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Texas Supreme Court Seeks Public Comment on Proposed Rules for New Business Court and 15th Court of Appeals

Client Alert | March 22, 2024

Misc. Docket Nos. 24-9004 **&** 24-9005 – Issued February 6, 2024 **The Texas Supreme Court preliminarily approved proposed rules of procedure for Texas's new business court and 15th Court of Appeals. The public is invited to comment on the new rules and amendments by May 1, 2024.**

Background:

Seeking to provide a faster, more efficient dispute resolution mechanism for businesses in Texas's growing economy, the Texas Legislature enacted House Bill 19—creating a specialized business court designed to handle complex commercial disputes. That law, now codified at Texas Government Code 25A, also provides for a new 15th Court of Appeals to hear appeals from the business court. Both courts will begin hearing cases on September 1, 2024. With that date approaching, the Texas Supreme Court has preliminarily approved a proposed set of rules and amendments governing the procedures for the business court and 15th Court of Appeals. The public is invited to submit comments on the proposed rules to rulescomments@txcourts.gov by May 1, 2024. Otherwise, the proposed rules and amendments are set to take effect on September 1, 2024.

Key Proposed Texas Rules of Civil Procedure for the Business Court:

Rule 352 states that, to the extent consistent with the new rules of practice in the business court, the general rules of civil procedure, the rules of practice in district and county courts, and the rules relating to ancillary proceedings apply in the business court, too. **Rule 354** prescribes the requirements for pleading, challenging venue or authority, and requesting transfer or dismissal in the business court. Notably, Rule 354 imposes an additional pleading requirement for plaintiffs filing suit in the business court—requiring plaintiffs provide facts establishing the business court's authority to hear the case and establishing venue in a county in one of the business court's operating divisions. The proposed rule also affords parties the right to challenge the business court's authority to hear the case as well as the venue. And the proposed rule provides that the business court can determine on its own that it doesn't have authority to hear the case, in which case the court must transfer the action to a district or county court or dismiss the case without prejudice. **Rule 355** implements the procedure for removal of a case from a district or county court to the business court. Under the proposed rule, litigants must notify the court where the case was originally filed, identify the business court that they are removing the case to, plead facts establishing that court's authority and venue, and state whether all parties agree to removal. When removal is contested, litigants have only 30 days to seek removal from the time that they discovered or reasonably should have discovered that the business court had the authority to hear the case. Similarly, litigants contesting removal must move to remand within 30 days either after the notice of removal is filed or, if the notice is filed before a party is served, within 30 days after that party enters an

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appearance. The business court may also determine on its own that removal is improper. **Rule 356** creates a mechanism for original courts to request that their cases be transferred to the business court. Under this proposed rule, the court in which an action is originally filed may request the presiding judge for its administrative judicial region to transfer a case to the business court if it believes the business court has authority to hear the case. A court requesting a transfer must notify the parties, and the regional presiding judge may transfer the case if doing so will "facilitate the fair and efficient administration of justice." A party may petition for mandamus relief to challenge a denial of a judge's motion to transfer. **Rule 357** provides that if the business court dismisses an action or claim, and a litigant files that same action or claim in a different court within 60 days, the applicable statute of limitations is suspended for the period between the filings. **Rule 358** prohibits the business court from ***requiring*** parties or lawyers to appear electronically in proceedings in which oral testimony will be heard without the consent of the parties. And it is prohibited from allowing a participant to appear electronically for jury trials altogether. The proposed rule specifies that aside from those prohibitions, Rule 21d governs remote proceedings. **Rule 359** requires the business court to issue a written opinion for a dispositive ruling if requested by a party and for a decision on an important state issue. Otherwise, whether to issue a written opinion is a matter of discretion.

Proposed Texas Rules of Appellate Procedure for the 15th Court of Appeals:

Rule 25.1, which provides the procedure for perfecting appeals, will be amended to require litigants to provide additional information in their notices of appeal. An appealing party must include in its notice whether the appeal concerns a matter: (1) brought by or against a state entity; (2) brought by or against a state officer or employee and arising out of that person's official conduct; or (3) in which a party is challenging the constitutionality or validity of a state statute or rule and the attorney general is a party to the case. **Rule 27a** prescribes the procedure for transferring appeals between the courts of appeals for cases that either have been improperly taken to the 15th Court of Appeals or over which the 15th Court of Appeals has exclusive intermediate appellate jurisdiction. Parties seeking to transfer an appeal must move to transfer within 30 days after the appeal is perfected but before the appellee files its brief. The moving party must file in the court in which the appeal is pending (the transferor court) and also immediately notify the court to which the party wishes to transfer the appeal (the transferee court). The transferor court can transfer the appeal (1) if no party objects to the transfer within 10 days of the motion's filing and (2) the transferee court agrees to the transfer. Once the transferee court receives a decision from the transferor court, it has 20 days to file a letter in the transferor court explaining whether it agrees with the transferor court's decision. The transferor court can also start this process on its own initiative. The Supreme Court must receive notice of all transfers. If there is a dispute between courts over whether to transfer the appeal, the transferor court must forward to the Texas Supreme Court specific materials relating to the transfer dispute within 20 days after receiving the transferee court's letter explaining its disagreement, absent special circumstances. The Texas Supreme Court will then decide whether transfer is appropriate.

What the Proposed Rules and Amendments Mean:

- Starting in September 2024, parties will be able to take their cases to the new business court and 15th Court of Appeals. But with those new avenues of relief come several procedural requirements of which to be aware. Close familiarity with those new procedural mechanisms will offer an edge to litigants in both courts.
- In particular, litigants should be aware of the various removal and transfer mechanisms provided under the proposed rules. Those mechanisms would allow parties to move cases either to or from the business court and 15th Court of Appeals, regardless of where the case was originally filed.
- Anyone wishing to comment on the newly proposed rules must do so by May 1, 2024. Comments on the proposed new and amended rules should be submitted in writing to rulescomments@txcourts.gov.

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The Court's opinion is available here. Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Texas Supreme Court. Please feel free to contact the following practice leaders:

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