

Supreme Court of Texas


Misc. Docket No. 24-9004

Preliminary Approval of Rules for the Business Court

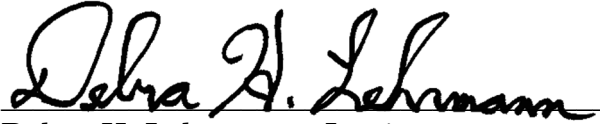
ORDERED that:

1. In accordance with the Act of May 25, 2023, 88th Leg., R.S., ch. 380 (H.B. 19, codified at TEX. GOV'T CODE ch. 25A), the Court invites public comments on proposed new Texas Rules of Civil Procedure 352-359 and on 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.
2. The amendments to Texas Rule of Civil Procedure 2, Canon 6 of the Code of Judicial Conduct, and the Texas Rules of Judicial Administration are demonstrated in redline form. New Texas Rules of Civil Procedure 352-359 are demonstrated in clean form.
3. Comments on the proposed new and amended rules should be submitted in writing to rulescomments@txcourts.gov by May 1, 2024.
4. The Court will issue an order finalizing the rules after the close of the comment period. The Court may change the rules in response to public comments. The Court expects all new and amended rules to take effect on September 1, 2024.
5. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

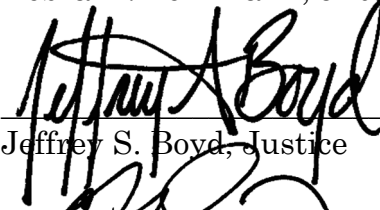
Dated: February 6, 2024.



Nathan L. Hecht, Chief Justice



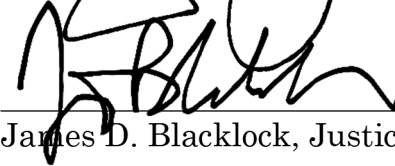
Debra H. Lehrmann, Justice



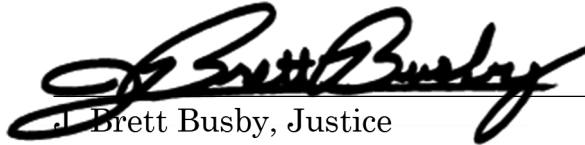
Jeffrey S. Boyd, Justice



John P. Dewine, Justice



James D. Blacklock, Justice



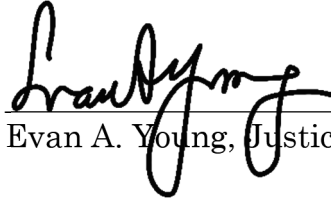
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF CIVIL PROCEDURE

RULE 2. SCOPE OF RULES

~~These rules shall govern the procedure in the justice, county, and district, and business courts 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: Rule 2 is revised to modernize the rule and clarify that the Texas Rules of Civil Procedure govern the procedures in the business court.

**PART III – RULES OF ~~PROCEDURE FOR THE COURTS OF~~
APPEALS PRACTICE IN THE BUSINESS COURT**

RULE 352. THE BUSINESS COURT GENERALLY

Chapter 25A, Government Code, and Parts I, II, III, and VI of these rules govern the business court. If there is any conflict between Parts I, II, and VI and Part III, Part III controls.

Notes and Comments

Comment to 2024 change: Part III of these rules is adopted to implement Texas Government Code Chapter 25A.

RULE 353. FEES FOR BUSINESS COURT ACTIONS

The Office of Court Administration and the business court must publish a schedule of business court fees. Parties must pay the fees as specified in the schedule, except the business court must waive fees for inability to afford payment of court costs, consistent with Rule 145, and may otherwise waive fees in the interest of justice.

Notes and Comments

Comment to 2024 change: Rule 353 is adopted to implement Texas Government Code Section 25A.018.

RULE 354. ACTION ORIGINALLY FILED IN THE BUSINESS COURT

- (a) *Pleading Requirements.* For an action originally filed in the business court, an original pleading that sets forth a claim for relief—whether an original petition, counterclaim, cross-claim, or third party claim—must, in addition to the pleading requirements specified in Part II of these rules, plead facts to establish the business court’s authority to hear the action. An original petition must also plead facts to establish venue in a county in an operating division of the business court.
- (b) *Clerk Duties.* The business court clerk must assign the action to a division of the business court. If the division has more than one judge, then the clerk must randomly assign the action to a specific judge within that division.

(c) *Challenges.*

- (1) To Venue. A motion challenging venue must comply with Rules 86 and 87.
- (2) To Authority. A motion challenging the business court's authority to hear an action must be filed within 30 days of the movant's appearance.

(d) *Transfer or Dismissal.*

- (1) Venue Transfer. If the business court determines, on a party's motion, that the division's geographic territory does not include a county of proper venue for the action, the business court must:
 - (A) if an operating division of the business court includes a county of proper venue, transfer the action to that division; or
 - (B) if there is not an operating division of the business court that includes a county of proper venue, at the request of the party filing the action, transfer the action to a district court or county court at law in a county of proper venue.
- (2) Authority. If the business court determines, on a party's motion or its own initiative, that it does not have the authority to hear the action, the business court must:
 - (A) if the determination was made on its own initiative, provide at least 10 days' notice of the intent to transfer or dismiss and an opportunity to be heard on any objection; and
 - (B) at the request of the party filing the action:
 - (i) transfer the action to a district court or county court at law in a county of proper venue; or
 - (ii) dismiss the action without prejudice to the parties' claims.

Notes and Comments

Comment to 2024 change: Rule 354 is adopted to implement Texas Government Code Sections 25A.006(a)-(c) and 25A.020(a)(2). Texas Government Code Section 25A.004 specifies the business court's authority to hear an action.

RULE 355. ACTION REMOVED TO THE BUSINESS COURT

- (a) *Notice of Removal Required.* A party to an action originally filed in a district court or county court at law may remove the action to the business court by filing a notice of removal with:
- (1) the court from which removal is sought; and
 - (2) the business court.
- (b) *Notice Contents.* The notice must:
- (1) state whether all parties agree to the removal;
 - (2) plead facts to establish:
 - (A) the business court's authority to hear the action; and
 - (B) venue in a county in an operating division of the business court; and
 - (3) contain a copy of the district court's or county court at law's docket sheet and all process, pleadings, and orders in the action.
- (c) *Notice Deadline.*
- (1) **When Agreed.** A party may file a notice of removal reflecting the agreement of all parties at any time during the pendency of the action.
 - (2) **When Not Agreed.** If all parties have not agreed to remove the action, the notice of removal must be filed:
 - (A) within 30 days after the date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the business court's authority to hear the action; or
 - (B) 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 authority to hear the action, within 30 days after the date the application is granted, denied, or denied by operation of law.

- (d) *Effect of Notice.* A notice of removal to the business court is not subject to due order of pleading rules. Filing a notice of removal does not waive a defect in venue or constitute an appearance waiving a challenge to personal jurisdiction.
- (e) *Clerk Duties.* On receipt of a notice of removal, the clerk of the court from which removal is sought must immediately transfer the action to the business court. The business court clerk must assign the action to the appropriate operating division of the business court. If the division has more than one judge, then the clerk must randomly assign the action to a specific judge within that division.
- (f) *Remand.*
 - (1) **When Required.** If the business court determines, on motion or its own initiative, that removal was improper, the business court must remand the action to the court from which the action was removed.
 - (2) **Motion to Remand.**
 - (A) A party may file a motion to remand the action in the business court based on improper removal. Except as provided in (B), the motion must be filed within 30 days after the notice of removal is filed.
 - (B) If a party is served with process after the notice of removal is filed, the party seeking remand must file a motion to remand within 30 days after the party enters an appearance.
 - (3) **On Business Court’s Own Initiative.** The business court must provide the parties 10 days’ notice of its intent to remand on its own initiative and an opportunity to be heard on any objection.

Notes and Comments

Comment to 2024 change: Rule 355 is adopted to implement Texas Government Code Section 25A.006(d)-(g), (i)-(j) and Section 25A.020(a).

RULE 356. ACTION TRANSFERRED TO THE BUSINESS COURT

- (a) *Transfer Request.* On its own initiative, a court may request the presiding judge for the administrative judicial region in which the court is located to transfer an action pending in the court to the business court if the business court has the authority to hear the action. In this rule, the “regional presiding judge” means the presiding judge for the administrative judicial region in which the court is located.

- (b) *Notice and Hearing.* The court must notify all parties of the transfer request and, if any party objects, must set a hearing on the transfer request in consultation with the regional presiding judge. The regional presiding judge must self-assign to the court, conduct a hearing on the request, and rule on the request.
- (c) *Transfer.* The regional presiding judge may transfer the action to the business court if the regional presiding judge finds the transfer will facilitate the fair and efficient administration of justice. A party may challenge the regional presiding judge's denial of a motion to transfer by filing a petition for writ of mandamus in the court of appeals district for the requesting court's county.
- (d) *Remand.* A party may seek remand from the business court under Rule 355 within 30 days after transfer of the case.
- (e) *Clerk Duties.* The business court clerk must assign the action to the appropriate operating division of the business court. If the division has more than one judge, then the clerk must randomly assign the action to a specific judge within that division.

Notes and Comments

Comment to 2024 change: Rule 356 is adopted to implement Texas Government Code Section 25A.006(k).

RULE 357. EFFECT OF DISMISSAL OF AN ACTION OR CLAIM

If the business court dismisses an action or claim and the same action or claim is filed in a different court within 60 days after the dismissal becomes final, the applicable statute of limitations is suspended for the period between the filings.

RULE 358. APPEARANCE AT BUSINESS COURT PROCEEDINGS

Rule 21d governs remote proceedings in the business court, except:

- (a) the business court must not require a party or lawyer to appear electronically for a proceeding in which oral testimony is heard absent agreement of the parties; and
- (b) the business court must not allow or require a participant to appear electronically for a jury trial.

Notes and Comments

Comment to 2024 change: Rule 358 is adopted to implement Texas Government Code Section 25A.017.

RULE 359. WRITTEN OPINIONS IN BUSINESS COURT ACTIONS

- (a) *When Required.* A business court judge must issue a written opinion:
 - (1) in connection with a dispositive ruling, on the request of a party; and
 - (2) on an issue important to the jurisprudence of the state, regardless of request.
- (b) *When Permitted.* A business court judge may issue a written opinion in connection with any order.

Notes and Comments

Comment to 2024 change: Rule 359 is adopted to implement Texas Government Code Section 25A.016.

TEXAS CODE OF JUDICIAL CONDUCT

Canon 6: Compliance with the Code of Judicial Conduct

A. The following persons shall comply with all provisions of this Code:

- (1) An active, full-time justice or judge of one of the following courts:
 - (a) the Supreme Court,
 - (b) the Court of Criminal Appeals,
 - (c) courts of appeals,
 - (d) district courts,
 - (e) criminal district courts,
 - (f) statutory county courts, ~~and~~
 - (g) statutory probate courts, and
 - (h) the business court.

TEXAS RULES OF JUDICIAL ADMINISTRATION

Rule 2. Definitions

In these rules:

- a. “Chief Justice” means the Chief Justice of the Supreme Court.
- b. “Presiding Judge” means the presiding judge of an administrative region.
- c. “Administrative region” means an administrative judicial region created by Section 74.042 of the Texas Government Code.
- d. “Statutory county court” means a court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, county criminal courts, county criminal courts of appeals, and county civil courts at law, but not including statutory probate courts as defined by Section 3(ii) of the Texas Probate Code.
- e. “Business court” means a court created by Section 25A.002 of the Texas Government Code.

Rule 3. Council of Presiding Judges

- a. There is hereby created the Council of Presiding Judges, composed of the Chief Justice as chairman and the ~~nine~~ eleven presiding judges of the administrative regions.

Rule 4. Council of Judges

- a. There is hereby created in each of the administrative regions a Council of Judges, composed of the Presiding Judge as Chairman, judges of the district courts, ~~and~~ statutory county courts, and business court within the region, senior judges, and former district and statutory county court judges residing in the region who have qualified to serve as judicial officers under the provisions of Section 74.055 of the Texas Government Code.
- b. The Presiding Judge shall call at least one meeting each year of the Council of Judges of the administrative region, at a time and place designated by the Presiding Judge, for consultation and counseling on the state of the dockets and the civil and criminal business in the district and statutory county courts of the administrative region and arranging for the disposition of cases and

other business pending on the court dockets. At the meeting, the Council shall study and act upon the matters listed in Rule 3.e and such other matters as may be presented to the meeting by the judges in attendance.

- c. The Council of Judges shall adopt rules for the administration of the affairs of the ~~district and statutory county~~ courts within the administrative region, including, but not limited to, rules for:
- (1) management of the business, administrative and nonjudicial affairs of the courts;
 - (2) docket management systems to provide the most efficient use of available court resources;
 - (3) the reporting of docket status information to reflect not only the numbers of cases on the dockets but also the types of cases relevant to the time needed to dispose of them;
 - (4) meaningful procedures for achieving the time standards for the disposition of cases provided by Rule 6;
 - (5) such other matters necessary to the administrative operations of the courts; and
 - (6) judicial budget matters.
- d. The expenses of judges attending meetings of the Council of Judges may be paid from funds provided by law.

Rule 6. Time Standards for the Disposition of Cases.

Rule 6.1 District and Statutory County Courts.

District ~~court, and statutory county court, and business court~~ judges of the county in which cases are filed should, so far as reasonably possible, ensure that all cases are brought to trial or final disposition in conformity with the following time standards:

Rule 7. Administrative Responsibilities.

A district ~~court,~~ or statutory county court, or business court judge must:

- (a) diligently discharge the administrative responsibilities of the office;
- (b) rule on a case within three months after the case is taken under advisement;
- (c) if an election contest or a suit for the removal of a local official is filed in the judge's court, request the presiding judge to assign another judge who is not a resident of the county to dispose of the suit;
- (d) on motion by either party in a disciplinary action against an attorney, request the presiding judge to assign another judge who is not a resident of the administrative region where the action is pending to dispose of the case;
- (e) request the presiding judge to assign another judge of the administrative region to hear a motion relating to the recusal or disqualification of the judge from a case pending in his court; and
- (f) to the extent consistent with due process, consider using methods to expedite the disposition of cases on the docket of the court, including:
 - (1) adherence to firm trial dates with strict continuance policies;
 - (2) the use of teleconferencing, videoconferencing, or other available means in lieu of personal appearance for motion hearings, pretrial conferences, scheduling, and other appropriate court proceedings;
 - (3) pretrial conferences to encourage settlements and to narrow trial issues;
 - (4) taxation of costs and imposition of other sanctions authorized by the Rules of Civil Procedure against attorneys or parties filing frivolous motions or pleadings or abusing discovery procedures; and
 - (5) local rules, consistently applied, to regulate docketing procedures and timely pleadings, discovery, and motions.
