

## Focus | Business Litigation/Appellate Law

# Five Things to Know About the Fifteenth Court of Appeals

BY J. COLLIN SPRING

For the first time since 1967, the Legislature has created a new court of appeals—and it did so in a way Texas has never seen before. While historically the Texas Courts of Appeals have been divided into distinct geographical districts, the new Fifteenth Court of Appeals located in Austin has jurisdiction statewide although limited by subject matter. This article briefly surveys a few things that members of the bar should know about this new appellate court.

### Jurisdiction

The Legislature granted the Fifteenth Court of Appeals jurisdiction over two primary categories of cases: (1) matters appealed from the soon-to-be-created business courts; and (2) civil cases in which the State or one of its subdivisions is a party. On the business side, the Fifteenth's jurisdiction is simple. It has jurisdiction over any appeal or mandamus suit arising out of an action in the business courts.

The governmental side of the Fifteenth's jurisdiction is more complicated. Generally, the Court will have jurisdiction over suits by or against the State and its executive agencies. This grant, however, is limited by several statutory exceptions, including ones for personal injury actions, suits under the Family Code, and eminent domain proceedings. Finally, the Fifteenth will have jurisdiction over appeals from suits involving the Attorney General when any party challenges the constitutionality or validity of a state statute or rule.

For suits within its statutory grant, the Fifteenth's jurisdiction is exclusive. The existing courts of appeals will no longer have authority to hear those matters granted to the Fifteenth. No matter whether a case arises in El Paso or Texarkana, if it falls within the Fifteenth's demesne, it will be heard in Austin.

### Transfer of Cases Limited

Not all cases currently heard by the Court of Appeals have geographic juris-

isdiction. The Supreme Court has implemented a procedure for "equalization transfer," which permits cases in courts of appeals with busier dockets to be removed and heard by courts with fewer cases per justice. Equalization transfers, however, are explicitly prohibited for cases that ordinarily should be heard by the Fifteenth.

The Supreme Court will develop rules for transferring cases that (1) should have been filed in the Fifteenth Court of Appeals, or (2) were improperly filed in the Fifteenth. Given the ambiguity as to the breadth of the jurisdictional language, it is likely that this new procedural device will lead to significant opinions of the Texas Supreme Court in the session following the establishment of the new appellate court.

### Effective Date Retroactive to September 1, 2023

The Fifteenth Court of Appeals will be created on September 1, 2024, and will have prospective application to appeals perfected on or after that date. It also will decide any then-pending appellate cases within its scope that were filed on or after September 1, 2023. All such cases will be automatically transferred to the new Court. In 2022, the average time from filing an appeal to disposition was six and a half months. This means that many cases that are already on file will undoubtedly fall to the Fifteenth to finally decide.

### Court Composition

The Court will be composed initially of three justices (including one Chief Justice) appointed by the Governor. This will put the

new Court on par with the smallest of the courts of appeals (only one-fourth the size of the Dallas Court of Appeals). On September 1, 2027, the court will expand to five justices, making it larger than the smallest rural courts, but still significantly smaller than the largest courts of appeal serving metropolitan areas. Over time, the appointed judges will be required to stand for statewide reelection to maintain their positions on the court.

### Constitutionality

Proponents and detractors of the bill establishing the new Court of Appeals have debated at length whether the manner in which the Fifteenth has been established—with its jurisdiction defined by subject matter rather than geography—comports with the State constitution. Skeptics have pointed to constitutional language requiring that the state be "divided" into appellate districts to suggest that non-geographic divisions are not allowed. Supporters point to the coextensive jurisdiction of the First and Fourteenth Courts of Appeals in Houston as evidence that the constitution does permit overlapping appellate districts.

The Legislature has provided that the Supreme Court will have exclusive original jurisdiction over any challenges to the constitutionality of the Fifteenth Court of Appeals. This challenge, which seems to be more a question of when than if, will require the Supreme Court to grapple with unanswered constitutional questions and will have serious implications for governmental actors and Texas businesses alike. **HN**

J. Collin Spring is an Associate in the Dallas office of Ryan Law Firm PLLC. He can be contacted at [jay.spring@ryanlawyers.com](mailto:jay.spring@ryanlawyers.com).

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### CAMIE MCKEE

Camie McKee is an Associate at Haynes and Boone, LLP.

#### 1. How did you first get involved in pro bono?

My first pro bono experiences were at UT Law. I worked with the INCLUDE Project, where we counseled special education students and their caregivers/supporters in Austin and Laredo about guardianship, probate, and Supported Decision-Making agreements. My first pro bono project with Haynes Boone involved drafting a DVAP client's estate planning documents while a summer associate.

#### 2. Which clinics have you assisted with?

I have volunteered with DVAP's monthly intake clinics both by phone and in-person at the Dallas VA Medical Center.

#### 3. Why do you do pro bono?

Pro bono work not only allows me to give back to the community but also reminds me to appreciate the education and training that a law degree and license afford.

#### 4. What impact has pro bono service had on your career?

Pro bono service makes me a better lawyer. I can practice my communication and writing skills while researching about a different area of the law. More importantly, I can practice connecting with someone and figuring out how we can solve the problem at hand.

#### 5. What is the most unexpected benefit you have received from doing pro bono?

I genuinely enjoy speaking with DVAP's potential clients during monthly intake clinics. Many of us, including those that I have contacted through DVAP, need someone to listen compassionately and hear our stories from start to finish. These clinics teach me how to be more empathetic—as an attorney, colleague, wife, sister, daughter, and friend.

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