

CLIENT ALERT

Business Courts in Texas – Final Rules Approved

AUGUST 29, 2024

With the new Texas Business Court set to open on September 1, 2024, the Texas Supreme Court has approved final rules for the court's operation, largely adopting the preliminary rules published earlier this year.

Specifically, the Texas Supreme Court approved new Texas Rules of Civil Procedure 352–359, termed the Rules of Practice in the Business Court. The Texas Supreme Court also approved amendments to Texas Rule of Civil Procedure 2, Canon 6 of the Code of Judicial Conduct, and Texas Rules of Judicial Administration 2, 3, 4, 6.1, and 7—all addressing the operation and procedure of the new Texas Business Court.

The Rules of Practice cover, among other things, authority and venue, removal and remand, transfer, the statute of limitations, remote appearances, and written opinions. Noteworthy highlights include:

- **Rule 354. Authority and Venue:** For an action originally filed in a business court, a party is required to plead facts to establish both the business court's authority to hear the action and to establish venue. If venue is improper, a party may move for transfer to another venue with an operating business court or, if there is no business court in the proper venue, a district or county court. If the business court lacks authority to hear the action, a party may move to transfer or dismiss the action or the court may do so on its own initiative.
- **Rule 355. Removal and Remand:** The removal procedure is similar to the procedure used to remove an action to federal court. For actions originally filed in district or county courts, a party may file a notice of removal to the business court at any time if all parties consent. If any party opposes removal, the party seeking removal must file a notice of removal within 30 days after the date the party discovered, or reasonably should have discovered, facts establishing the business court's authority to hear the action (with a different timeline for actions involving temporary injunctions). As with Rule 354, if removal was improper, a party may move to remand the action or the court may do so on its own initiative. Note that only actions filed on or after September 1, 2024 may be removed under Rule 355 to a business court.
- **Rule 356. Transfer:** On its own initiative, a district or county court may request the presiding judge for the administrative judicial region in which the court is located to transfer a pending action to the business court, granted the business court has authority to hear the action. The regional presiding judge may transfer the action to the business court if it will facilitate the fair and efficient administration of justice. If, however, a party objects to the transfer, the regional presiding judge must conduct a hearing on the request. If the transfer is

denied, a party may challenge the denial through writ of mandamus. If the action is transferred, a party may seek remand from the business court within 30 days after the transfer of the case. It is currently unclear if courts will allow cases filed prior to September 1, 2024 to be transferred under Rule 356 to a business court.

- **Rule 357. Statute of Limitations:** If the business court dismisses an action without prejudice and the same action is filed in a different court within 60 days of dismissal, the applicable statute of limitations is suspended for the period between the filings.
- **Rule 358. Remote Appearances:** A business court may not force a party or lawyer to appear electronically for a proceeding in which oral testimony is heard. And regardless of party agreement, participants may not appear electronically for a jury trial. This rule does not prevent the efficiencies of telephonic or video hearings that have become increasing common following the COVID-19 pandemic for non-testimonial hearings, but also ensures in-person proceedings for the most important hearings, as well as trial.
- **Rule 360. Written Opinions:** A business court judge, on the request of any party, must issue a written opinion in connection with a dispositive ruling. For an issue important to the jurisprudence of the state, a business court judge must issue a written opinion, regardless of request. A business court judge is permitted to issue a written opinion in connection with any order.

As we noted in our July 1, 2024 update, Governor Abbott has already appointed two judges to each division to serve two-year terms. With the final rules in place, the Texas Business Court is primed to attract litigants seeking a specialized, knowledgeable, and qualified judiciary. Combined with the ability for parties to obtain reasoned, written opinions, on important rulings, the Texas Business Court should have no shortage of eager litigants upon opening.

Logan Connealy, Summer Associate, also contributed to this client alert.

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