

CLIENT ALERT

## Business Courts in Texas – Progress and Prognostication

JULY 1, 2024

Texas has just expanded its court system. Last summer, Governor Greg Abbott signed into law House Bill 19, which created a new, specialized court to address commercial disputes. The business court is set to open on September 1, 2024. Initially, the court will consist of five divisions in Austin, Dallas, Fort Worth, Houston, and San Antonio, with six more divisions deferred until the 2025 legislative session. Further details include:

- **Judges:** Governor Abbott appointed two judges to each division to serve for a two-year term. The Governor's appointees are:

### DALLAS:

**Hon. Andrea Bouressa** currently serves as judge of the 471st District Court in Collin County. She recently served as a local administrative district judge for Collin County for a two-year term.

**Hon. William "Bill" Whitehill** is head of the appellate and special issues practice group at Condon Tobin Sladek Thornton Nerenberg PLLC. He is a former justice of the Texas Fifth Court of Appeals in Dallas.

### AUSTIN:

**Melissa Andrews** is an appellate and litigation partner at Holland & Knight. She previously served as an attorney for Texas Supreme Court Justice Jeff Boyd and First Court of Appeals Justice Harvey Brown.

**Patrick K. Sweeten** is the Principal Deputy General Counsel for the Office of the Governor. Previously, he served as the Deputy Attorney General for Special Litigation for the Office of the Texas Attorney General.

### SAN ANTONIO:

**Hon. Marialyn Barnard** currently serves as judge of the 73rd Judicial District Court in Bexar County. She previously served as the Bexar County Commissioner for Precinct 3 and as a justice on the Fourth Court of Appeals for 10 years.

**Stacy Sharp** is an attorney and owner of Sharp Appellate PLLC. She also serves as an adjunct professor at The University of Texas at Austin.

## FORT WORTH:

**Jerry Bullard** is a shareholder with Adams, Lynch & Loftin, P.C. He has over 30 years of experience in state and federal court litigation, in both trial and appellate law.

**Brian Stagner** is of counsel and a former partner at Kelly Hart & Hallman LLP. He also serves as an adjunct professor at Texas Christian University teaching business law.

## HOUSTON:

**Sofia Adrogué** is a partner with Diamond McCarthy LLP, and she is founder and editor of the Texas Business Litigation Treatise (ALM 5th Edition).

**Hon. Grant Dorfman** formerly served as judge of the 129th and 334th District Courts in Harris County and was former Deputy First Assistant Attorney General for the Office of the Texas Attorney General. Dorfman also worked as a partner in a commercial litigation law firm and was senior in-house counsel for an oil and gas drilling contractor.

- **Jurisdiction:** The business court will have concurrent jurisdiction with civil district courts for:
  - Certain derivative and internal governance proceedings with an amount in controversy of \$5 million or more (exclusive of interest, statutory and exemplary damages, penalties, attorneys' fees, and court costs);
  - Certain derivative and internal governance proceedings involving a publicly traded company (regardless of the amount in controversy);
  - Certain proceedings involving financial institutions, commercial transactions, or the Texas Finance or Business & Commerce Codes where the amount in controversy is \$10 million or more (exclusive of interest, statutory and exemplary damages, penalties, attorneys' fees, and court costs); and
  - Supplemental jurisdiction over related claims—subject to several exceptions—but only with the agreement of all parties and the judge.
- **Relief Available:** In addition to money damages, the business court may provide injunctive, declaratory, and other equitable relief. Parties will retain their right to a trial by jury.
- **Business Court Procedure:** Earlier this year, the Texas Supreme Court approved preliminary procedural rules for the new court. The preliminary rules were open for public comment until May 1, 2024, and the Texas Supreme Court expects to issue final rules that will take effect on September 1, 2024. Of particular note, the preliminary rules address:
  - establishing jurisdiction and venue (Rule 354);
  - removal and remand (Rule 355);
  - procedures for judges presiding over courts of general jurisdiction to transfer cases to the business court (Rule 356);
  - suspension of applicable statutes of limitations for 60 days after a business court dismisses a claim and the plaintiff refiles in another court (Rule 357);
  - remote appearances (Rule 358); and
  - required written opinions in connection with a dispositive ruling and on “an issue important to jurisprudence of the state” (Rule 359).

The establishment of a specialty business court presents a significant step toward solidifying Texas as a desirable forum for public companies, financial institutions, and other sophisticated entities. For instance, because a business court judge is required to issue a written opinion in certain situations, parties will benefit from a substantial body of reasoned precedent. This increased transparency should lead to better-informed appellate decision-making and greater certainty for litigants as they weigh the strength of their positions. In addition, business court judges must

possess at least ten years of experience in complex litigation, corporate transactions, and/or as a Texas judge, ensuring a knowledgeable and qualified judiciary.

There may be some concerns, however, regarding stability and continuity given that appointments are only for two-year periods. Complex commercial litigation can often take multiple years to resolve. If judges transition on and off cases every two years, dockets may move much slower than intended. Moreover, if public response and sentiment is any indication, the new business courts will be very popular. With only ten judges across five initial divisions, the business courts may be as overworked and under-resourced as their existing district court counterparts. But after some initial (and expected) growing pains, the establishment of a new Texas business court primes the state to become a highly sought-after forum for both Texas-based and foreign businesses.

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