



TEXAS SUPREME COURT'S NEW RULES BRING CLARITY TO FUNCTIONING OF NEW BUSINESS COURTS

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When Governor Abbott established the Texas business courts by signing House Bill 19 into law in summer of 2019, legal and business leaders alike saw it as the next step in Texas's continuing effort to define itself as the best state in the nation to conduct business. But that bill, now codified at Texas Government Code 25A, still left key questions to be answered. And now, the Texas Supreme Court has begun providing those answers by approving a preliminary set of governing rules that the business courts must abide by.

These rules, subject to a public commentary period, are slated to go into effect on the same date as the doors to the business courts open, September 1, 2024, and will be added to the Texas Rules of Civil Procedure 352 to 359.

Rule 352 – Fees

The filing fees for the Business Courts are still unclear as the Texas Supreme Court deferred to the Office of Court Administration and business courts to determine the filing fees at a later date.

Rule 354 – Venue

Rule 354 sets forth the rules for establishing venue in the business courts, including the pleading requirements and the process for challenging venue in the business courts and transferring cases to a different business court or out of the business courts entirely.

When reviewing large contracts and deals, consider agreeing to place venue in a county covered by the business courts. Otherwise, you may risk seeing your case transferred to a court less well-suited for the claims at issue.



Rule 355 – Removing Cases to the Business Courts

Rule 355 provides the process for removing cases from Texas state courts (district court or county court at law) to the business courts. The process largely tracks the process for removing cases to federal court but with one notable quirk. To remove a case to the business court, a party files a notice of removal with the removing court and the business court within 30 days that the party “discovered, or reasonably should have discovered, facts establishing the business court’s authority to hear the action.” However, if there is an application for temporary injunction pending, then the removal deadline is extended until “within 30 days after the date the application is granted, denied, or denied by operation of law” which has potential to greatly extend the deadline to remove a case and defers from removal to federal court. Rule 355 also sets the process for remanding a case if by motion, or on the court’s own initiative, the court finds it does not have authority to hear the action.

Rule 356 – Transfer by Judge for Regional Administrative Judicial Region

Rule 356 empowers a district court to request the transfer of a case from its docket to the business court. While the parties will have the opportunity to object at a hearing, the presiding judge of the local administrative judicial region will determine if the business court has authority to hear the action and may transfer the case regardless of any objection if they believe that the “fair and efficient administration of justice” will best be served by the business court. Afterwards, a party will have 30 days to ask the business court to return the case to district court.

Before filing a case in district court, determine whether it meets the requirements of the business court, and be prepared for a judge to move your case even if you’d prefer it to stay in district court.

Rule 357 – Dismissal and the Statute of Limitations

The business courts are, by design, courts of limited jurisdiction that are only able to hear cases that meet specific criteria. When a business court determines that those criteria are not met, it must transfer or dismiss the case. Rule 357 ensures that dismissal without prejudice will not doom claims that are brought near to the expiration of the statute of limitations. Any claim dismissed by a business court that is refiled in another court within 60 days of the dismissal will be permitted even if the statute of limitations expired while the case was in business court or during the 60-day period following dismissal.

When evaluating where to file a claim governed by a Texas statute of limitations, consider whether filing in the business courts first will grant an advantage—after all, the “second bite at the apple” provided by Rule 357 may not apply if you file elsewhere first.

Rule 359 – Written Opinions

In a welcome reprieve for practitioners and parties used to practicing in Texas state court, Rule 359 requires a business court to issue a written opinion in connection with any dispositive ruling if a party requests one. But strikingly, the business courts are also required to write a full opinion in making any ruling on an issue important to jurisprudence in Texas. This standard is very broad and somewhat vague, likely

leading business court judges to (hopefully) err on the side of caution and issue far more written opinions than litigants used to state court may expect.

Be ready for a high volume of written opinions to quickly develop legal precedent and doctrine in Texas—an agile organization with access to strong knowledge of how the business courts will analyze its practices and transactions will have the opportunity to position itself to win more disputes than its inattentive peers.

Rule 358 – Remote Proceedings

Consistent with post-COVID practice in district courts and county courts at law, business courts will be allowed to conduct proceedings remotely with two exceptions: (1) jury trials must be in-person; and (2) any hearing in which oral testimony is heard must be in-person unless both parties (and the court) agree otherwise.

While Rule 21d permits participants, including witnesses, to appear at jury trials remotely if the court allows it, Rule 358 contains no such exceptions. If a case goes to a jury trial in the business courts, all lawyers and witnesses must be present in person. Surprisingly, this rule makes no exceptions for illness, age, disability, inconvenience of travel or any other reason for which courts may permit a remote appearance at trial.

While the commentary period may result in changes to this rule, parties nearing trial in business court should be prepared to appear in person regardless of circumstance.

These Rules and You

Texas chose to establish business courts to create a more predictable and sophisticated landscape for resolving complex issues. But taking advantage of the predictability and sophistication requires an understanding of how these new courts will operate—and operation in any court starts with knowing the rules.

These rules lay the groundwork for the critical body of knowledge that will develop surrounding the business courts. Businesses and practitioners who begin building that knowledge sooner will better understand before acting or transacting how to ensure that their claim will make it into the right court, stay in the right court and be resolved by the right court.

Related Media Coverage

- [“Texas Business Courts: The Next Frontier in Business Litigation,”](#) *Texas Lawyer*, June 25, 2024.

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