extensively discussing together.

Overall, there appears to be a general consensus that where appeals are designated to be transferred to the Fifteenth Court of Appeals, they should be “worked up” by the appellate courts in which they are currently pending so that they are positioned to be decided by the Fifteenth Court of Appeals once it opens for business on September 1, 2024. At the same time, the appellate courts currently retaining these appeals should not invest significant time and other resources on the merits of these appeals unless they believe they can finally dispose of the appeal in its entirety before September 1, 2024. We considered *when* it would be appropriate for an appellate court to hold or abate an appeal that is designated for transfer to the Fifteenth Court of Appeals and believe



it is when that court considers the appeal to be “at issue.” Each court of appeals should be able to handle these appeals according to its own local rules and internal operating procedures to avoid duplication of efforts and without adverse consequences.

The topics we have considered and recommend guidance in the form of an Administrative Order or local rules or internal operating procedures for the individual appellate courts are:

- *Supersedeas and stay issues.* The courts of appeals where the appeal is pending should address and resolve supersedeas and stay issues and other time-sensitive motions and requests as it does in all of its pending cases.
- *Routine motions and requests.* The courts of appeals where the appeal is pending should address and resolve routine motions for extensions, requests relating to the record on appeal, etc. so that the appellate record and briefing are completed as fully as possible during the transition year.
- *Designation of appeals to be transferred.* The courts of appeals should adopt a process for identifying and notifying the parties that a particular case is designated for transfer to the Fifteenth Court of Appeals on September 1, 2024.
- *Exemption of cases designated for the Fifteenth Court of Appeals from docket-equalization transfers.* It does not make sense for an appeal designated for the Fifteenth Court of Appeals to be docket-equalized to another court of appeals only to be transferred to the Fifteenth Court.
- *Determinations of jurisdiction.* The Court should consider how to resolve the disputes over the jurisdiction of the Fifteenth Court of Appeals that we expect will arise. For example, the statute does not address what should occur if (a) both the Fifteenth Court of Appeals and the transferor court of appeals reject the appeal as being in the other’s jurisdiction; (b) the claim or party providing jurisdiction in the Fifteenth Court of Appeals is settled or otherwise disposed of without reaching the merits of the appeal; and (c) whether there should be a time-limit on filing jurisdictional disputes once the case is designated for transfer to the Fifteenth Court (e.g., should the parties be precluded from challenging jurisdiction after an unfavorable oral argument?).
- *Motions for rehearing.* If a case is transferred to the Fifteenth Court of Appeals after an opinion is handed down but before all timely filed motions for rehearing are resolved, the intent of the statute appears to be that the Fifteenth Court of Appeals would determine the motion for rehearing. In reconsidering the opinion, should the Fifteenth Court of Appeals apply the precedent of the transferor court or develop its own precedent?
- *Remand from the Supreme Court.* If an appeal that was decided by another appellate court but within the Fifteenth Court of Appeals’ jurisdiction is remanded by the Court back to the appellate court, we presume the Court would remand to the Fifteenth Court of Appeals, thus making the jurisdictional decision. As to matters

not resolved by the Court, should the Fifteenth Court of Appeals apply its own precedent?

- *Enforcement of judgment.* To the extent that post-appellate enforcement of the judgment is necessary of a case within the Fifteenth Court's jurisdiction, we would expect it to handle enforcement proceedings even if the original judgment was signed by a different court of appeals.

# TAB 2A

*DRAFT: October 2, 2023*

**Supreme Court Advisory Committee: Fifteenth Court of Appeals Subcommittee**  
***Proposed Rules Amendments based on SB 1045***

**TEXAS RULES OF APPELLATE PROCEDURE**  
**WITH PROVISIONS FOR 15TH COURT OF APPEALS**

General Drafting guidance:

- Proposed additions to existing rules are shown in **highlighted text**.
- Proposed deletions to existing rules are shown in ~~strikeout text~~.
- Generally, unless otherwise noted in [brackets], the proposed amendments use language taken directly from SB 1045 or HB 19, as codified.

{EXPANDED TITLE OF} **RULE 25: PERFECTING AND PROSECUTING APPEALS**

{New} **Rule 25.3 Fifteenth Court of Appeals**

(a) [*Applicable Rules and Procedure.*] [Unless otherwise specified in Government Code chapters 22 or 25A or these Rules:]

(1) the procedure governing an appeal or original proceeding of a matter over which the Fifteenth Court of Appeals has exclusive jurisdiction is the same as the procedure for an appeal or original proceeding from a district court;<sup>1</sup> and

(2) the original jurisdiction of the [Fifteenth Court of Appeals] to issue writs is limited to writs arising out of matters over which the court has exclusive intermediate appellate jurisdiction under Government Code section 22.220(d).<sup>2</sup> [The Fifteenth Court of Appeals lacks authority to issue writs of mandamus against:]

(1) a judge of a district court who is acting as a magistrate at a court of inquiry under Chapter 52, Code of Criminal Procedure, in the court of appeals district; or

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<sup>1</sup> TEX. GOV'T CODE § 25A.007(c).

<sup>2</sup> TEX. GOV'T CODE § 22.221(c-1).

(2) an associate judge of a district or county court appointed by a judge under Chapter 201, Family Code, in the court of appeals district for the judge who appointed the associate judge.<sup>3</sup>

(b) [*Jurisdiction of the Fifteenth Court of Appeals.*] The Court of Appeals for the Fifteenth Court of Appeals District has exclusive intermediate appellate jurisdiction over the following matters arising out of or related to a civil case:

(1) matters brought by or against the state or a board, commission, department, office, or other agency in the executive branch of the state government, including a university system or institution of higher education as defined by Section 61.003, Education Code, or by or against an officer or employee of the state or a board, commission, department, office, or other agency in the executive branch of the state government arising out of that officer's or employee's official conduct, other than:

(A) a proceeding brought under the Family Code and any related motion or proceeding;

(B) a proceeding brought under Chapter 7B or Article 17.292, Code of Criminal Procedure;

(C) a proceeding brought against a district attorney, a criminal district attorney, or a county attorney with criminal jurisdiction;

(D) a proceeding relating to a mental health commitment;

(E) a proceeding relating to civil asset forfeiture;

(F) a condemnation proceeding for the acquisition of land or a proceeding related to eminent domain;

(G) a proceeding brought under Chapter 101, Civil Practice and Remedies Code;

(H) a claim of personal injury or wrongful death;

(I) a proceeding brought under Chapter 125, Civil Practice and Remedies Code, to enjoin a common nuisance;

(J) a proceeding brought under Chapter 55, Code of Criminal Procedure;

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<sup>3</sup> TEX. GOV'T CODE § 22.221(c)(1)&(2).

(K) a proceeding under Chapter 22A, Government Code;

(L) a proceeding brought under Subchapter E-1, Chapter 411, Government Code;

(M) a proceeding brought under Chapter 21, Labor Code;

(N) a removal action under Chapter 87, Local Government Code; or

(O) a proceeding brought under Chapter 841, Health and Safety Code;<sup>4</sup>

(2) matters in which a party to the proceeding files a petition, motion, or other pleading challenging the constitutionality or validity of a state statute or rule and the attorney general is a party to the case;<sup>5</sup>

(3) appeals from orders or judgments of the business court or an original proceeding related to an action or order of the business court;<sup>6</sup> and

(4) any other matter as provided by law.<sup>7</sup>

(c) [*Transfers Between Courts of Appeals*. Either on its own initiative, with not less than ten days' notice to the parties and an opportunity to object, or on motion of a party, an appellate court may transfer an appeal:]

(1) [improperly] filed in the Fifteenth Court of Appeals to a court of appeals with jurisdiction over the appeal;<sup>8</sup> and

(2) over which the Fifteenth Court of Appeals has exclusive intermediate appellate jurisdiction under Section 22.220(d) [that has been improperly filed in another appellate court.]<sup>9</sup>

Such a motion or transfer should be filed or initiated by the deadline for a reply brief.

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<sup>4</sup> TEX. GOV'T CODE § 22.220(d)(1)(A)-(O).

<sup>5</sup> TEX. GOV'T CODE § 22.220(d)(2).

<sup>6</sup> TEX. GOV'T CODE § 25A.007(a).

<sup>7</sup> TEX. GOV'T CODE § 22.220(d)(3).

<sup>8</sup> TEX. GOV'T CODE § 73.001(c)(1).

<sup>9</sup> TEX. GOV'T CODE § 73.001(c)(2).

Notes and Comments

Comment to 2024 change: This new rule incorporates the jurisdictional, writ, and transfer provisions for the Fifteenth Court of Appeals found in Tex. Gov't Code §§ 22.220(d), 22.221, 25.007(a) & (c); 73.001(c). These rules apply to appeals perfected on or after September 1, 2024.

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**RULE 32. DOCKETING STATEMENT**

**32.1. Civil Cases**

Promptly upon filing the notice of appeal in a civil case, the appellant must complete and file in the appellate court a docketing statement containing the information required by the Office of Court Administration<sup>10</sup> that includes the following information:

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~~(a) (1) if the appellant filing the statement has counsel, the name of that appellant and the name, address, telephone number, fax number, if any, and State Bar of Texas identification number of the appellant's lead counsel; or~~

~~(2) if the appellant filing the statement is not represented by an attorney, that party's name, address, telephone number, and fax number, if any;~~

~~(b) the date the notice of appeal was filed in the trial court and, if mailed to the trial court clerk, the date of mailing;~~

~~(c) the trial court's name and county, the name of the judge who tried the case, and the date the judgment or order appealed from was signed;~~

~~(d) the date of filing of any motion for new trial, motion to modify the judgment, request for findings of fact, motion to reinstate, or other filing that affects the time for perfecting the appeal;~~

~~(e) the names of all other parties to the trial court's judgment or the order appealed from, and:~~

~~(1) if represented by counsel, their lead counsel's names, addresses, telephone numbers, and fax numbers, if any; or~~

~~(2) if not represented by counsel, the name, address, and telephone number of the party, or a statement that the appellant diligently inquired but could not discover that information;~~

~~(f) the general nature of the case — for example, personal injury, breach of contract, or temporary injunction;~~

<sup>10</sup> TEX. GOV'T CODE § 22.2152; see also SB 1045, §1.15(b).

~~(g) whether the appeal's submission should be given priority, whether the appeal is an accelerated one under Rule 28.1 or another rule or statute, and whether it is a parental termination or child protection case or an appeal from an order certifying a child to stand trial as an adult, as defined in Rule 28.4;~~

~~(h) whether the appellant has requested or will request a reporter's record, and whether the trial was electronically recorded;~~

~~(i) the name, mailing address, telephone number, fax number, if any, email address, and Certified Shorthand Reporter number of each court reporter responsible for preparing the reporter's record;~~

~~(j) whether the appellant intends to seek temporary or ancillary relief while the appeal is pending;~~

~~(k) if the appellant filed a Statement of Inability to Afford Payment of Court Costs in the trial court:~~

~~(1) the date that the Statement was filed;~~

~~(2) the date of filing of any motion challenging the Statement;~~

~~(3) the date of any hearing on the appellant's ability to afford costs; and~~

~~(4) if the trial court signed an order under Texas Rule of Civil Procedure 145, the court's findings regarding the appellant's ability to afford costs and the date that the order was signed;~~

~~(l) whether the appellant has filed or will file a supersedeas bond; and~~

~~(m) any other information the appellate court requires.~~ The form of the docketing statement shall be made available through the appellate court's clerk's office and on its official website.

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### Notes and Comments

Comment to 2023 change: Rule 32.1 is amended to implement Texas Family Code section 56.01(h-1). Comment to 2024 change: Rule 32.1 is amended to delete the individual requirements and allow flexibility for OCA to amend the docketing statement forms to include the information it is required to collect for purposes of implementing SB 1045. These rules apply to appeals perfected on or after September 1, 2024.

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**RULE 39. ORAL ARGUMENT; DECISION WITHOUT ARGUMENT**

**Rule 39.8. Clerk’s Notice**

The clerk must send to the parties—at least 21 days before the date the case is set for argument or submission without argument—a notice telling the parties:

- (a) whether the court will allow oral argument or will submit the case without argument;
- (b) the date of argument or submission without argument;
- (c) if argument is allowed, the time allotted for argument;
- (d) the names of the members of the panel to which the case will be argued or submitted, subject to change by the court; **and**
- (e) the location of the oral argument or instructions for joining the proceeding electronically, the court’s designated contact information, and instructions for submitting exhibits.<sup>11</sup>

A party's failure to receive the notice does not prevent a case's argument or submission on the scheduled date.

Notes and Comments

Comment to 2024 change: This change is necessitated by Tex. Gov’t Code § 22.2151(b) permitting the Fifteenth Court of Appeals to “transact business in any county in the district as the court determines is necessary and convenient.” The language is adapted from Texas Rule of Appellate Procedure 21(b). These rules apply to appeals perfected on or after September 1, 2024.

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<sup>11</sup> TEX. GOV’T CODE § 22.2151; TEX. R. APP. P. 21(b).

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# TAB 2B

SCAC Fifteenth Court of Appeals Subcommittee

Tentative Analysis of HB 1045

Provision	Rule Needed?	TRAP General	Comment/Other	Local Rule	Other
1.01	No		Leave in Gov't Code		
1.02	Yes	TRAP 39.8			TRAP 39.8(e)
1.03	Yes	TRAP 32.1			TRAP 32.1
1.04	No		Leave in Gov't Code		
1.05	Yes for "d"	Add TRAP 25.3 (expand title of TRAP 25); consider TRAP 50			TRAP 25.3(b)
1.06	Yes "c" and "c-1"	TRAP 25.3 or 50			TRAP 25.3(a)(2)
1.07	No		Leave in Gov't Code		
1.08	Yes "c"	"c" TRAP 25.3			"c" to TRAP 25.3(c)
1.09	No		Leave in Gov't Code		
1.10	N		Leave in Gov't Code		
1.11	No		Leave in Gov't Code		
1.12	No		Leave in Gov't Code		
1.13	No		Leave in Gov't Code		
1.14	No		Leave in Gov't Code		
1.15	Yes	TRAP 32.1 and comment			SCOTX Order; OCA is revising Docketing

Provision	Rule Needed?	TRAP General	Comment/Other	Local Rule	Other
					Statement; like TRCP 5.02/LR COAs
<b>2.01</b>	No		Leave in Gov't Code		
<b>2.02</b>	No		Leave in Gov't Code		
<b>2.03</b>	No		Leave in Gov't Code		
<b>2.04</b>	No		Leave in Gov't Code		
<b>3.01</b>	No		Leave in Gov't Code		
<b>3.02</b>	No		Leave in Gov't Code		
<b>3.03</b>	No	Comment	Leave in Gov't Code		
<b>HB 19 25A.007 Appeals</b>	Yes	(a) TRAP 25.3 (c) TRAP 25.3			(a) TRAP 25.3(b)(3) (c) TRAP 25.3(a)(1)
<b>Other Rules Impacted</b>					
Supersedeas	Maybe			Local Rule?	SCOTX Order
Designation of cases to be transferred on 9.1.24	Yes			Local Rule	
Abatement/work-up/argument/opinion	Maybe			Local Rule?	SCOTX Order
Reinstatement after abatement	Maybe			Local Rule?	SCOTX Order

<b>Provision</b>	<b>Rule Needed?</b>	<b>TRAP General</b>	<b>Comment/Other</b>	<b>Local Rule</b>	<b>Other</b>
Determinations of 15th COA jurisdiction	Maybe			Local Rule?	SCOTX Order
Rehearings after transfer to 15th COA	Maybe			Local Rule?	SCOTX Order
Remand after petition for review	Maybe			Local Rule?	SCOTX Order
Enforcement of judgment	Maybe			Local Rule?	SCOTX Order
Nearest available court of appeals	Maybe	TRAP 17.2			

# TAB 2C

## Zamen, Shiva

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**From:** Tracy Christopher <[REDACTED]>  
**Sent:** Thursday, October 5, 2023 1:34 PM  
**To:** mgreer@adjtlaw.com  
**Cc:** Babcock, Chip; Jaclyn Daumerie  
**Subject:** Appellate Court rules

**\*\*RECEIVED FROM EXTERNAL SENDER – USE CAUTION\*\***

Hi Marcy, here are my comments and questions about the TRAP amendments.

1. The notice of appeal might need to be changed—TRAP 25.1 requires the notice to be filed with the trial court clerk. There are other provisions in the TRAP rules about the trial court clerk. Under the new business rules—we have a business court clerk in Austin for filings. We do not have “trial court clerks.” I noted the problems that might cause in my other email. Also do we need to add anything about filing a notice in the wrong trial court?
2. I am not opposed to rule 39.8 but sometimes we change oral arguments with less than 21 days notice. Especially when we move it to zoom if someone is exposed to Covid but still wants to continue. Or when we reschedule on motion—so I think the rule needs to reflect that we can amend with less than 21 days notice.
3. I think the transfer should be by the SCT—not by the individual courts. Our transfers now are all by SCT order with a few exceptions in the 1<sup>st</sup> and 14<sup>th</sup>. I am not sure that an appellate court has the power to transfer under the Government code. This ends any possible dispute on the matter.
4. I am not sure that the legislature intended this—but it appears that the 15<sup>th</sup> court cannot issue a writ to the business court judge because they are not listed. Can that be fixed by rule? They do have jurisdiction over “original proceedings” under the statute.
5. Speaking of original proceedings and permissions to appeal—should we change the rule to make the parties state whether or not their case is part of the 15<sup>th</sup> court’s jurisdiction?
6. Because the 15<sup>th</sup> court has exclusive jurisdiction—there should be no time deadline for a transfer—its is jurisdictional. I don’t think that can be changed by rule.
7. I do not think the Supreme Court should cede power to OCA on the docketing statement—perhaps add—“as approved by the Supreme Court” at the end of the sentence.
8. I don’t think the SCT needs to worry too much about the cases filed after 9/1/23 subject to transfer. I think the intermediate courts plan to just handle the cases and wont issue final opinions in cases if its too close to 9/1/24. I will leave it up to the SCT in the very small number of cases where we decide a post 9/1/23 case and then the SCT remands to us –as to where the case should go.

Thanks for considering.

Tracy Christopher  
Chief Justice, 14th Court of Appeals  
Houston, TX 77002  
[REDACTED]

# TAB 2D



## Zamen, Shiva

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**From:** Tracy Christopher [REDACTED] >  
**Sent:** Tuesday, October 10, 2023 11:32 AM  
**To:** Marcy Greer  
**Cc:** Babcock, Chip; Jaclyn Daumerie  
**Subject:** RE: Appellate Court rules

**\*\*RECEIVED FROM EXTERNAL SENDER – USE CAUTION\*\***

Hi Marcy

Forget to mention two items that I believe we should address through rules—even though its not in the legislation.

1. Does the 15<sup>th</sup> court have jurisdiction over appeals when one defendant or plaintiff is “the state” but the others are not?
2. Does the 15<sup>th</sup> court have jurisdiction over appeals where there are two claims—one of which is within jurisdiction while the other is not?

For our court, the two most common type of cases that might transfer are cases against the local community colleges. Surprisingly tax cases are not excluded and our local community colleges are sometimes parties to those cases. We also have employment disputes that arise from those colleges with both breach of contract (not excluded) and an excluded claim like discrimination.

Thanks

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**From:** Marcy Greer <[mgreer@adjtlaw.com](mailto:mgreer@adjtlaw.com)>  
**Sent:** Tuesday, October 10, 2023 10:57 AM  
**To:** Tracy Christopher [REDACTED]  
**Cc:** [cbabcock@jw.com](mailto:cbabcock@jw.com); Jaclyn Daumerie [REDACTED]  
**Subject:** RE: Appellate Court rules

**CAUTION: This email originated from outside of the Texas Judicial Branch email system.  
DO NOT click links or open attachments unless you expect them from the sender and know the content is safe.**

Thank you as well for these very helpful comments and suggestions. And we really appreciate your giving us so much advance notice to factor into our discussion Friday.

Marcy

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**From:** Tracy Christopher [REDACTED]  
**Sent:** Thursday, October 5, 2023 1:34 PM  
**To:** Marcy Greer <[mgreer@adjtlaw.com](mailto:mgreer@adjtlaw.com)>  
**Cc:** [cbabcock@jw.com](mailto:cbabcock@jw.com); Jaclyn Daumerie [REDACTED]  
**Subject:** Appellate Court rules

Hi Marcy, here are my comments and questions about the TRAP amendments.

1. The notice of appeal might need to be changed—TRAP 25.1 requires the notice to be filed with the trial court clerk. There are other provisions in the TRAP rules about the trial court clerk. Under the new business rules—we

- have a business court clerk in Austin for filings. We do not have “trial court clerks.” I noted the problems that might cause in my other email. Also do we need to add anything about filing a notice in the wrong trial court?
2. I am not opposed to rule 39.8 but sometimes we change oral arguments with less than 21 days notice. Especially when we move it to zoom if someone is exposed to Covid but still wants to continue. Or when we reschedule on motion –so I think the rule needs to reflect that we can amend with less than 21 days notice.
  3. I think the transfer should be by the SCT –not by the individual courts. Our transfers now are all by SCT order with a few exceptions in the 1<sup>st</sup> and 14<sup>th</sup>. I am not sure that an appellate court has the power to transfer under the Government code. This ends any possible dispute on the matter.
  4. I am not sure that the legislature intended this–but it appears that the 15<sup>th</sup> court cannot issue a writ to the business court judge because they are not listed. Can that be fixed by rule? They do have jurisdiction over “original proceedings” under the statute.
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  6. Because the 15<sup>th</sup> court has exclusive jurisdiction–there should be no time deadline for a transfer–its is jurisdictional. I don’t think that can be changed by rule.
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Thanks for considering.

Tracy Christopher  
Chief Justice, 14th Court of Appeals  
Houston, TX 77002  
[REDACTED]

# TAB 2E

**S.B. No. 1045**

AN ACT relating to the creation of the Fifteenth Court of Appeals with jurisdiction over certain civil cases, the compensation of the justices of that court, and the jurisdiction of the courts of appeals in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: ARTICLE 1. FIFTEENTH COURT OF APPEALS

**SECTION 1.01.**

Section 22.201, Government Code, is amended by amending Subsection (a) and adding Subsection (p) to read as follows:

- (a) The state is organized into 15 courts of appeals districts with a court of appeals in each district.
- (p) The Fifteenth Court of Appeals District is composed of all counties in this state.

**SECTION 1.02.**

Subchapter C, Chapter 22, Government Code, is amended by adding Section 22.2151 to read as follows:

**Sec. 22.2151. FIFTEENTH COURT OF APPEALS.**

- (a) The Court of Appeals for the Fifteenth Court of Appeals District shall be held in the City of Austin.
- (b) The Fifteenth Court of Appeals may transact its business in any county in the district as the court determines is necessary and convenient.

**SECTION 1.03.**

Subchapter C, Chapter 22, Government Code, is amended by adding Section 22.2152 to read as follows:

**Sec. 22.2152. REPORT ON FIFTEENTH COURT OF APPEALS.**

Not later than December 1 of each year, the Office of Court Administration of the Texas Judicial System shall submit to the legislature a report on the number and types of cases heard by the Court of Appeals for the Fifteenth Court of Appeals District in the preceding state fiscal year.

**SECTION 1.04.**

Section 22.216, Government Code, is amended by adding Subsections (n-1) and (n-2) to read as follows:

- (n-1) The Court of Appeals for the Fifteenth Court of Appeals District consists of a chief justice and of four justices holding places numbered consecutively beginning with Place 2.
- (n-2) Notwithstanding Subsection (n-1), the Court of Appeals for the Fifteenth Court of Appeals District consists of a chief justice and of two justices holding places numbered consecutively beginning with Place 2 for the first three years following the court's creation. This subsection expires September 1, 2027.

**SECTION 1.05.**

Section 22.220, Government Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

- (a) Except as provided by Subsection (d), each court of appeals has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds \$250, exclusive of interest and costs.
- (d) The Court of Appeals for the Fifteenth Court of Appeals District has exclusive intermediate appellate jurisdiction over the following matters arising out of or related to a civil case:
  - (1) matters brought by or against the state or a board, commission, department, office, or other agency in the executive branch of the state government, including a university system or institution of higher education as defined by Section 61.003, Education Code, or by or against an officer or employee of the state or a board, commission, department, office, or other agency in the executive branch of the state government arising out of that officer's or employee's official conduct, other than:
    - (A) a proceeding brought under the Family Code and any related motion or proceeding;
    - (B) a proceeding brought under Chapter 7B or Article 17.292, Code of Criminal Procedure;
    - (C) a proceeding brought against a district attorney, a criminal district attorney, or a county attorney with criminal jurisdiction;
    - (D) a proceeding relating to a mental health commitment;
    - (E) a proceeding relating to civil asset forfeiture;

- (F) a condemnation proceeding for the acquisition of land or a proceeding related to eminent domain;
- (G) a proceeding brought under Chapter 101, Civil Practice and Remedies Code;
- (H) a claim of personal injury or wrongful death;
- (I) a proceeding brought under Chapter 125, Civil Practice and Remedies Code, to enjoin a common nuisance;
- (J) a proceeding brought under Chapter 55, Code of Criminal Procedure;
- (K) a proceeding under Chapter 22A, Government Code;
- (L) a proceeding brought under Subchapter E-1, Chapter 411, Government Code;
- (M) a proceeding brought under Chapter 21, Labor Code;
- (N) a removal action under Chapter 87, Local Government Code; or
- (O) a proceeding brought under Chapter 841, Health and Safety Code;

(2) matters in which a party to the proceeding files a petition, motion, or other pleading challenging the constitutionality or validity of a state statute or rule and the attorney general is a party to the case; and

(3) any other matter as provided by law.

**SECTION 1.06.**

Section 22.221, Government Code, is amended by amending Subsection (b) and adding Subsections (c) and (c-1) to read as follows:

- (b) Subject to Subsection (c-1), each court of appeals for a court of appeals district may issue all writs of mandamus, agreeable to the principles of law regulating those writs, against a judge of a district, statutory county, statutory probate county, or county court in the court of appeals district.
- (c) Each court of appeals for a court of appeals district, other than the Court of Appeals for the Fifteenth Court of Appeals District, may issue all writs of mandamus, agreeable to the principles of law regulating those writs, against:
  - (1) a judge of a district court who is acting as a magistrate at a court of inquiry under Chapter 52, Code of Criminal Procedure, in the court of appeals district; or
  - (2) an associate judge of a district or county court appointed by a judge under Chapter 201, Family Code, in the court of appeals district for the judge who appointed the associate judge.

(c-1) The original jurisdiction of the Court of Appeals for the Fifteenth Court of Appeals District to issue writs is limited to writs arising out of matters over which the court has exclusive intermediate appellate jurisdiction under Section 22.220(d).

**SECTION 1.07.**

Section 22.229(a), Government Code, is amended to read as follows:

- (a) An appellate judicial system fund is established for each court of appeals, other than the Court of Appeals of the Fifteenth Court of Appeals District, to:
  - (1) assist the court of appeals in the processing of appeals filed with the court of appeals from the county courts, statutory county courts, statutory probate courts, and district courts in the counties the court of appeals serves; and
  - (2) defray costs and expenses incurred in the operation of the court of appeals.

**SECTION 1.08.**

Section 73.001, Government Code, is amended to read as follows:

**Sec. 73.001. AUTHORITY TO TRANSFER.**

- (a) Except as provided by Subsection (b), the supreme court may order cases transferred from one court of appeals to another at any time that, in the opinion of the supreme court, there is good cause for the transfer.
- (b) The supreme court may not transfer any case or proceeding properly filed in the Court of Appeals for the Fifteenth Court of Appeals District to another court of appeals for the purpose of equalizing the dockets of the courts of appeals.
- (c) The supreme court shall adopt rules for:
  - (1) transferring an appeal inappropriately filed in the Fifteenth Court of Appeals to a court of appeals with jurisdiction over the appeal; and
  - (2) transferring to the Fifteenth Court of Appeals from another court of appeals the appeals over which the Fifteenth Court of Appeals has exclusive intermediate appellate jurisdiction under Section 22.220(d).

equal to \$2,500 less than the base salary for a justice of the supreme court as determined under this subsection.

## **SECTION 1.09.**

Section 659.012(a), Government Code, is amended to read as follows:

- (a) Notwithstanding Section 659.011 and subject to Subsections (b) and (b-1):
- (1) a judge of a district court is entitled to an annual base salary from the state as set by the General Appropriations Act in an amount equal to at least \$140,000, except that the combined base salary of a district judge from all state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is \$5,000 less than the maximum combined base salary from all state and county sources for a justice of a court of appeals other than a chief justice as determined under this subsection;
  - (2) except as provided by Subdivision (3), a justice of a court of appeals other than the chief justice is entitled to an annual base salary from the state in the amount equal to 110 percent of the state base salary of a district judge as set by the General Appropriations Act, except that the combined base salary of a justice of the court of appeals other than the chief justice from all state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is \$5,000 less than the base salary for a justice of the supreme court as determined under this subsection;
  - (3) a justice of the Court of Appeals for the Fifteenth Court of Appeals District other than the chief justice is entitled to an annual base salary from the state in the amount equal to \$5,000 less than 120 percent of the state base salary of a district judge as set by the General Appropriations Act;
  - (4) a justice of the supreme court other than the chief justice or a judge of the court of criminal appeals other than the presiding judge is entitled to an annual base salary from the state in the amount equal to 120 percent of the state base salary of a district judge as set by the General Appropriations Act; and
  - (5) the chief justice or presiding judge of an appellate court is entitled to an annual base salary from the state in the amount equal to \$2,500 more than the state base salary provided for the other justices or judges of the court, except that the combined base salary of the chief justice of a court of appeals from all state and county sources may not exceed the amount

## **SECTION 1.10.**

Section 2001.038(f), Government Code, is amended to read as follows:

- (f) A Travis County district court in which an action is brought under this section, on its own motion or the motion of any party, may request transfer of the action to the Court of Appeals for the Fifteenth Court of Appeals District if the district court finds that the public interest requires a prompt, authoritative determination of the validity or applicability of the rule in question and the case would ordinarily be appealed. After filing of the district court's request with the court of appeals, transfer of the action may be granted by the court of appeals if it agrees with the findings of the district court concerning the application of the statutory standards to the action. On entry of an order by the court of appeals granting transfer, the action is transferred to the court of appeals for decision, and the validity or applicability of the rule in question is subject to judicial review by the court of appeals. The administrative record and the district court record shall be filed by the district clerk with the clerk of the court of appeals. The court of appeals may direct the district court to conduct any necessary evidentiary hearings in connection with the action.

## **SECTION 1.11.**

Section 2001.176(c), Government Code, is amended to read as follows:

- (c) A Travis County district court in which an action is brought under this section, on its own motion or on motion of any party, may request transfer of the action to the Court of Appeals for the Fifteenth Court of Appeals District if the district court finds that the public interest requires a prompt, authoritative determination of the legal issues in the case and the case would ordinarily be appealed. After filing of the district court's request with the court of appeals, transfer of the action may be granted by the court of appeals if it agrees with the findings of the district court concerning the application of the statutory standards to the action. On entry of an order by the court of appeals granting transfer, the action is transferred to the court of appeals for decision, and the agency decision in the contested case is subject to judicial review by the court of appeals. The administrative record and the district court record shall be filed by the district clerk with the clerk of

the court of appeals. The court of appeals may direct the district court to conduct any necessary evidentiary hearings in connection with the action.

chief justice and justices of the court shall be filled by appointment.

#### **SECTION 1.12.**

Section 2301.751(a), Occupations Code, is amended to read as follows:

(a) A party to a proceeding affected by a final order, rule, or decision or other final action of the board with respect to a matter arising under this chapter or Chapter 503, Transportation Code, may seek judicial review of the action under the substantial evidence rule in:

- (1) a district court in Travis County; or
- (2) the court of appeals for the Fifteenth Court of Appeals District.

#### **SECTION 1.13.**

Section 39.001(e), Utilities Code, is amended to read as follows:

(e) Judicial review of competition rules adopted by the commission shall be conducted under Chapter 2001, Government Code, except as otherwise provided by this chapter. Judicial review of the validity of competition rules shall be commenced in the Court of Appeals for the Fifteenth Court of Appeals District and shall be limited to the commission's rulemaking record. The rulemaking record consists of:

- (1) the notice of the proposed rule;
- (2) the comments of all interested persons;
- (3) all studies, reports, memoranda, or other materials on which the commission relied in adopting the rule; and
- (4) the order adopting the rule.

#### **SECTION 1.14.**

(a) Except as otherwise provided by this Act, the Court of Appeals for the Fifteenth Court of Appeals District is created September 1, 2024.

(b) If the Court of Appeals for the Fifteenth Court of Appeals District is created, the initial vacancies in the offices of

#### **SECTION 1.15.**

(a) The changes in law made by this Act apply to appeals perfected on or after September 1, 2024.

(b) On September 1, 2024, all cases pending in other courts of appeal that were filed on or after September 1, 2023, and of which the Court of Appeals for the Fifteenth Court of Appeals District has exclusive intermediate appellate jurisdiction are transferred to the Court of Appeals for the Fifteenth Court of Appeals District.

(c) When a case is transferred as provided by Subsection (b) of this section:

(1) all processes, writs, bonds, recognizances, or other obligations issued from the other courts of appeal are returnable to the Court of Appeals for the Fifteenth Court of Appeals District as if originally issued by that court; and

(2) the obligees on all bonds and recognizances taken in and for the other courts of appeal and all witnesses summoned to appear in another court of appeals are required to appear before the Court of Appeals for the Fifteenth Court of Appeals District as if originally required to appear before the Court of Appeals for the Fifteenth Court of Appeals District.

## ARTICLE 2. CONFORMING AMENDMENTS

### SECTION 2.01.

Article 4.01, Code of Criminal Procedure, is amended to read as follows:

#### Art. 4.01. WHAT COURTS HAVE CRIMINAL JURISDICTION.

The following courts have jurisdiction in criminal actions:

1. The Court of Criminal Appeals;
2. Courts of appeals, other than the Court of Appeals for the Fifteenth Court of Appeals District;
3. The district courts;
4. The criminal district courts;
5. The magistrates appointed by the judges of the district courts of Bexar County, Dallas County, Tarrant County, or Travis County that give preference to criminal cases and the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County;
6. The county courts;
7. All county courts at law with criminal jurisdiction;
8. County criminal courts;
9. Justice courts;
10. Municipal courts;
11. The magistrates appointed by the judges of the district courts of Lubbock County;
12. The magistrates appointed by the El Paso Council of Judges;
13. The magistrates appointed by the Collin County Commissioners Court;
14. The magistrates appointed by the Brazoria County Commissioners Court or the local administrative judge for Brazoria County; and
15. The magistrates appointed by the judges of the district courts of Tom Green County.

### SECTION 2.02.

Article 4.03, Code of Criminal Procedure, is amended to read as follows:

#### Art. 4.03. COURTS OF APPEALS.

The Courts of Appeals, other than the Court of Appeals for the Fifteenth Court of Appeals District, shall have appellate jurisdiction coextensive with the limits of their respective districts in all criminal cases except those in which the death penalty has been assessed. This article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court, the county criminal court, or county court at law, in which the fine imposed or affirmed by the county court, the county criminal court or county court at law does not exceed one hundred dollars, unless the sole issue is the constitutionality of the statute or ordinance on which the conviction is based.

### SECTION 2.03.

Article 44.25, Code of Criminal Procedure, is amended to read as follows:

#### Art. 44.25. CASES REMANDED.

The courts of appeals, other than the Court of Appeals of the Fifteenth Court of Appeals District, or the Court of Criminal Appeals may reverse the judgment in a criminal action, as well upon the law as upon the facts.

### SECTION 2.04.

Section 31.001, Government Code, is amended to read as follows:

#### Sec. 31.001. AUTHORITY FOR COUNTY PAYMENT OF COMPENSATION.

The commissioners courts in the counties of each of the 15 courts of appeals districts may pay additional compensation in an amount that does not exceed the limitations of Section 659.012 to each of the justices of the courts of appeals, other than a justice of the Court of Appeals of the Fifteenth Court of Appeals District, residing within the court of appeals district that includes those counties. The compensation is for all extrajudicial services performed by the justices.



**ARTICLE 3. SPECIFIC APPROPRIATION REQUIRED;  
CONSTITUTIONAL CHALLENGE; EFFECTIVE DATE**

**SECTION 3.01.**

- (a) Notwithstanding Section 22.201(a), Government Code, as amended by this Act, and Sections 22.201(p) and 22.2151, Government Code, as added by this Act, the Court of Appeals for the Fifteenth Court of Appeals District is not created unless the legislature makes a specific appropriation of money for that purpose. For purposes of this subsection, a specific appropriation is an appropriation identifying the Court of Appeals for the Fifteenth Court of Appeals District or an Act of the 88th Legislature, Regular Session, 2023, relating to the creation of the Court of Appeals for the Fifteenth Court of Appeals District.
- (b) Notwithstanding Section 22.220(a), Government Code, as amended by this Act, a court of appeals has the same jurisdiction the court had on August 31, 2023, if the Court of Appeals for the Fifteenth Court of Appeals District is not created as a result of Subsection (a) of this section.

**SECTION 3.02.**

The Texas Supreme Court has exclusive and original jurisdiction over a challenge to the constitutionality of this Act or any part of this Act and may issue injunctive or declaratory relief in connection with the challenge.

**SECTION 3.03.**

This Act takes effect September 1, 2023.