

PART I

Introduction to Civil Litigation

CHAPTER 1

Litigation and the Paralegal

KEY POINTS

Civil Litigation in Texas State Courts is regulated by

- Texas Rules of Civil Procedure
- Texas Rules of Civil Evidence
- Texas Rules of Appellate Procedure
- Texas Civil Practice and Remedies Code
- Local Rules of Court
- Texas Statutes and Codes
- Texas Case Law

WHAT CIVIL LITIGATION IS

FEDERAL COURTS VERSUS STATE COURTS

The litigation practice in Texas state courts is quite similar in many areas to the litigation practice in the federal courts. However, there are many differences between the

two systems, including the times for filing or responding and the format of pleadings. The role of the paralegal in a litigation law firm is much the same whether the practice occurs in federal or state court.

ALTERNATIVES AND LIMITATIONS TO LITIGATION

ARBITRATION

The process of arbitration involves submitting a dispute to a third party for resolution. For a number of years, arbitration has increasingly been recognized as a viable alternative to litigation in Texas.

In the 1987 session, the 70th Texas Legislature enacted a number of statutes providing for alternative dispute resolution (ADR). The purpose of the Alternative Dispute Resolution Procedures act is found in the opening words of Tex. Civ. Prac. & Rem. Code Ann. § 154.002: “It is the policy of this state to encourage the peaceable resolution of disputes . . . and the early settlement of pending litigation through voluntary settlement procedures.”

The Act permits a court, either on its own motion or on the motion of a party, to refer a pending litigation to ADR

and to appoint neutral third parties to preside over the ADR procedures. The court is responsible for conferring with the parties to determine the most appropriate ADR method and subsequently notifying the parties of its determination.

Once the court’s notice is received, the parties have 10 days to file a written objection to the notice of referral. A provision in the Act allows avoidance of the ADR procedure if the court finds that a reasonable basis exists for a party’s objections.

The procedures permitted under ADR are outlined in Tex. Civ. Prac. & Rem. Code Ann. §154.023-.027 and include, but are not limited to:

1. mediation
2. arbitration
3. mini-trial

4. moderated settlement conference
5. summary jury trial
6. special judge trial.

One important aspect of ADR is that the results of the chosen procedure are not binding on the parties.

The third parties who participate in ADR must adhere to Tex. Civ. Prac. & Rem. Code Ann. § 154.052.

This section requires a minimum of 40 hours training in dispute resolution and 24 additional training hours if the party participates in parent-child disputes. Other training and experience may apply toward these requirements.

Refer to Tex. Rev. Civ. Stat. Ann. art. 235 for additional sources of requirements for arbitration.

SOURCES OF THE LAW

PRIMARY SOURCES

The controlling law for Texas civil litigation is found in the Texas Constitution, Texas cases, Texas statutory codes, and various local rules of court.

litigation form books are listed in Exhibit 1-1. The State Bar of Texas has compiled numerous seminar course materials into excellent guidebooks for both attorneys and paralegals.

Many publishers now provide their forms on computer disk, in addition to the written format, in an effort to meet the needs of the computerized law firm.

SECONDARY SOURCES

Numerous secondary sources exist for litigation practice in the Texas court system. Frequently used, state-specific

Exhibit 1-1 Texas Form Books

Stayton Texas Forms with Practice Commentaries, by Stayton (Vernon)
Texas Civil Trial Guide, by Johnson and Dorsaneo (Matthew Bender)
Texas Criminal Practice Guide, by Teague (Matthew Bender)
Texas Forms: Legal and Business
Texas Jurisprudence Pleading and Practice Forms 3d (Lawyers Cooperative Publishing)
Texas Legal Practice Forms, by Stevenson and Taylor (Callaghan)
Texas Litigation Guide, by Dorsaneo (Matthew Bender)
Texas Pattern Jury Instructions (State Bar of Texas)
Texas Special Issues Forms, by Robins (Butterworth)
West's Texas Forms (West)

CHAPTER 2

The Courts and Jurisdiction

KEY POINTS

- The Texas court system is patterned after the federal court system.
- Texas has four types of trial courts: municipal courts, justice of the peace courts, county courts, and district courts.
- The Texas Court of Appeals has jurisdiction over both civil and criminal cases.

FEDERAL COURT SYSTEM**UNITED STATES DISTRICT COURTS**

Each state has at least one United States district court. Based on the state's population and size, as well as the

court's case load, it may have more than one. Texas has four districts. Exhibit 2-1 specifies the composition of the United States district courts in Texas.

Exhibit 2-1 United States District Courts in Texas**EASTERN DISTRICT OF TEXAS**

Room 212, United States Courthouse
Beaumont, TX 77701

BEAUMONT DIVISION (Hardin, Jasper, Jefferson, Liberty, Newton, and Orange Counties)

LUFKIN DIVISION (Angelina, Houston, Nacogdoches, Polk, Sabine, San Augustine, Shelby, Trinity, and Tyler Counties)

MARSHALL DIVISION (Camp, Cass, Harrison, Marion, Morris, and Upshur Counties)

SHERMAN DIVISION (Collin, Cooke, Delta, Denton, Fannin, Grayson, Hopkins, and Lamar Counties)

TEXARKANA DIVISION (Bowie, Franklin, Red River, and Titus Counties)

TYLER DIVISION (Anderson, Cherokee, Gregg, Henderson, Panola, Rains, Rusk, Smith, Van Zandt, and Wood Counties)

NORTHERN DISTRICT OF TEXAS

Room 15c22, United States Courthouse
1100 Commerce Street
Dallas, TX 75242

ABILENE DIVISION (Callahan, Eastland, Fisher, Haskell, Howard, Jones, Mitchell, Nolan, Shackelford, Stephens, Stonewall, Taylor, and Throckmorton Counties)

AMARILLO DIVISION (Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler Counties)

DALLAS DIVISION (Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall Counties)

FORT WORTH DIVISION (Comanche, Erath, Hood, Jack, Palo Pinto, Parker, Tarrant, and Wise Counties)

LUBBOCK DIVISION (Bailey, Borden, Cochran, Crosby, Dawson, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Kent, Lamb, Lubbock, Lynn, Motley, Scurry, Terry, and Yoakum Counties)

SAN ANGELO DIVISION (Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Reagan, Runnels, Schleicher, Sterling, Sutton, and Tom Green Counties)

WICHITA FALLS DIVISION (Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Knox, Montague, Wichita, Wilbarger, and Young Counties)

SOUTHERN DISTRICT OF TEXAS

P.O. Box 61010
Houston, TX 77208

BROWNSVILLE DIVISION (Cameron and Willacy Counties)

CORPUS CHRISTI DIVISION (Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces, and San Patricio Counties)

continued

Exhibit 2-1 United States District Courts in Texas (*continued*)

GALVESTON DIVISION (Brazoria, Chambers, Galveston, and Matagorda Counties)
 HOUSTON DIVISION (Austin, Brazos, Colorado, Fayette, Fort Bend, Grimes, Harris, Madison, Montgomery, San Jacinto, Walker, Waller, and Wharton Counties)
 LAREDO DIVISION (Jim Hogg, LaSalle, McMullen, Webb, and Zapata Counties)
 McALLEN DIVISION (Hidalgo and Starr Counties)
 VICTORIA DIVISION (Calhoun, DeWitt, Goliad, Jackson, Lavaca, Refugio, and Victoria Counties)

WESTERN DISTRICT OF TEXAS

Hemisfair Plaza
 655 East Durango Boulevard
 San Antonio, TX 78206

AUSTIN DIVISION (Bastrop, Blanco, Burieson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington, and Williamson Counties)
 DEL RIO DIVISION (Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde, and Zavala Counties)
 EL PASO DIVISION (El Paso County)
 MIDLAND-ODESSA DIVISION (Andrews, Crane, Ector, Martin, Midland, Odessa, and Upton Counties)
 PECOS DIVISION (Brewster, Culberson, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Ward, and Winkler Counties)
 SAN ANTONIO DIVISION (Atascosa, Bandera, Bexar, Comal, Dimmit, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real, and Wilson Counties)
 WACO DIVISION (Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson, and Somervell Counties)

UNITED STATES COURTS OF APPEAL

The United States is divided geographically into 11 appellate districts plus the District of Columbia Circuit, which hears appeals from decisions of federal administrative agencies and the specially created Federal Circuit court of appeals. Texas is located in the jurisdiction of the Fifth Circuit court of appeals. The other states in the Fifth Circuit are District of Canal Zone, Louisiana, and Mississippi.

The Fifth Circuit court of appeals sits in New Orleans, Louisiana.

The primary function of the federal appeals courts is to review the decisions of the district courts within their circuits. Normally reviews are conducted by three-judge panels. In some instances, however, a party may petition the court for a *hearing en banc*: a hearing before all the judges of the circuit.

STATE COURT SYSTEMS

The state court system in Texas, a dual creation of the Texas Constitution and the Texas Legislature, is patterned after the structure of the federal system. The Texas Constitution created one Supreme Court, one court of criminal appeals, courts of appeals, district courts, county courts, commissioners courts, and courts of justices of the peace.

The Texas Legislature has also exercised its authority to establish additional statutory courts. Illustrates the state court structure in Texas.

TRIAL COURTS

There are four types of trial courts in Texas: municipal courts, justice of the peace courts (often referred to simply as justice courts or JP courts), county courts, and district courts. A further subdivision of the justice courts is the small claims courts.

MUNICIPAL COURTS. Municipal courts have jurisdiction in criminal cases only. At least one municipal

court of record is established for cities with a population of 1.2 million, and additional municipal courts may be created by a municipality's governing body. There are presently over 900 municipal courts in Texas.

Trial in the municipal court is before a judge or six-person jury. Either party may request a jury trial.

An appeal may be taken to a county court if a party is dissatisfied with the municipal court's decision. At the county court level, the trial is *de novo*, that is, a new trial occurs. From the county court level, an appeal is taken to the district court and from there to the state court of appeals. The final appeal is to the Supreme Court of Texas.

JUSTICE OF THE PEACE COURTS. Justice of the peace courts were created by Tex. Const. art. 5, § 19, and Tex. Gov't Code § 27.031 and 27.032. Tex. R. Civ. P. 523 et seq. govern the practices of the justice courts. Rule 523 states that: "All rules governing the district and county courts shall also govern the justice courts, insofar as they can be applied, except where otherwise specifically provided by law or these rules."

Texas counties are divided into precincts. A justice of the peace presides over the court at the precinct level. Justice courts are not courts of record, as there is no court reporter recording the proceedings and, therefore, no written record of the proceedings. Cases appealed to county court are tried *de novo*. At present, there are approximately 800 justice of the peace courts in Texas.

Justice courts are granted original jurisdiction, both civil and criminal, when the amount sued for, exclusive of interest or penalty, does not exceed \$5,000.

COUNTY COURTS. In Texas, there are two types of county courts. Tex. Const. art. 5, § 16, created a county court for each county; these are referred to as *constitutional county courts*. That section of the state constitution also authorized the legislature both to create additional courts and to set the jurisdiction for those courts. Courts created by the legislature include county courts at-law, often referred to as *statutory* or *legislative county courts*. There are presently over 490 county courts in Texas.

For additional information on the nature of county courts, refer to the statutes that created a particular court

and the general enactments under Tex. Gov't Code Ann. § 25.0003 and 25.0013.

DISTRICT COURTS. The third type of court in the state court system is the district court, which was created by Tex. Const. art. 5, § 1. Tex. R. Civ. P. 15–21c govern both county and district courts.

There are presently approximately 440 district courts in Texas. The district courts include special criminal, probate, family, and juvenile courts, all created by statute.

Certain district courts have been established by Tex. Gov't Code Ann. § 24.601(a) to serve as family district courts and hear matters regarding custody, visitation, and child support.

APPELLATE COURTS

Three of the courts depicted are appellate courts. The first tier is the Texas court of appeals.

There are 14 district courts of appeals in Texas. Each district is referred to as a *Supreme Judicial District*. The only city with more than one court of appeals is Houston.

Appeals are heard by a panel of three justices. Decisions of this panel are normally in written form.

TEXAS SUPREME COURT

The highest civil court in Texas is the Texas Supreme Court, which consists of nine justices, one of whom acts as chief justice. Since the 1980 amendment to the state constitution, the Texas Supreme Court hears only civil cases.

TEXAS COURT OF CRIMINAL APPEALS

For criminal cases, the Texas court of criminal appeals is the court of last resort. After the constitutional amendment in 1980, the Texas court of appeals was authorized to hear both civil and criminal cases. On appeal from the criminal district court, a criminal case may be sent to either the Texas Supreme Court or the Texas court of criminal appeals.

JURISDICTION

Jurisdiction is the authority or power of a court to hear a particular case. The jurisdictional limits are set by statute. The issue of jurisdiction has two prongs. First, the court must have jurisdiction over the subject matter of the case. Second the court must have jurisdiction over the persons involved in the litigation.

SUBJECT MATTER JURISDICTION IN THE STATE COURT

If a court has subject matter jurisdiction, it has the power to hear a particular type of case. In the absence of that power, any judgment rendered in the case is void. A void judgment is not enforceable and is subject to challenge at any time.

The laws governing the types of cases that can be brought in state court in Texas are often complicated. The following is a summary of the subject matter jurisdiction of the Texas state courts.

MUNICIPAL COURTS. Municipal courts, which are authorized to hear only criminal cases, have been given concurrent jurisdiction with the justice courts in cases in which the maximum penalty to be imposed is \$200. (See Tex. Code Crim. Proc. Ann. art. 4.14.)

JUSTICE OF THE PEACE COURTS. Justice of the peace courts have exclusive original jurisdiction over a civil case if the amount in controversy is \$200, exclusive of interest, unless another court has been granted jurisdiction over the subject matter. If the amount in controversy exceeds \$200, but does not exceed \$5,000, exclusive of interest, the justice of the peace court shares concurrent original jurisdiction with the district and county courts. Justice of the peace courts have jurisdiction over a criminal case if the fine does not exceed \$200.

Original jurisdiction over *forcible entry and detainer* cases, involving eviction from or possession of real estate (but not title to the real estate), is vested in the justice of the peace court regardless of the value of the land in controversy.

The justice courts also have jurisdiction over the following matters:

1. foreclosure of mortgages and enforcement of liens on personal property if the amount in controversy is within the court's jurisdiction
2. issuance of writs of attachment, garnishment, and sequestration.

The issuance of *peace bonds*—orders by the court to prevent one person from approaching another person, based on previous problems between the parties—is an important jurisdictional matter for the justice of the peace courts. A person against whom a bond has been requested is required to post a bond that states that the person will not harm or destroy the property of the other individual for a period of one year from the date of the issuance of the bond. The amount of the bond is at the discretion of the justice of the peace court issuing the bond.

The justice of the peace courts do not have jurisdiction over the following types of actions:

1. issuance of writs of mandamus or injunction
2. suits filed by the State of Texas to recover penalties, forfeitures, and escheats
3. suits for divorce
4. suits for damages because of slander or defamation of character
5. suits for the trial of title to land
6. suits for the enforcement of liens on land.

Each justice of the peace also presides over a small claims court. This court shares concurrent jurisdiction with the justice of the peace court in the recovery of money claims not exceeding \$5,000.

CONSTITUTIONAL COUNTY COURTS. Tex. Const. art. 5, § 16, grants to the constitutional county courts original jurisdiction over civil cases if the amount in controversy exceeds \$200, up to a maximum of \$5,000. The constitutional county court also has been given the authority to issue writs of injunction, mandamus, certiorari, and other writs required to enforce its jurisdiction.

The subject matter of the legislative county courts varies, as do the limits on the amount in controversy. Many county courts are authorized to hear cases that do not exceed \$5,000. However, others have a limit of \$50,000.

In counties without a statutory probate court, county court at-law, or other statutory court with the jurisdiction of a probate court, constitutional county courts are authorized to exercise limited original probate jurisdiction. In the event the probate matter heard in the constitutional county court is challenged, a request may be made by either the judge or any party that the proceeding be transferred to the district court. Once the case is transferred to the district court, the court treats the case as if it had been filed originally in that court (Tex. Prob. Code Ann. § C, § 5(b)).

Dallas, Houston, and several other large cities in Texas have separate probate courts. Smaller cities generally do not have probate courts.

Criminal jurisdiction is granted to a constitutional county court only if there is no statutory criminal court in the county. In such circumstance, the constitutional county court may exercise original jurisdiction over misdemeanors, except for cases involving official misconduct or fines of less than \$200.

Concurrent jurisdiction with a district court is granted to a legislative county court if the amount in controversy exceeds the jurisdiction of a constitutional county court.

A constitutional county court also serves as an appellate court for cases arising in either the justice courts or small claims courts when the judgment exceeds \$20, exclusive of costs. The review process is a trial de novo. Both original and appellate judgments from the constitutional county court may be appealed to the intermediate court of appeals if the judgment or amount in controversy exceeds \$20, exclusive of interests and costs (Tex. Civ. Prac. & Rem. Code Ann. § 51.012).

Jurisdiction is denied to the constitutional county court in the following areas, according to Tex. Gov't Code Ann. § 26.043:

1. suits for the enforcement of a lien on land
2. eminent domain matters
3. suits for the recovery of land

4. suits on behalf of the state for escheat action
5. suits for divorce
6. suits for the forfeiture of a corporate charter
7. suits for the trial of a right to property valued at \$500 or more and levied on by a writ of execution, sequestration, or attachment.

DISTRICT COURTS. Tex. Const. art. 5, § 8, grants to the district courts general jurisdiction over all proceedings except those granted exclusively to other courts (probate, family law, etc.). Thus, the majority of litigation in Texas state courts occurs in the district court.

Jurisdiction in the district court may be exclusive, appellate, or original.

Cases in which the amount in controversy exceeds \$500 are within the jurisdiction of the district court. There is no maximum limit for matters to be heard in this court. The district court also has concurrent jurisdiction with justice courts if the amount in controversy exceeds \$200, up to \$5,000.

If the amount in controversy in a case falls within the jurisdictional limits of two or more courts, the case may be filed in any of those courts (Tex. Gov't Code Ann. § 25.0013, 26.04(d), and 27.03 1).

APPELLATE COURTS. In 1980 the Texas Constitution was amended, effective in 1981, to give the Texas court of appeals jurisdiction over criminal appeals, which had formerly been heard by the Texas court of criminal appeals. This change became necessary because of the heavy backlog of criminal appeals. The one exception is the death penalty case, which may be appealed directly to the Texas court of criminal appeals.

PERSONAL JURISDICTION

Personal jurisdiction over the defendant in a Texas state court action is easily established if the defendant is domiciled within the state. Problems arise when the defendant is domiciled outside the state but has some type of contact with the state so as to satisfy constitutional due process requirements. Texas case law is the best source for determining if the “minimum contacts” requirements to satisfy personal jurisdiction have been met.

NOTICE. The exercise of personal jurisdiction over a defendant is dependent on proper notice of the action

VENUE

STATE COURT VENUE

The issue of venue in Texas has undergone drastic changes over the past ten years. New procedural rules were developed to reflect the latest changes. Refer to Tex. R. Civ. P. 86–89.

or service of process. What constitutes proper service for defendants domiciled in Texas is detailed in Tex. R. Civ. P. 103, 106, and 107. Service of process is discussed more fully in Chapter 5.

STATE LONG-ARM STATUTES. The two major categories of nonresident defendants are (Tex. Rev. Civ. Stat. Ann. art. 2031b):

1. individuals who are not residents of Texas
2. foreign corporations, joint-stock companies, associations, or partnerships

Tests for establishing a nonresident defendant's minimum contacts with Texas include (Tex. Rev. Civ. Stat. Ann. art. 2031b, § 4):

1. the existence of contracts, by mail or otherwise, with any Texas resident when either party is to perform the contract, either in whole or in part, in Texas
2. the defendant's commission of a tort, in whole or in part, in Texas
3. recruitment of Texas residents, either directly or through an intermediary in Texas, for employment in Texas or outside the state.

Service requirements for nonresidents are discussed in Chapter 5.

CHALLENGING PERSONAL JURISDICTION.

In Texas, personal jurisdiction must be challenged by a special appearance, that is, an appearance made solely for the purpose of challenging the jurisdiction (Tex. R. Civ. P. 120a). The special appearance must be by sworn motion filed prior to a motion to transfer venue or any other plea, pleading, or motion. However, a motion to transfer venue and any other plea, pleading, or motion may be part of the same instrument or filed subsequent thereto without waiver of such special appearance. “The issuance of process for witnesses, the taking of depositions, the serving of requests for admissions, and the use of discovery processes shall not constitute a waiver of such special appearance” (Tex. R. Civ. P. 1 20a(1)).

The court determines the special appearance on the basis of pleadings, stipulations, affidavits filed by the parties, results of discovery, and any oral testimony. Any affidavits filed on behalf of a special appearance must be served at least seven days before the hearing and must be made on personal knowledge.

The earlier Texas venue laws were patterned after the Spanish influence on the state and established venue in the county of the defendant's domicile.

Venue law currently is reflected in Tex. Civ. Prac. & Rem. Code Ann. § 15.001:

VENUE: GENERAL RULE. Except as otherwise provided by this subchapter of Subchapter B or C, all lawsuits shall be brought in the county in which all or part of the cause of action accrued or in the county of defendant's residence if defendant is a natural person.

However, there are numerous exceptions to this general rule setting forth venue in Texas. Refer to Tex. Civ. Prac. & Rem. Code Ann. § 15 for a partial listing of those exceptions. Nonresidents, corporations, partnerships, and counties, for example, enjoy exception status.

This code section also establishes mandatory filing requirements, in the county where the land is located, for actions for recovery of real property; for establishment of interest in real property; for partition of title to real property; for removal of encumbrances from title to real property; or to quiet title to real property.

Under Tex. Civ. Prac. & Rem. Code Ann. § 15.017, the plaintiff in a libel, slander, or invasion-of-privacy matter may elect to file either: (1) In the county where the plaintiff resides at the time of accrual of the cause of action; (2) in the county where the defendant resides at the time of filing suit; (3) in the county of any defendant's residence; or (4) in the county of domicile of a corporation.

Permissive venue is granted under Tex. Civ. Prac. & Rem. Code Ann. § 15.031 to an executor, administrator, or guardian. Such an action may be brought in the county where the estate is administered or the county in which a negligent act or omission occurred.

Tex. Civ. Prac. & Rem. Code Ann. § 15.032 establishes venue in insurance matters. A suit against a fire, marine, or inland company may be brought in the county where the insured property is situated. In the case of life, accident, or health claims, the suit may be brought in the county where the insurance company's home office is located, the county where the loss occurred, or the county where the policyholder or beneficiary instituting the suit resides.

An action for breach of warranty by a manufacturer may be brought in the county where all or a part of the cause of action accrued; where the manufacturer has an agency, representative, or principal office; or where the plaintiff resides.

Tex. Civ. Prac. & Rem. Code Ann. § 15.035 regulates venue for contracts in writing and provides that, unless the contract permits performance in a particular county, suit may be brought in that county or the county in which the defendant is domiciled. If the action is based on the defendant's contractual obligation arising out of the purchase of consumer goods, services, loans, or extensions of credit for personal, household, family, or agricultural use, suit may be filed either in the county where the defendant signed the contract or the county where the defendant resides at the time of the suit.

Venue for a corporation or association is based in the county where its principal office is situated; where all or

part of the cause of action arose; or the county of the plaintiff's residence at the time all or part of the cause of action arose if the company has an agency or representative there. However, if the company does not have an agency or representative in the county of the plaintiff's residence at the time all or part of the action arose, then venue is in the county nearest where the plaintiff resided where the company did have an agency or representatives.

In the case of foreign corporations doing business in Texas, suit may be filed in the county where all or part of the action arose or where the foreign corporation has an agency, representative, or principal office. If the business has no such agency, representative, or office in the state, then venue is in the county of the plaintiff's residence.

Texas case law holds that the county where the registered agent is located is the principal office. Tex. Civ. Prac. & Rem. Code Ann. § 15.061 provides that if the court has venue as to any one defendant, it has venue as to all defendants and claims in that case, unless a mandatory venue provision controls.

Venue of the main action also controls the filing of counterclaims, cross-claims, and third-party claims. Tex. R. Civ. P. 255 provides that the parties may consent to venue.

CHANGING VENUE

Under the appropriate circumstances, venue can be changed. Tex. R. Civ. P. 86–89 set forth the requirements for a motion to transfer venue and the required accompanying affidavits. See Exhibit 2-2 for a sample motion.

The defendant's motion to transfer must be filed and served concurrently with or prior to the filing of any other plea, pleading, or motion, except for a special appearance.

The motion to transfer must recite the reasons the action should be transferred to another county of proper venue. Reasons for transfer include:

1. the county where the action is pending is not a proper county
2. mandatory venue of the action in another county is prescribed by a specific statutory provision, such as those discussed previously.

Verification of the motion to transfer is not required. However, the defendant may supply affidavits based on personal knowledge.

A plaintiff need not respond to a motion to transfer. However, the defendant's sworn allegations are taken as true unless specifically denied by the plaintiff. After venue allegations are denied, the plaintiff has the burden of presenting prima facie proof of the allegations by pleadings or supporting affidavits based on personal knowledge.

Discovery is permitted in transfer-of-venue mailers. The hearing is based on prior pleadings, affidavits, and discovery documents. No live testimony is presented.

Exhibit 2-2 Sample Motion to Transfer Venue

[STYLE OF CASE]

MOTION TO TRANSFER VENUE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant USC INVESTMENT COMPANY (hereinafter “USC”), and files this its Motion to Transfer Venue to Travis County, Texas, a county of proper venue, for the reason that Dallas County, Texas, is not a proper county of suit. As cause therefor, USC would show this Honorable Court as follows:

I.

Defendant specifically denies the existence of a cause of action from the facts stated in Plaintiff’s Original Petition, Defendant further specifically denies that Plaintiff’s allegations constitute a pleading of venue facts necessary to maintain suit in Dallas County, Texas. Each of the alleged actions occurred in Travis County and Dallas County has absolutely no relationship to these alleged actions or the parties in this suit. USC further specifically denies that it breached any duty to the Plaintiff, contractual or otherwise.

II.

As more fully shown by the affidavit of John Smith, which is attached hereto as Exhibit A and incorporated herein by reference, USC is a domestic corporation residing and having its principal place of business in Travis County, Texas, where it maintains its offices and registered agent. USC has no registered agent or office in any other county in the State of Texas, including Dallas County.

III.

The cause of action, or part thereof, if a cause of action exists, did not accrue in Dallas County, Texas, but in Travis County, Texas, where the account was opened, the funds were deposited, and all transactions between the parties occurred. At no time did any transactions occur, in part or in whole, in Dallas County, Texas.

IV.

USC has never transacted business with Plaintiff in Dallas County, Texas. In fact, Plaintiff alleges in her pleading that she is a resident of New Orleans, Louisiana.

V.

Section 15.036 of the Texas Civil Practice & Remedies Code provides that a private corporation may be sued (1) in the county in which its principal office is situated, (2) in the county in which all or a part of the cause of action arose, or (3) in the county in which the plaintiff resided when all or a part of the cause of action arose, provided the corporation had an agency or representative in the county or, if the corporation had no agency or representative in the county in which the plaintiff resided, when all or a part of the cause of action arose, then suit may be brought in the county nearest that in which plaintiff resided at that time in which the corporation then had an agency or representative. Provision (3) is not available to Plaintiff since Plaintiff is not a resident of Dallas County, Texas, but is a resident of New Orleans, Louisiana, as shown in her Original Petition. Therefore, under Provisions (1) and (2), Travis County, Texas, is a proper county in which to bring suit, as this county is the location of both Defendant’s principal place of business and the only county in which all or a part of the alleged cause of action could have arisen. See Exhibit A attached hereto. Plaintiff has not shown that venue may be established in Dallas County, Texas. In this case, venue is proper in Travis County, Texas, where USC’s principal office and only registered agent reside.

continued

Exhibit 2-2 Sample Motion to Transfer Venue (*continued*)

VI.

No provision for mandatory venue authorizing venue to be maintained by Plaintiff in Dallas County, Texas, exists.

VII.

No provision for permissive venue authorizing venue to be maintained by Plaintiff in Dallas County, Texas, exists.

WHEREFORE, PREMISES CONSIDERED, USC requests that this matter be set for hearing after forty-five days from the date of the filing of this Motion, with notice to Plaintiff, and that, upon the completion of the hearing, the Court grant this Motion to Transfer Venue and transfer such cause to Travis County, Texas, taxing costs incurred against Plaintiff, and that Defendant have such other and further relief to which it may be justly entitled.

[Signature block]

[FIAT]

[Certificate of Service]

[Style of Case]

EXHIBIT A

AFFIDAVIT OF JOHN SMITH

STATE OF TEXAS (

COUNTY OF _____ (

BEFORE ME, the undersigned authority, on this date personally appeared JOHN SMITH, known to me to be the person whose name is subscribed below and who, having been by me duly sworn, stating upon his oath as follows:

1. "My name is John Smith. I am over the age of twenty-one years. I have never been convicted of a felony or other crime. I have personal knowledge of the facts herein stated. I am otherwise competent under law to give this affidavit. I am District Manager of USC Investment Management Company (hereinafter "USC"). USC is a Texas corporation and I make this affidavit in support of USC's Motion to Transfer Venue.
2. "USC is a corporation residing in and having its principal place of business in Travis County, Texas, where it maintains its offices and registered agent. USC has no registered agent or office in Dallas County, Texas.
3. "All transactions regarding Plaintiff's accounts with USC occurred in Travis County and no action related to these transactions occurred in Dallas County. Defendant has never transacted any business with Plaintiff in Dallas County.
4. "Plaintiff represented to USC that she was a resident of New Orleans, Louisiana, as shown on its New Account Application, attached hereto as Exhibit B and incorporated herein by reference" [not included in this sample].

FURTHER, Affiant sayeth not.

JOHN SMITH

[Notary block and seal]