

**PROBATE, GUARDIANSHIP AND TRUST
JURISDICTION IN TEXAS**

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State Bar of Texas

41ST ANNUAL

ADVANCED ESTATE PLANNING & PROBATE

June 7-9, 2017

Houston

CHAPTER 6

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Professional Biography

Lisa H. Jamieson is experienced in all facets of estate planning and probate law, is Board Certified in Estate Planning and Probate Law by the Texas Board of Legal Specialization and is a Certified Public Accountant. Ms. Jamieson's practice includes sophisticated business and estate tax planning, administration of dependent and independent estates, guardianships for incapacitated adults, and counseling and representing trustees.

Ms. Jamieson is licensed in Texas, having graduated from Baylor University School of Law. She is a Fellow in the American College of Trust and Estate Counsel and is the past President of the Tarrant County Probate Bar. Ms. Jamieson is a former Chair of the Real Estate, Probate, and Trust Law Section of the State Bar of Texas, the largest section of the State Bar. She also has chaired the Guardianship Code Committee of the Section as well as Chair of the Jurisdiction Committee which revised the jurisdiction statutes of decedents' estates and guardianships in anticipation of the codification of the Texas Probate Code.

Education

Baylor University (J.D., 1984 Law Review)
Texas A & M University (B.B.A., 1981 *summa cum laude*)

Admissions & Certifications

- Board Certified, Estate Planning and Probate Law by the Texas Board of Legal Specialization
- Certified Public Accountant, Texas
- State Bar of Texas (1984)

Professional Affiliations & Memberships

- American College of Trust and Estate Counsel, Fellow
- State Bar of Texas, Real Estate, Probate and Trust Law Council (Chair, 2013-2014); (Council, 2000-2004)
- Fort Worth/Tarrant County Young Lawyers Association (President, 1990)
- Tarrant County Probate Bar (President, 1995-1996)
- Leadership Fort Worth and Forum Fort Worth
- Tarrant County Bar Foundation, Board Member

Honors and Recognitions

- Martindale-Hubbell® AV® Preeminent™ (5.0); Top Rated Layers in Trust & Estate Law
- Best Lawyers in America® (2001-2016)
- Top Attorney, *Fort Worth*, Texas magazine (2009-2016)

- Texas Super Lawyer, *Texas Monthly* magazine among Top 50 women attorneys in Texas, Top 100 attorneys in Texas
- Outstanding Young Lawyer for the State of Texas (1996)

Publications & Presentations

Ms. Jamieson has spoken at numerous continuing courses for the State Bar of Texas, including the State Bar's annual Advanced Estate Planning and Probate Course and its Advanced Strategies Course. In 2007, she was the Course Director for the State Bar's Advanced Estate Planning and Probate Course.

Personal Biography

Lisa has committed a considerable amount of time in many civic and professional organizations. She currently serves on the Board of United Community Centers Foundation, Advocates for Special People, The Alzheimer's Association of North Central Texas, and the B&G Clubs of Arlington.

Lisa was one of the initial members of the Board of Directors of Guardianship Services, Inc., and served as its first President. She has also served as President of Parenting Center (formerly Parenting Guidance Center), the Alzheimer's Association in Fort Worth, Safe Haven of Tarrant County, and Advocated for Special People.

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PROBATE, GUARDIANSHIP AND TRUST JURISDICTION IN TEXAS

INTRODUCTION

The jurisdiction of Texas courts over the estates of decedents and incapacitated persons has evolved for many years and was fairly well-settled until the passage of the Texas Estates Code (the “TEC”), which became effective on January 1, 2014. A decision was made to redraft virtually all of the jurisdictional provisions of the Texas Probate Code when the TEC was enacted. While this redraft did not make many major substantive changes in the law, it incorporated entirely new language that must now be interpreted by the courts.

The jurisdiction of Texas courts over trusts has remained fairly constant since the passage of Section 115.001 of the Texas Trust Code, which became effective on January 1, 1984 and was based, in part, on the Uniform Probate Code. That is not to say that there have not been some changes, but these changes in trust jurisdiction have not been *as* substantive as those to estate jurisdiction (which, again, were not very substantive to begin with).

The jurisdictional provisions of the TEC describe four different types of jurisdiction:

1. “**Jurisdiction**” is generally defined as “[a] court’s power to decide a case or issue a decree.” Black’s Law Dictionary (7th ed. 1999).
2. “**Concurrent Jurisdiction**” is generally defined as “[j]urisdiction exercised simultaneously by more than one court over the same subject matter and within the same territory, with the litigant having the right to choose the court in which to file the action.” Black’s Law Dictionary (7th ed. 1999).
3. “**Original Jurisdiction**” is generally defined as “[a] court’s power to hear and decide a matter before any other court can review the matter.” Black’s Law Dictionary (7th ed. 1999).
4. “**Exclusive Jurisdiction**” is generally defined as “[a] court’s power to adjudicate an action or class of actions to the exclusion of all other courts.” Black’s Law Dictionary (7th ed. 1999).

This paper deals with the jurisdiction of four different types of Texas courts:

1. Constitutional County Courts (“CCCs”):

- 1.1. There is a CCC for each of the 254 counties in Texas. Texas Constitution,

Article V, Section 15 provides, in part, that “[t]here shall be established in each county in this State a County Court”

- 1.2. Article V, Sections 15 through 17 of the Texas Constitution, as well as Chapters 25 and 26 of the Texas Government Code, outline the duties of CCCs and their officers. The CCC “has jurisdiction as provided by law.” Tex. Const. art. V, § 16.
- 1.3. The judges of CCCs are not required to be licensed attorneys, but Article V, Section 15 of the Texas Constitution provides that the judge of a CCC “shall be well informed in the law of the State”

2. County Courts at Law (Statutory County Courts) Exercising Probate Jurisdiction (“CCLs”):

- 2.1. CCLs are courts created by the Texas Legislature.
- 2.2. Article V, Section 1 of the Texas Constitution provides, in part, that “[t]he Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.”
- 2.3. Texas Government Code Section 25.0003(a) provides that “[a] statutory county court has jurisdiction over all causes and proceedings, civil and criminal, original and appellate, prescribed by law for county courts.”
- 2.4. Texas Government Code Section 25.0003(d) provides that “[e]xcept as provided by Subsection (e), a statutory county court has, concurrent with the county court, the probate jurisdiction provided by general law for county courts.”
- 2.5. Texas Government Code Section 25.0003(e) provides that “[i]n a county that has a statutory probate court, a statutory probate court is the only county court created by statute with probate jurisdiction.” In other words, if the county has a SPC, then any CCLs in that county lack probate jurisdiction.
- 2.6. Texas Government Code Section 25.0003(f) provides that “[a] statutory county court does not have the jurisdiction of a statutory probate court granted statutory probate courts by the

Texas Probate Code.” Because the Texas Probate Code has been repealed, this section should be construed to apply to the Texas Estates Code.

- 2.7. The legal jurisdiction of CCLs varies considerably and is established by the statute that creates the particular CCL. The jurisdiction of statutorily created CCLs may be concurrent with the jurisdiction of the CCC and District Courts in the county.
- 2.8. The judges of CCLs are required to be licensed attorneys. Tex. Gov’t Code § 25.0014(3).

3. Statutory Probate Courts (“SPCs”):

- 3.1. Article V, Section 1 of the Texas Constitution provides, in part, that “[t]he Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.”
- 3.2. TEC Section 22.007(c) defines a “Statutory Probate Court” as “a court created by statute and designated as a statutory probate court under Chapter 25, Government Code. For the purposes of this code, the term does not include a county court at law exercising probate jurisdiction unless the court is designated as a statutory probate court under Chapter 25, Government Code.”
- 3.3. Texas Government Code Section 25.0021(b) provides, in part, that “[a] statutory probate court as that term is defined in Section 3 (ii), Texas Probate Code, has:

- (1) the general jurisdiction of a probate court as provided by the Texas Probate Code; and
- (2) the jurisdiction provided by law for a county court to hear and determine actions, cases, matters, or proceedings instituted under:
 - (A) Section 166.046, 192.027, 193.007, 552.015, 552.019, 711.004, or 714.003, Health and Safety Code;
 - (B) Chapter 462, Health and Safety Code; or
 - (C) Subtitle C or D, Title 7, Health and Safety Code.”

There are two potential problems with these statutory definitions:

First, the Texas Probate Code was repealed when the Texas Estates Code went into effect on January 1, 2014. Texas Estates Code Section 21.002(b) probably solves this problem by providing that “[t]his code and the Texas Probate Code, as amended, shall be considered one continuous statute, and for the purposes of any instrument that refers to the Texas Probate Code, this code shall be considered an amendment to the Texas Probate Code.”

Second, the definitions are circular: Section 25.0021(b) of the Texas Government Code provides, in part, that “[a] statutory probate court as that term is defined in Section 3 (ii), Texas Probate Code has certain jurisdiction. Section 22.007(c) of the Texas *Estates* Code, on the other hand, defines a “Statutory Probate Court” as a court created by statute and designated as a statutory probate court under Chapter 25, Government Code.

- 3.4. Texas has eighteen SPCs, which are located in the ten following counties:
 - (1) Bexar County (two courts);
 - (2) Collin County (one court);
 - (3) Dallas County (three courts);
 - (4) Denton County (one court);
 - (5) El Paso County (one court);
 - (6) Galveston County (one court);
 - (7) Harris County (four courts);
 - (8) Hidalgo County (one court);
 - (9) Tarrant County (two courts); and
 - (10) Travis County (one court).
- 3.5. The judges of SPCs are required to be licensed attorneys. Tex. Gov’t Code § 25.0014(3).

4. District Courts:

4.1. The District Court is the court of general jurisdiction in Texas. Texas Constitution, Article V, Section 8 provides, in part, that “District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body.”

- 4.2. The judges of District Courts are required to be licensed attorneys. Tex. Const. art. 5, § 7.

PART 1: PROBATE JURISDICTION

1. Definitions:

- 1.1. TEC Section 22.007(a) contains the following definition of the word “Court”: “(1) a county court in the exercise of its probate jurisdiction; (2) a court created by statute and authorized to exercise original probate jurisdiction; and (3) a district court exercising original probate jurisdiction in a contested matter.”
- 1.2. TEC Section 22.007(b) also provides that “[t]he terms ‘county court’ and ‘probate court’ are synonymous and mean: (1) a county court in the exercise of its probate jurisdiction; (2) a court created by statute and authorized to exercise original probate jurisdiction; and (3) a district court exercising probate jurisdiction in a contested matter.”
- 1.3. TEC Section 22.029 states that “[t]he terms ‘probate matter,’ ‘probate proceedings,’ ‘proceedings in probate,’ and ‘proceedings for probate’ are synonymous and include a matter or proceeding relating to a decedent’s estate.”

2. Preliminary Matters:

- 2.1. TEC, Chapter 32 deals with jurisdiction and provides that all “probate proceedings” must be filed and heard in a court exercising original probate jurisdiction. TEC § 32.001(a). It is the author’s opinion that, in order for Chapter 32 to confer jurisdiction, there must be a pending action that relates to the administration of an estate. If there is no estate administration pending, then TEC Chapter 32 does not apply. This is far more complicated than might initially appear because attorneys in Texas seldom formally close the administration of an estate subject to independent administration. So, when actions are brought years after administration is granted, there is almost always a question on whether the estate remains under administration.
- 2.2. TEC Section 31.001 defines the term “probate proceeding.” TEC Section

- 31.002 defines “a matter related to a probate proceeding.”
- 2.2.1. The jurisdiction conferred on courts by the TEC depends on whether the matters before a given court are “probate proceedings” or “matters related to a probate proceeding.”
- 2.2.2. TEC Section 32.001(a) provides, in part, that “[a]ll *probate proceedings* must be filed and heard in a court exercising *original probate jurisdiction*.” (emphasis added).
- 2.2.3. Consequently, all “probate proceedings” (as defined by TEC Section 32.001) must be filed and heard in a court exercising original probate jurisdiction.
- 2.2.4. TEC Section 32.001(a) further provides that “[t]he court exercising original probate jurisdiction also has jurisdiction of all *matters related to the probate proceeding* as specified in Section 31.002 for that type of court.” (emphasis added).
- 2.2.5. Consequently, courts exercising original probate jurisdiction have jurisdiction over “matters related to the probate proceeding” (as such term applies to the court), and that jurisdiction is *not original jurisdiction*.
- 2.3. TEC Section 32.001(b) provides that “[a] probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.”
- 2.3.1. Some courts and commentators argue that “pendent and ancillary” is merely another way of saying “matters related to a probate [or guardianship] proceeding” or “matters appertaining or incident to” an estate (or guardianship). *See Goodman v. Summit at W. Rim, Ltd.*, 952 S.W.2d 930, 933 (Tex. App.—Austin 1997, no pet.) (“[T]he probate court may only exercise ‘ancillary’ or ‘pendent’ jurisdiction over a claim that bears some relationship to the estate. Once the estate settles, the claim is ‘ancillary’ or ‘pendent’ to nothing, and the court is without jurisdiction.”); § 14:9. Pendent and ancillary jurisdiction, 2 Tex. Prac. Guide Probate § 14:9 (“Pendent and ancillary jurisdiction is essentially another name for what we now refer to as a ‘matters related to a probate proceeding’” or “‘matters appertaining or incident to’ an estate or guardianship.”)

- 2.3.2. Other courts disagree, holding that a court may exercise jurisdiction over pendent and/or ancillary matters that are *unrelated* to the underlying probate (or guardianship) proceeding so long as the court’s exercise of pendent and ancillary jurisdiction will promote judicial efficiency and economy. *In re Estate of Trevino*, 195 S.W.3d 223, 229 (Tex. App.—San Antonio 2006, no pet.); *Schuchmann v. Schuchmann*, 193 S.W.3d 598, 603 (Tex. App.—Fort Worth 2006, pet. denied); *Sabine Gas Transmission Co. v. Winnie Pipeline Co.*, 15 S.W.3d 199, 201-02 (Tex. App.—Houston [14th Dist.] 2000, no pet.).
- 2.3.3. The latter is likely the correct interpretation because “pendent and ancillary jurisdiction” is in a subsection separate from the subsection addressing a court’s jurisdiction of “matters related to” the probate (or guardianship) proceeding in both statutes (the probate statute and the guardianship statute). TEC §§ 32.001(a)-(b), 1022.001(a)-(b). But this is not without limitation: courts seem to agree that the pendent and/or ancillary matters must have at least some “close relationship” with the underlying probate (or guardianship) proceeding. *Schuchmann*, 193 S.W.3d at 603; *Sabine Gas Transmission Co.*, 15 S.W.3d at 202. Just how close remains unclear.
- 2.4. TEC Section 32.001(c) provides that “[a] final order issued by a probate court is appealable to the court of appeals.”
- 2.4.1. Generally, appeals are available only from final judgments. This principal is known as the “one final judgement” rule. *De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006).
- 2.4.2. The administration of a decedent’s estate is an ongoing process as opposed to an independent event such as a personal injury lawsuit. In the administration of an estate, the court will frequently make numerous ongoing, interrelated, and independent administrative decisions.
- 2.4.3. Probate proceedings are an exception to the one final judgment rule because probate proceedings routinely involve multiple final judgments. *Id.* Not every probate order, however, is appealable. *Id.*
- 2.4.4. The Texas Supreme Court has adopted the following test for determining whether there is appellate jurisdiction over a particular probate court order:

If there is an express statute, such as the one for the complete heirship judgment, declaring the phase of the probate proceedings to be final and appealable, that statute controls. Otherwise, if there is a proceeding of which the order in question may logically be considered a part, but one or more pleadings also part of that proceeding raise issues or parties not disposed of, then the probate order is interlocutory.

Id. (quoting *Crowson v. Wakeham*, 897 S.W.2d 779, 783 (Tex. 1955)).

- 2.4.5. Accordingly, if there is no express rule or statute that declares a particular probate court order final and appealable, then the *De Ayala* test is applied.
- 2.4.6. Parties may also need a severance order to eliminate ambiguities about whether an order is final and appealable under *De Ayala*. *De Ayala*, 193 S.W.3d at 578.
- 2.5. TEC Section 32.001(d) provides that “[t]he administration of the estate of a decedent, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one proceeding for purposes of jurisdiction. The entire proceeding is a proceeding in rem.”

3. Constitutional County Courts (“CCC’s”):

- 3.1. In a county in which there is no SPC or CCL exercising original probate jurisdiction, the CCC has original jurisdiction of probate proceedings. TEC § 32.002(a). In such a county, the CCC also has original jurisdiction over matters related to a probate proceeding as specified by TEC Section 31.002. TEC §§ 32.001(a), 31.002(a).
- 3.2. Therefore, in a county in which there is no SPC or CCL exercising original probate jurisdiction, the CCC has original jurisdiction over the following matters:
 - 3.2.1. the probate of a will, with or without administration of the estate (a Probate Proceeding) (TEC §§ 31.001(1), 32.002(a));
 - 3.2.2. the issuance of letters testamentary and of administration (a Probate Proceeding) (TEC §§ 31.001(2), 32.002(a));
 - 3.2.3. an heirship determination or small estate affidavit, community property administration and homestead and family

- 3.2.4. allowances (a Probate Proceeding) (TEC §§ 31.001(3), 32.002(a)); an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent (a Probate Proceeding) (TEC §§ 31.001(4), 32.002(a));
 - 3.2.5. a claim arising from an estate administration and any action brought on the claim (a Probate Proceeding) (TEC §§ 31.001(5), 32.002(a));
 - 3.2.6. the settling of a personal representative’s account of an estate and any other matter related to the settlement, partition, or distribution of an estate (a Probate Proceeding) (TEC §§ 31.001(6), 32.002(a));
 - 3.2.7. a will construction suit (a Probate Proceeding) (TEC §§ 31.001(7), 32.002(a));
 - 3.2.8. an action against a personal representative or former personal representative arising out of the representative’s performance of the duties of a personal representative (a Matter Related to Probate Proceeding) (TEC §§ 31.002(a)(1), 32.002(a), 32.001(a));
 - 3.2.9. an action against a surety of a personal representative or former personal representative (a Matter Related to Probate Proceeding) (TEC §§ 31.002(a)(2), 32.002(a), 32.001(a));
 - 3.2.10. a claim brought by a personal representative on behalf of an estate (a Matter Related to Probate Proceeding) (TEC §§ 31.002(a)(3), 32.002(a), 32.001(a));
 - 3.2.11. an action brought against a personal representative in the representative’s capacity as personal representative (a Matter Related to Probate Proceeding) (TEC §§ 31.002(a)(4), 32.002(a), 32.001(a));
 - 3.2.12. an action for trial of title to real property that is estate property, including enforcement of a lien against the property (a Matter Related to Probate Proceeding) (TEC §§ 31.002(a)(5), 32.002(a), 32.001(a)); and
 - 3.2.13. an action for trial of the right of property that is estate property (a Matter Related to Probate Proceeding) (TEC §§ 31.002(a)(6), 32.002(a), 32.001(a)).
- 3.3. General Observations Regarding Removal of Contested Probate Proceedings from a CCC:
 - 3.3.1. The Texas Legislature believes that every litigant should be entitled to have a contested probate proceeding tried before a judge who is a licensed attorney. CCC judges (as opposed to CCL judges, SPC judges, and District Court judges) are not required to be licensed attorneys. Consequently, the TEC contains provisions providing for the transfer of contested probate proceedings from a CCC to a CCL exercising original probate jurisdiction, SPC, or District Court.
 - 3.3.2. If a “contested probate proceeding” is filed in a CCC, then either the CCC itself or any party to the proceeding may cause to have the contested probate proceeding transferred out of the CCC.
 - 3.3.3. But if the CCC judge and all parties agree, then a contested probate proceeding may nevertheless be tried in the CCC.
 - 3.3.4. A CCC judge is required, however, to assign a contested probate proceeding on the motion of any party to the proceeding.
 - 3.3.5. A motion filed by any such party may designate whether the transfer is to be made to a SPC or a District Court.
 - 3.3.6. In counties in which there is no SPC, but in which there is a CCL exercising original probate jurisdiction, then the transfer may be made only to the CCL (i.e., *not* to a District Court).
 - 3.3.7. In certain circumstances, and only at the request of the judge of the CCC, the entire probate proceeding—the contested and uncontested portions—may be transferred to a SPC.
 - 3.3.8. In any event, once the contested probate proceeding is resolved, the SPC or the District Court must transfer the proceeding back to the CCC.
 - 3.3.9. If an entire probate proceeding (rather than only the contested portions thereof) is transferred to the CCL, then there is no apparent requirement that the proceeding be transferred back to the CCC.
 - 3.4. Contested Probate Proceedings in Counties with no SPC or CCL:
 - 3.4.1. TEC Section 32.003(a) provides that, in a county in which there is no SPC or CCL exercising original probate jurisdiction, when a matter in a probate proceeding is

- contested, the judge of the CCC may, on the judge’s own motion, or shall, on the motion of any party to the proceeding: (1) request the assignment of a SPC judge to hear the contested matter as provided by Section 25.0022 of the Government Code; or (2) transfer the contested matter to the District Court, which may then hear the contested matter as if originally filed in the District Court.
- 3.4.1.1. Texas Government Code Section 25.0022(h) provides that a judge or former or retired judge of a SPC may be assigned by the presiding judge of the SPCs to hold court in a SPC, a CCC, or any CCL exercising probate jurisdiction when a CCC judge requests the assignment of a SPC judge to hear a probate matter in the CCC.
 - 3.4.1.2. Texas Government Code Section 25.0022(n) provides that a judge who has jurisdiction over a suit pending in one county may, unless a party objects, conduct any of the judicial proceedings except the trial on the merits in a different county.
 - 3.4.1.3. While the TEC does not expressly deal with this situation, it is apparent that, once a probate proceeding ceases to be contested, the assigned court loses jurisdiction and must transfer the “contested matter” back to the CCC pursuant to TEC Section 32.003(e).
 - 3.4.2. TEC Section 32.003(b) provides that, if a party to a probate proceeding files a motion for the assignment of a SPC judge to hear a contested matter in the proceeding before the judge of the CCC transfers the contested matter to a District Court under TEC Section 32.003, the CCC judge shall grant the motion for assignment of a SPC judge and may not transfer the matter to the District Court unless the party withdraws the motion.
 - 3.4.3. TEC Section 32.003(b-1) provides that, if a judge of a CCC requests the assignment of a SPC judge to hear a contested probate proceeding on the judge’s own motion or on the motion of a party to the proceeding as provided by TEC Section 32.003, the judge may request that the SPC judge be assigned to the entire proceeding on the judge’s own motion or on the motion of a party.
 - 3.4.4. TEC Section 32.003(c) provides that a party to a probate proceeding may file a motion for the assignment of a SPC judge under TEC Section 32.003 before a matter in the proceeding becomes contested, and the motion is given effect as a motion for assignment of a SPC judge under TEC Section 32.003(a) if the matter later becomes contested.
 - 3.4.5. TEC Section 32.003(d) provides that, notwithstanding any other law, a transfer of a contested matter in a probate proceeding to a District Court under any authority other than the authority under TEC Section 32.003: (1) is disregarded for the purposes of TEC Section 32.003; and (2) does not defeat the right of a party to the proceeding to have the matter assigned to a SPC judge in accordance with this TEC Section 32.003.
 - 3.4.6. TEC Section 32.003(e) provides that a SPC judge assigned to a contested matter in a probate proceeding or to the entire proceeding under TEC Section 32.003 has the jurisdiction and authority granted to a SPC by the TEC. A SPC judge assigned to hear only the contested matters in a probate proceeding shall, on resolution of the matter, including any appeal of the matter, return the matter to the CCC for further proceedings not inconsistent with the orders of the SPC or court of appeals, as applicable. A SPC judge assigned to the entire proceeding as provided by TEC Section 32.003 (b-1) shall, on resolution of the contested matter in the proceeding, including any appeal of the matter, return the entire proceeding to the CCC for further proceedings not inconsistent with the orders of the SPC or court of appeals, as applicable.
 - 3.4.7. TEC Section 32.003(f) provides that a District Court to which a contested matter is transferred under TEC Section 32.003 has the jurisdiction and authority granted to a SPC by the TEC. On resolution of a contested matter transferred to the District Court under TEC Section 32.003, including any appeal of the matter, the District Court shall return the matter to the CCC for further proceedings not inconsistent with the orders of the District Court or court of appeals, as applicable.
 - 3.4.8. TEC Section 32.003(g) provides that, if only the contested matter in a probate proceeding is assigned to a SPC judge under TEC Section 32.003, or if the contested matter in the probate

proceeding is transferred to a District Court under TEC Section 32.003, the CCC shall continue to exercise jurisdiction over the management of the estate, other than a contested matter, until final disposition of the contested matter is made in accordance with TEC Section 32.003. Any matter related to a probate proceeding in which a contested matter is transferred to a District Court may be brought in the District Court. The District Court in which a matter related to the proceeding is filed may, on its own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the CCC with jurisdiction of the management of the estate.

- 3.4.9. TEC Section 32.003(h) provides that, if a contested matter in a probate proceeding is transferred to a District Court under TEC Section 32.003, the District Court has jurisdiction of any contested matter in the proceeding that is subsequently filed, and the CCC shall transfer those contested matters to the District Court. If a SPC judge is assigned under TEC Section 32.003 to hear a contested matter in a probate proceeding, the SPC judge shall be assigned to hear any contested matter in the proceeding that is subsequently filed.
- 3.4.10. TEC Section 32.003(i) provides that the clerk of a District Court to which a contested matter in a probate proceeding is transferred under TEC Section 32.003 may perform in relation to the contested matter any function a county clerk may perform with respect to that type of matter.
- 3.5. Contested Probate Proceedings in Counties with a CCL but no SPC:
 - 3.5.1. TEC Section 32.004(a) provides that, in a county in which there is no SPC, but in which there is a CCL exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the CCC may, on the judge’s own motion, or shall, on the motion of any party to the proceeding, transfer the contested matter to the CCL. In addition, the judge of the CCC, on the judge’s own motion, or on the motion of any party to the proceeding, may transfer the entire proceeding to the CCL.
 - 3.5.2. TEC Section 32.004(b) provides that a CCL to which a proceeding is transferred

under TEC Section 32.004 may hear the proceeding as if originally filed in that court. If only a contested matter in the proceeding is transferred, on the resolution of the matter, the matter shall be returned to the CCC for further proceedings not inconsistent with the orders of the CCL.

4. County Courts at Law (Statutory County Courts) Exercising Probate Jurisdiction (“CCLs”):

- 4.1 In a county in which there is no SPC, but in which there is a CCL exercising original probate jurisdiction, the CCL exercising original probate jurisdiction and the CCC have concurrent original jurisdiction of probate proceedings, unless otherwise provided by law. The judge of a CCC may hear probate proceedings while sitting for the judge of any other county court. TEC § 32.002(b). In such a county, the CCC and CCL also have concurrent original jurisdiction over matters related to a probate proceeding as specified by TEC Section 31.002. TEC §§ 32.001(a), 31.002(a)-(b).
- 4.2 Therefore, in a county in which there is no SPC, but in which there is a CCL exercising original probate jurisdiction, the CCL has original jurisdiction concurrent with the CCC over the following matters:
 - 4.2.1 the probate of a will, with or without administration of the estate (a Probate Proceeding) (TEC §§ 31.001(1), 32.002(b));
 - 4.2.2 the issuance of letters testamentary and of administration (a Probate Proceeding) (TEC §§ 31.001(2), 32.002 (b));
 - 4.2.3 an heirship determination or small estate affidavit, community property administration, and homestead and family allowances (a Probate Proceeding) (TEC §§ 31.001(3), 32.002(b));
 - 4.2.4 an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent (a Probate Proceeding) (TEC §§ 31.001(4), 32.002(b));
 - 4.2.5 a claim arising from an estate administration and any action brought on the claim (a Probate Proceeding) (TEC §§ 31.001(5), 32.002(b));

- 4.2.6 the settling of a personal representative’s account of an estate and any other matter related to the settlement, partition, or distribution of an estate (a Probate Proceeding) (TEC §§ 31.001(6), 32.002(b));
- 4.2.7 a will construction suit (a Probate Proceeding) (TEC §§ 31.001(7), 32.002(b));
- 4.2.8 an action against a personal representative or former personal representative arising out of the representative’s performance of the duties of a personal representative (a Matter Related to Probate Proceeding) (TEC §§ 31.002(a)(1); 32.002(b), 32.001(a));
- 4.2.9 an action against a surety of a personal representative or former personal representative (a Matter Related to Probate Proceeding) (TEC §§ 31.002(a)(2), 32.002(a), 32.00(b));
- 4.2.10 a claim brought by a personal representative on behalf of an estate (a Matter Related to Probate Proceeding) (TEC §§ 31.002(a)(3), 32.002(b), 32.001(a));
- 4.2.11 an action brought against a personal representative in the representative’s capacity as personal representative (a Matter Related to Probate Proceeding) (TEC §§ 31.002(a)(4), 32.002(b), 32.001(a));
- 4.2.12 an action for trial of title to real property that is estate property, including enforcement of a lien against the property (a Matter Related to Probate Proceeding) (TEC §§ 31.002(a)(5), 32.002(b), 32.001(a));
- 4.2.13 an action for trial of the right of property that is estate property (a Matter Related to Probate Proceeding) (TEC §§ 31.002(a)(6), 32.002(b), 32.001(a));
- 4.2.14 the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court (a Matter Related to Probate Proceeding) (TEC §§ 31.002(b)(2), 32.002(b), 32.001(a)); and
- 4.2.14.1 [Note that the term “interpretation and administration” of a testamentary trust is a fairly narrow definition and may or may not include breach-of-fiduciary-duty claims against a trustee.]
- 4.2.15 the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate

in the court (a Matter Related to Probate Proceeding) (TEC §§ 31.002(b)(3), 32.002(b), 32.001(a)).

- 4.2.15.1 Again, the term “interpretation and administration” of an inter vivos trust is a fairly narrow definition and may or may not include breach-of-fiduciary-duty claims against a trustee.

5. Statutory Probate Courts (“SPCs”):

- 5.1. In a county in which there is a SPC, the SPC has original jurisdiction of probate proceedings. TEC § 32.002(c).
- 5.2. Further, in a county in which there is a SPC, the SPC has exclusive jurisdiction of all probate proceedings, regardless of whether the proceeding is contested or uncontested. TEC § 32.005(a). In such a county, a cause of action related to the probate proceeding must also be brought in the SPC unless the jurisdiction of the SPC is concurrent with the jurisdiction of a District Court as provided by TEC Section 32.007 or with the jurisdiction of any other court. TEC § 32.005(a).
- 5.3. TEC Section 32.005(a) is construed in conjunction and in harmony with TEC Chapter 401, TEC Section 402.001, and a number of other sections of the TEC relating to independent executors. TEC § 32.005(b). But Section 32.005(a) may not be construed to expand a court’s control over an independent executor. TEC § 32.005(b).
- 5.4. Therefore, in a county in which there is a SPC, the SPC has original jurisdiction (either exclusive or not—*see* TEC Section 32.005(a)) over the following matters:
 - 5.4.1. the probate of a will, with or without administration of the estate (a Probate Proceeding) (TEC §§ 31.001(1), 32.002(c));
 - 5.4.2. the issuance of letters testamentary and of administration (a Probate Proceeding) (TEC §§ 31.001(2), 32.002(c));
 - 5.4.3. an heirship determination or small estate affidavit, community property administration and homestead and family allowances (a Probate Proceeding) (TEC §§ 31.001(3), 32.002(c));
 - 5.4.4. an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent (a

- 5.4.5. Probate Proceeding) (TEC §§ 31.001(4), 32.002(c));
- 5.4.6. a claim arising from an estate administration and any action brought on the claim (a Probate Proceeding) (TEC §§ 31.001(5), 32.002(c));
- 5.4.7. the settling of a personal representative’s account of an estate and any other matter related to the settlement, partition, or distribution of an estate (a Probate Proceeding) (TEC §§ 31.001(6), 32.002(c));
- 5.4.8. a will construction suit (a Probate Proceeding) (TEC §§ 31.001(7), 32.002(c));
- 5.4.9. an action against a personal representative or former personal representative arising out of the representative’s performance of the duties of a personal representative (a Matter Related to Probate Proceeding) (TEC §§ 31.002(1), 32.002(c), 32.001(a));
- 5.4.10. an action against a surety of a personal representative or former personal representative (a Matter Related to Probate Proceeding) (TEC §§ 31.002(2), 32.002(c), 32.001(b));
- 5.4.11. a claim brought by a personal representative on behalf of an estate (a Matter Related to Probate Proceeding) (TEC §§ 31.002(3), 32.002(c), 32.001(a));
- 5.4.12. an action brought against a personal representative in the representative’s capacity as personal representative (a Matter Related to Probate Proceeding) (TEC §§ 31.002(4), 32.002(c), 32.001(a));
- 5.4.13. an action for trial of title to real property that is estate property, including enforcement of a lien against the property (a Matter Related to Probate Proceeding) (TEC §§ 31.002(5), 32.002(c), 32.001(a));
- 5.4.14. an action for trial of the right of property that is estate property (a Matter Related to Probate Proceeding) (TEC §§ 31.002(5), 32.002(c), 32.001(a));
- 5.4.15. the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court (a Matter Related to Probate Proceeding) (TEC §§ 31.002(b)(2), 32.002(b), 32.001(a));
- 5.4.16. the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate in the court (a Matter Related to Probate Proceeding) (TEC §§ 31.002(b)(2), 32.002(b), 32.001(a));
- 5.5. any cause of action in which a personal representative of an estate pending in the SPC is a party in the representative’s capacity as a personal representative (a Matter Related to Probate Proceeding) (TEC §§ 31.002(c)(2), 32.002(b), 32.001(a)).
- 5.5.1. The SPC also has jurisdiction over the following matters:
 - 5.5.1. an action by or against a trustee (TEC § 32.006(1));
 - 5.5.2. an action involving an inter vivos trust, testamentary trust, or charitable trust (TEC § 32.006(2));
 - 5.5.3. an action by or against an agent or former agent under a power of attorney arising out of the agent’s performance of the duties of an agent (TEC § 32.006(3)); and
 - 5.5.4. an action to determine the validity of a power of attorney or to determine the agent’s rights, powers, or duties under a power of attorney (TEC § 32.006(4)).
- 5.6. The SPC also has concurrent jurisdiction with a District Court over the following matters:
 - 5.6.1. a personal injury, survival, or wrongful death action by or against a person in the person’s capacity as a personal representative (TEC § 32.007(1));
 - 5.6.2. an action by or against a trustee (TEC § 32.007(2));
 - 5.6.3. an action involving an inter vivos trust, testamentary trust, or charitable trust, including a charitable trust as defined by Texas Property Code Section 123.001 (TEC § 32.007(3));
 - 5.6.4. an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate (TEC § 32.007(4));
 - 5.6.5. an action against an agent or former agent under a power of attorney arising out of the agent’s performance of the duties of an agent (TEC § 32.007(5)); and
 - 5.6.6. an action to determine the validity of a power of attorney or to determine an agent’s rights, powers, or duties under a power of attorney (TEC § 32.007(6)).
- 5.7. TEC Section 34.001 deals with a SPC’s ability to transfer certain proceedings related to probate proceeding.

5.7.1. TEC Section 34.001(a) provides that “[a] judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in the estate, may transfer to the judge’s court from a district, county, or statutory court a cause of action related to a probate proceeding pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.”

5.8. Texas Government Code Section 25.00222 deals with the transfer of cases by a SPC judge and provides that:

- (a) The judge of a statutory probate court may transfer a cause of action pending in that court to another statutory probate court in the same county that has jurisdiction over the cause of action that is transferred.
- (b) If the judge of a statutory probate court that has jurisdiction over a cause of action appertaining to or incident to an estate pending in the statutory probate court determines that the court no longer has jurisdiction over the cause of action, the judge may transfer that cause of action to:
 - (1) a district court, county court, statutory county court, or justice court located in the same county that has jurisdiction over the cause of action that is transferred; or
 - (2) the court from which the cause of action was transferred to the statutory probate court under Section 5B or 608, Texas Probate Code. [Note that both of these sections have been repealed by the TEC. Section 5B has been replaced by TEC Section 304.001, and Section 608 has been replaced by TEC Section 1022.107.
- (c) When a cause of action is transferred from a statutory probate court to another court as provided by Subsection (a) or (b), all processes,

writs, bonds, recognizances, or other obligations issued from the statutory probate court are returnable to the court to which the cause of action is transferred as if originally issued by that court. The obligees in all bonds and recognizances taken in and for the statutory probate court, and all witnesses summoned to appear in the statutory probate court, are required to appear before the court to which the cause of action is transferred as if originally required to appear before the court to which the transfer is made.

5.9. Texas Government Code Section 25.0026 provides that:

- (a) A statutory probate court or its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court or any court of inferior jurisdiction in the county.
- (b) A statutory probate court or its judge may punish for contempt as prescribed by general law.
- (c) The judge of a statutory probate court has all other powers, duties, immunities, and privileges provided by law for county court judges.
- (d) The judge of a statutory probate court has no authority over the county’s administrative business that is performed by the county judge.

6. District Courts:

6.1. A District Court does not have original probate jurisdiction over “probate proceedings” or “matters related to probate proceedings” (save and except for its jurisdiction over trusts). It only has jurisdiction to hear a contested probate proceeding that has been transferred to it. When a transfer occurs, the District Court has the jurisdiction of a SPC. TEC § 32.003(f). On resolution of a contested

matter transferred to the District Court, the District Court shall return the matter to the CCC for further proceedings not inconsistent with the orders of the District Court or court of appeals, as applicable. *Id.*

PART 2: GUARDIANSHIP JURISDICTION

1. Definitions:

- 1.1. TEC Section 1002.008 contains the following definition of “Court”: “(1) a county court exercising its probate jurisdiction; (2) a court created by statute and authorized to exercise original probate jurisdiction; or (3) a district court exercising original probate jurisdiction over a contested matter. (b) ‘Statutory probate court’ means a court created by statute and designated as a statutory probate court under Chapter 25, Government Code. The term does not include a county court at law exercising probate jurisdiction unless the court is designated as a statutory probate court under Chapter 25, Government Code.”
- 1.2. TEC Section 1002.015 contains the following definition of “Guardianship Proceeding”: “[a] matter or proceeding related to a guardianship or any other matter covered by this title, including: (1) the appointment of a guardian of a minor or other incapacitated person, including an incapacitated adult for whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child; (2) an application, petition, or motion regarding guardianship or a substitute for guardianship under this title; (3) a mental health action; and (4) an application, petition, or motion regarding a trust created under Chapter 1301.”

2. Preliminary Matters:

- 2.1. TEC, Chapter 1021 deals with jurisdiction and provides that all “guardianship proceedings” must be filed and heard in a court exercising original probate jurisdiction. TEC § 1022.001(a). It is the author’s opinion that, in order for Chapter 1021 to confer jurisdiction, there must be a pending guardianship proceeding pending. If no guardianship

- proceeding is pending, then TEC Chapter 1021 does not apply.
- 2.2. TEC Section 1002.015 defines the term “guardianship proceeding.” TEC Section 1021.001 defines the term “a matter related to a guardianship proceeding.”
 - 2.2.1. The jurisdiction conferred on courts by the TEC depends on whether the matters before a given court are “guardianship proceedings” or “matters related to a guardianship proceeding.”
 - 2.2.2. TEC Section 1022.001(a) provides that “[a]ll *guardianship proceedings* must be filed and heard in a court exercising *original probate jurisdiction*.” (emphasis added).
 - 2.2.3. Consequently, all “guardianship proceedings” (as defined in TEC Section 1002.015) must be filed and heard in a court exercising original probate jurisdiction. (See Part 1, *supra*)
 - 2.2.4. TEC Section 1022.001(a) further provides that “[t]he court exercising original probate jurisdiction also has jurisdiction of all *matters related to the guardianship proceeding* as specified in Section 1021 for that type of court.” (emphasis added).
 - 2.2.5. Consequently, courts exercising original probate jurisdiction have jurisdiction over “guardianship proceedings” and “matters related to the guardianship proceeding” (as such terms apply to the court), and that jurisdiction is *not* original jurisdiction.
- 2.3. TEC Section 1022.001(b) provides that “[a] probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.” See discussion of TEC Sections 32.001(b) and 1022.001(b) in Part 1, *supra*.
- 2.4. TEC Section 1022.001(c) provides that “[a] final order issued by a probate court is appealable to the court of appeals.” See discussion of TEC Section 32.001(c) in Part 1, *supra*.
- 2.5. TEC Section 1022.002(d) provides that “[f]rom the filing of the application for the appointment of a guardian of the estate or person, or both, until the guardianship is settled and closed under this chapter, the administration of the estate of a minor or other incapacitated person is one proceeding for the purposes of jurisdiction and is a proceeding in rem.”

3. Constitutional County Courts (“CCCs”):

- 3.1. In a county in which there is no SPC or CCL exercising original probate jurisdiction, the CCC has original jurisdiction of guardianship proceedings. TEC § 1022.002(a). In such a county, the CCC also has original jurisdiction over matters related to a guardianship proceeding as specified by TEC 1021.001. TEC §§ 1022.001(a), 1021.001(a).
- 3.2. Therefore, in a county in which there is no SPC or CCL exercising original probate jurisdiction, the CCC has original jurisdiction over the following matters:
 - 3.2.1. the appointment of a guardian of a minor or other incapacitated person, including an incapacitated adult for whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child (a Guardianship Proceeding) (TEC §§ 1022.002(a), 1022.001(a), 1002.015(1));
 - 3.2.2. an application, petition, or motion regarding guardianship or a substitute for guardianship under this title (a Guardianship Proceeding) (TEC §§ 1022.002(a), 1022.001(a), 1002.015(2));
 - 3.2.3. a mental health action (a Guardianship Proceeding) (TEC §§ 1022.002(a), 1022.001(a), 1002.015(3));
 - 3.2.4. an application, petition, or motion regarding a trust created under Chapter 1301 (a Guardianship Proceeding) (TEC §§ 1022.002(a), 1022.001(a), 1002.015(4));
 - 3.2.5. the granting of letters of guardianship (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(1), 1022.001(a));
 - 3.2.6. the settling of the account of a guardian and all other matters relating to the settlement, partition, or distribution of a ward’s estate (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(2), 1022.001(a));
 - 3.2.7. a claim brought by or against a guardianship estate (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(3), 1022.001(a));
 - 3.2.8. an action for trial of title to real property that is guardianship estate property, including the enforcement of a lien

- 3.2.9. against the property (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(4), 1022.001(a));
- 3.2.9. an action for trial of the right of property that is guardianship estate property (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(5), 1022.001(a));
- 3.2.10. after a guardianship of the estate of a ward is required to be settled as provided by TEC Section 1204.001:
 - 3.2.10.1. an action brought by or on behalf of the former ward against a former guardian of the ward for alleged misconduct arising from the performance of the person’s duties as guardian (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(6)(A), 1022.001(a));
 - 3.2.10.2. an action calling on the surety of a guardian or former guardian to perform in place of the guardian or former guardian, which may include the award of a judgment against the guardian or former guardian in favor of the surety (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(6)(B), 1022.001(a));
 - 3.2.10.3. an action against a former guardian or the former ward that is brought by a surety that is called on to perform in place of the former guardian (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(6)(C), 1022.001(a));
 - 3.2.10.4. a claim for the payment of compensation, expenses, and court costs, and any other matter authorized under Chapter 1155 (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(6)(D), 1022.001(a)); and
 - 3.2.10.5. a matter related to an authorization made or duty performed by a guardian under Chapter 1204 (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(6)(E), 1022.001(a)); and
- 3.2.11. the appointment of a trustee for a trust created under Section 1301.053 or 1301.054, the settling of an account of the trustee, and all other matters relating to the trust. (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(7), 1022.001(a)).
- 3.3. General Observations Regarding the Removal of Contested Guardianship Proceedings from a CCC:
 - 3.3.1. The Texas Legislature believes that every litigant should be entitled to have a contested guardianship proceeding tried

- before a judge who is a licensed attorney. CCC judges (as opposed to CCL judges, SPC judges, and District Court judges) are not required to be licensed attorneys. Consequently, the TEC contains provisions providing for the transfer of contested guardianship proceedings from a CCC to a CCL exercising probate jurisdiction, a SPC, or a District Court.
- 3.3.2. If a “contested guardianship proceeding” is filed in a CCC in a county in which there is no SPC or CCL exercising original probate jurisdiction, then either the CCC judge, or any party to the proceeding, may cause to have the “contested guardianship proceeding” (rather than the entire proceeding) transferred out of the CCC to either a District Court or a SPC.
- 3.3.3. Notwithstanding this fact, if the CCC judge and all parties agree, then the contested probate proceeding may be tried in the CCC.
- 3.3.4. A CCC judge is required, however, to assign the “contested guardianship proceeding” to a SPC (rather than to a District Court) on the motion of any party to the proceeding.
- 3.3.5. If the CCC judge or any party to the proceeding requests assignment of a SPC judge to hear a “contested guardianship matter,” then the CCC judge may also request that the SPC be assigned the “entire guardianship proceeding” (rather than only the contested portions of the guardianship proceeding).
- 3.3.6. In counties where there is no SPC, but in which there is a CCL exercising original probate jurisdiction, then the transfer may be made only to the CCL (i.e., not to a District Court).
- 3.3.7. If there is a SPC in the county, then the SPC has exclusive jurisdiction of all guardianship proceedings, regardless of whether they are contested.
- 3.3.8. In certain circumstances, and only at the request of the judge of the CCC, the entire guardianship proceeding—the contested and uncontested portions—may be transferred to a SPC pending resolution of the contested guardianship proceeding. In any event, once the contested guardianship proceeding is resolved, the SPC must transfer the proceeding back to the CCC.
- 3.4. Contested Guardianship Proceedings in Counties with no SPC or CCL:
- 3.4.1. TEC Section 1022.003(a) provides that, in a county in which there is no SPC or CCL exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the CCC may, on the judge’s own motion, or shall, on the motion of any party to the proceeding: (1) request the assignment of a SPC judge to hear the contested matter as provided by Section 25.0022 of the Government Code; or (2) transfer the contested matter to the District Court, which may then hear the contested matter as if originally filed in the District Court.
- 3.4.1.1. Texas Government Code Section 25.0022(h) provides that a judge or former or retired judge of a SPC may be assigned by the presiding judge of the SPCs to hold court in a SPC, a CCC, or any CCL exercising probate jurisdiction when a CCC judge requests the assignment of a SPC judge to hear a probate matter in the CCC.
- 3.4.1.2. Texas Government Code Section 25.0022(n) provides that a judge who has jurisdiction over a suit pending in one county may, unless a party objects, conduct any of the judicial proceedings except the trial on the merits in a different county.
- 3.4.1.3. While the TEC does not expressly deal with this situation, it is apparent that, once a guardianship proceeding ceases to be contested, the assigned court loses jurisdiction and must transfer the “contested matter” back to the CCC pursuant to TEC Section 32.003(e).
- 3.4.2. TEC Section 1022.003(b) provides that, if a party to a guardianship proceeding files a motion for the assignment of a SPC judge to hear a contested matter in the proceeding before the judge of the CCC transfers the contested matter to a District Court under TEC Section 32.003, the CCC judge shall grant the motion for assignment of a SPC judge and may not transfer the matter to the District Court unless the party withdraws the motion.
- 3.4.3. TEC Section 1022.003(c) provides that, if a judge of a CCC requests the assignment of a SPC judge to hear a contested guardianship proceeding on the judge’s own motion or on the motion of a party to the proceeding as provided by TEC Section 1022.003, the judge may

- request that the SPC judge be assigned to the entire proceeding on the judge’s own motion or on the motion of a party.
- 3.4.4. TEC Section 1022.003(d) provides that a party to a guardianship proceeding may file a motion for the assignment of a SPC judge under TEC Section 1022.003 before a matter in the proceeding becomes contested, and the motion is given effect as a motion for assignment of a SPC judge under TEC Section 1022.003(a) if the matter later becomes contested.
- 3.4.5. TEC Section 1022.003(e) provides that, notwithstanding any other law, a transfer of a contested matter in a guardianship proceeding to a District Court under any authority other than the authority under TEC Section 1022.003: (1) is disregarded for the purposes of TEC Section 1022.003; and (2) does not defeat the right of a party to the proceeding to have the matter assigned to a SPC judge in accordance with TEC Section 1022.003.
- 3.4.6. TEC Section 1022.003(f) provides that a SPC judge assigned to a contested matter in a guardianship proceeding or to the entire proceeding under TEC Section 1022.003 has the jurisdiction and authority granted to a SPC by the TEC. A SPC judge assigned to hear only the contested matters in a guardianship proceeding shall, on resolution of the matter, including any appeal of the matter, return the matter to the CCC for further proceedings not inconsistent with the orders of the SPC or court of appeals, as applicable. A SPC judge assigned to the entire proceeding as provided by TEC Section 1022.003(c) shall, on resolution of the contested matter in the proceeding, including any appeal of the matter, return the entire proceeding to the CCC for further proceedings not inconsistent with the orders of the SPC or court of appeals, as applicable.
- 3.4.7. TEC Section 1022.003(g) provides that a District Court to which a contested matter is transferred under TEC Section 1022.003 has the jurisdiction and authority granted to a SPC by the TEC. On resolution of a contested matter transferred to the District Court under TEC Section 1022.003, including any appeal of the matter, the District Court shall return the matter to the CCC for further proceedings not inconsistent with
- the orders of the District Court or court of appeals, as applicable.
- 3.4.8. TEC Section 1022.003(h) provides that, if only the contested matter in a guardianship proceeding is assigned to a SPC judge under TEC Section 1022.003, or if the contested matter in the guardianship proceeding is transferred to a District Court under TEC Section 1022.003, the CCC shall continue to exercise jurisdiction over the management of the guardianship, other than a contested matter, until final disposition of the contested matter is made in accordance with TEC Section 1022.003. Any matter related to a guardianship proceeding in which a contested matter is transferred to a District Court may be brought in the District Court. The District Court in which a matter related to the proceeding is filed may, on its own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the CCC with jurisdiction of management of the guardianship.
- 3.4.9. TEC Section 1022.003(i) provides that, if a contested matter in a guardianship proceeding is transferred to a District Court under TEC Section 1022.003, the District Court has jurisdiction of any contested matter in the proceeding that is subsequently filed, and the CCC shall transfer those contested matters to the District Court. If a SPC judge is assigned under TEC Section 1022.003 to hear a contested matter in a guardianship proceeding, the SPC judge shall be assigned to hear any contested matter in the proceeding that is subsequently filed.
- 3.4.10. TEC Section 1022.003(j) provides that the clerk of a District Court to which a contested matter in a guardianship proceeding is transferred under TEC Section 1022.003 may perform in relation to the transferred matter any function a county clerk may perform with respect to that type of matter.
- 3.5. Contested Guardianship Proceedings in Counties with a CCL but no SPC:
- 3.5.1. TEC Section 1022.004(a) provides that, in a county in which there is no SPC, but in which there is a CCL exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the CCC may, on the judge’s own motion, or shall, on the

motion of any party to the proceeding, transfer the contested matter to the CCL. In addition, the judge of the CCC, on the judge’s own motion or on the motion of any party to the proceeding, may transfer the entire proceeding to the CCL.

3.5.2. TEC Section 1022.004(b) provides that a CCL to which a proceeding is transferred under TEC Section 1022.004 may hear the proceeding as if originally filed in that court. If only a contested matter in the proceeding is transferred, on the resolution of the matter, the matter shall be returned to the CCC for further proceedings not inconsistent with the orders of the CCL.

3.6. Contested Guardianship Proceedings in Counties with a SPC:

3.7. TEC Section 1022.005(a) provides that, in a county in which there is a SPC, the SPC has exclusive jurisdiction of all guardianship proceedings, regardless of whether the proceeding is contested or uncontested.

3.8. TEC Section 1022.005(b) provides that a cause of action related to a guardianship proceeding of which the SPC has exclusive jurisdiction as provided by TEC Section 1022.005(a) must be brought in the SPC unless the jurisdiction of the SPC is concurrent with the jurisdiction of a District Court as provided by TEC Section 1022.006 or with the jurisdiction of any other court.

3.9. TEC Section 1022.006 provides that a SPC has concurrent jurisdiction with the District Court in: (1) a personal injury, survival, or wrongful death action by or against a person in the person’s capacity as a guardian; and (2) an action involving a guardian in which each other party aligned with the guardian is not an interested person; in the guardianship.

4. County Courts at Law (Statutory County Courts) Exercising Probate Jurisdiction (“CCLs”):

4.1. In a county in which there is no SPC, but in which there is a CCL exercising original probate jurisdiction, the CCL and the CCC have concurrent original jurisdiction of guardianship proceedings, unless otherwise provided by law. The judge of a CCC may hear guardianship proceedings while sitting for the judge of any other county court. TEC

§ 1022.002(b). In such a county, the CCC and CCL also have concurrent original jurisdiction over matters related to a guardianship proceeding as specified by TEC 1021.001. TEC §§ 1022.001(a), 1021.001(a).

4.2. Therefore, in a county in which there is no SPC, but in which there is a CCL exercising original probate jurisdiction, the CCL has original jurisdiction concurrent with the CCC over the following matters:

4.2.1. the appointment of a guardian of a minor or other incapacitated person, including an incapacitated adult for whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child (a Guardianship Proceeding) (TEC §§ 1022.002(b), 1002.015(1));

4.2.2. an application, petition, or motion regarding guardianship or a substitute for guardianship under Title 3 of the TEC (a Guardianship Proceeding) (TEC §§ 1022.002(b), 1002.015(2));

4.2.3. a mental health action (a Guardianship Proceeding) (TEC §§ 1022.002(b), 1002.015(3));

4.2.4. an application, petition, or motion regarding a trust created under Chapter 1301 of the TEC (a Guardianship Proceeding) (TEC §§ 1022.002(b), 1002.015(4));

4.2.5. the granting of letters of guardianship (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(1), 1022.001(a));

4.2.6. the settling of the account of a guardian and all other matters relating to the settlement, partition, or distribution of a ward’s estate (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(2), 1022.001(a));

4.2.7. a claim brought by or against a guardianship estate (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(3), 1022.001(a));

4.2.8. an action for trial of title to real property that is guardianship estate property, including the enforcement of a lien against the property (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(4), 1022.001(a));

4.2.9. an action for trial of the right of property that is guardianship estate property (a Matter Related to Guardianship

- Proceeding) (TEC §§ 1021.001(a)(5), 1022.001(a));
- 4.2.10. after a guardianship of the estate of a ward is required to be settled as provided by TEC Section 1204.001:
 - 4.2.10.1. an action brought by or on behalf of the former ward against a former guardian of the ward for alleged misconduct arising from the performance of the person’s duties as guardian (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(6)(A), 1022.001(a));
 - 4.2.10.2. an action calling on the surety of a guardian or former guardian to perform in place of the guardian or former guardian, which may include the award of a judgment against the guardian or former guardian in favor of the surety (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(6)(B), 1022.001(a));
 - 4.2.10.3. an action against a former guardian of the former ward that is brought by a surety that is called on to perform in place of the former guardian (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(6)(C), 1022.001(a));
 - 4.2.10.4. a claim for the payment of compensation, expenses, and court costs, and any other matter authorized under Chapter 1155 of the TEC (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(6)(D), 1022.001(a)); and
 - 4.2.10.5. a matter related to an authorization made or duty performed by a guardian under Chapter 1204 (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(6)(E), 1022.001(a)); and
 - 4.2.11. the appointment of a trustee for a trust created under Section 1301.053 or 1301.054 of the TEC, the settling of an account of the trustee, and all other matters relating to the trust. (a Matter Related to Guardianship Proceeding) (TEC §§ 1021.001(a)(7), 1022.001(a)).

5. Statutory Probate Courts (“SPCs”):

- 5.1. In a county in which there is a SPC, the SPC has original jurisdiction of guardianship proceedings. TEC § 1022.002(c).
- 5.2. Further, in a county in which there is a SPC, the SPC has exclusive jurisdiction of all guardianship proceedings, regardless of whether the proceeding is contested or uncontested. TEC

- § 1022.005(a). In such a county, a cause of action related to a guardianship proceeding of which the SPC has exclusive jurisdiction as provided by TEC Section 1022.005(a) must be brought in the SPC unless the jurisdiction of the SPC is concurrent with the jurisdiction of a District Court as provided by TEC Section 1022.006 or with the jurisdiction of any other court. TEC § 1022.005(b).
- 5.3. TEC Section 1022.006 provides that a SPC has concurrent jurisdiction with the District Court in: (1) a personal injury, survival, or wrongful death action by or against a person in the person’s capacity as a guardian; and (2) an action involving a guardian in which each other party aligned with the guardian is not an interested person in the guardianship.
- 5.4. Therefore, without in any way limiting the generality of the foregoing provisions, in a county in which there is a SPC, the SPC has exclusive jurisdiction over the following matters:
 - 5.4.1. the appointment of a guardian of a minor or other incapacitated person, including an incapacitated adult for whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child (a Guardianship Proceeding) (TEC §§ 1022.005(a), 1002.015(1));
 - 5.4.2. an application, petition, or motion regarding guardianship or a substitute for guardianship under this Title 3 of the TEC (a Guardianship Proceeding) (TEC §§ 1022.005(a), 1002.015(2));
 - 5.4.3. a mental health action (a Guardianship Proceeding) (TEC §§ 1022.005(a), 1002.015(3)); and
 - 5.4.4. an application, petition, or motion regarding a trust created under Chapter 1301 of the TEC (a Guardianship Proceeding) (TEC §§ 1022.005(a), 1002.015(4)).
- 5.5. Similarly, in a county in which there is a SPC, the following matters must be brought in the SPC unless the SPC’s jurisdiction is concurrent with a District Court as provided by TEC Section 1022.006 or with the jurisdiction of any other court (TEC § 1022.005(b)):
 - 5.5.1. the granting of letters of guardianship (a Matter Related to Guardianship Proceeding) (TEC §§ 1022.005(b), 1021.001(a)(1), 1022.001(a));

- 5.5.2. the settling of the account of a guardian and all other matters relating to the settlement, partition, or distribution of a ward's estate (a Matter Related to Guardianship Proceeding) (TEC §§ 1022.005(b), 1021.001(a)(2), 1022.001(a));
- 5.5.3. a claim brought by or against a guardianship estate (a Matter Related to Guardianship Proceeding) (TEC §§ 1022.005(b), 1021.001(a)(3), 1022.001(a));
- 5.5.4. an action for trial of title to real property that is guardianship estate property, including the enforcement of a lien against the property (a Matter Related to Guardianship Proceeding) (TEC §§ 1022.005(b), 1021.001(a)(4), 1022.001(a));
- 5.5.5. an action for trial of the right of property that is guardianship estate property (a Matter Related to Guardianship Proceeding) (TEC §§ 1022.005(b), 1021.001(a)(5), 1022.001(a));
- 5.5.6. after a guardianship of the estate of a ward is required to be settled as provided by TEC Section 1204:
 - 5.5.6.1. an action brought by or on behalf of the former ward against a former guardian of the ward for alleged misconduct arising from the performance of the person's duties as guardian (a Matter Related to Guardianship Proceeding) (TEC §§ 1022.005(b), 1021.001(a)(6)(A), 1022.001(a));
 - 5.5.6.2. an action calling on the surety of a guardian or former guardian to perform in place of the guardian or former guardian, which may include the award of a judgment against the guardian or former guardian in favor of the surety (a Matter Related to Guardianship Proceeding) (TEC §§ 1022.005(b), 1021.001(a)(6)(B), 1022.001(a));
 - 5.5.6.3. an action against a former guardian or the former ward that is brought by a surety that is called on to perform in place of the former guardian (a Matter Related to Guardianship Proceeding) (TEC §§ 1022.005(b), 1021.001(a)(6)(C), 1022.001(a));
 - 5.5.6.4. A claim for the payment of compensation, expenses, and court costs, and any other matter authorized under Chapter 1155 (a Matter Related to Guardianship Proceeding) (TEC §§ 1022.005(b), 1021.001(a)(6)(D), 1022.001(a));
- 5.5.6.5. A matter related to an authorization made or duty performed by a guardian under Chapter 1204 (a Matter Related to Guardianship Proceeding) (TEC §§ 1022.005(b), 1021.001(a)(6)(E), 1022.001(a));
- 5.5.7. the appointment of a trustee for a trust created under Section 1301.053 or 1301.054, the settling of an account of the trustee, and all other matters relating to the trust. (a Matter Related to Guardianship Proceeding) (TEC §§ 1022.005(b), 1021.001(a)(7), 1022.001(a));
- 5.5.8. a suit, action, or application filed against or on behalf of a guardianship or a trustee of a trust created under TEC §§ 1301.053 or 1301.054 (a Matter Related to Guardianship Proceeding) (TEC §§ 1022.005(b), 1021.001(b)(2), 1022.001(a)); and
- 5.5.9. a cause of action in which a guardian in a guardianship pending in the statutory probate court is a party (a Matter Related to Guardianship Proceeding) (TEC §§ 1022.005(b), 1021.001(b)(3), 1022.001(a)).
- 5.6. TEC Section 1022.007 deals with a SPC's ability to transfer to itself from another court certain matters related to a guardianship proceeding that is pending in the SPC.
 - 5.6.1. TEC Section 1022.007(a) provides that a judge of a SPC, on the motion of a party to the action or on the motion of a person interested in the guardianship, may (1) transfer to the SPC from a district, county, or statutory court a cause of action that is a matter related to a guardianship proceeding pending in the SPC, including a cause of action that is a matter related to a guardianship proceeding pending in the SPC and in which the guardian, ward, or proposed ward in the pending guardianship proceeding is a party; and (2) consolidate the transferred cause of action with the guardianship proceeding to which it relates and any other proceedings in the SPC that are related to the guardianship proceeding.
- 5.7. Texas Government Code Section 25.00222 deals with the transfer of cases by a SPC judge and provides that:

- (a) The judge of a statutory probate court may transfer a cause of action pending in that court to another statutory probate court in the same county that has jurisdiction over the cause of action that is transferred.
- (b) If the judge of a statutory probate court that has jurisdiction over a cause of action appertaining or incident to an estate pending in the statutory probate court determines that the court no longer has jurisdiction over the cause of action, the judge may transfer that cause of action to:
 - (1) a district court, county court, statutory county court, or justice court located in the same county that has jurisdiction over the cause of action that is transferred; or
 - (2) the court from which the cause of action was transferred to the statutory probate court under Section 5B or 608, Texas Probate Code. [Both of these sections have been repealed by the TEC. Section 5B has been replaced by TEC Section 304.001. Section 608 has been replaced by TEC Section 1022.107].
- (c) When a cause of action is transferred from a statutory probate court to another court as provided by Subsection (a) or (b), all processes, writs, bonds, recognizances, or other obligations issued from the statutory probate court are returnable to the court to which the cause of action is transferred as if originally issued by that court. The obligees in all bonds and recognizances taken in and for the statutory probate court, and all witnesses summoned to appear in the statutory probate court, are required to appear before the court to which the cause of action is transferred as if originally require to appear before the court to which the cause of action is transferred as if originally required to appear before the court to which transfer is made.

5.8. Texas Government Code Section 25.0026 provides that:

- (a) A statutory probate court or its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court or any court of inferior jurisdiction in the county.
- (b) A statutory probate court or its judge may punish for contempt as prescribed by general law.
- (c) The judge of a statutory probate court has all other powers, duties, immunities, and privileges provided by law for county court judges.
- (d) The judge of a statutory probate court has no authority over the county’s administrative business that is performed by the county judge.

6. District Courts:

6.1. A District Court does not have original probate jurisdiction over “guardianship proceedings” or “matters related to guardianship proceedings” (save and except for its jurisdiction over trusts). It only has jurisdiction to hear a contested guardianship proceeding that has been transferred to it. When a transfer occurs, the District Court has the jurisdiction of a SPC. TEC § 1022.003(g). On resolution of a contested matter transferred to the District Court, the District Court shall return the matter to the CCC for further proceedings not inconsistent with the orders of the District Court or court of appeals, as applicable. *Id.*

7. Transfer of Contested Guardianship of the Person of a Minor:

7.1. TEC Section 1022.008(a) provides that, “[i]f an interested person contests an application for the appointment of a guardian of the person of a minor or an interested person seeks the removal of a guardian of the person of a minor, the

judge, on the judge’s own motion, may transfer all matters related to the guardianship proceeding to a court of competent jurisdiction in which a suit affecting the parent-child relationship under the Family Code is pending.”

7.2. TEC Section 1022.008(b) provides that, “[t]he probate court that transfers a proceeding under this section to a court with proper jurisdiction over suit affecting the parent-child relationship shall send to the court to which the transfer is made the complete files in all matters affecting the guardianship of the person of the minor and certified copies of all entries in the judge’s guardianship docket. The transferring court shall keep a copy of the transferred files. If the transferring court retains jurisdiction of the guardianship of the estate of the minor or of another minor who was subject of the suit, the court shall send a copy of the complete files to the court to which the transfer is made and shall keep the original files.”

7.3. TEC Section 1022.008(c) provides that, “[t]he court to which the transfer is made under this section shall apply the procedural and substantive provisions of the Family Code, including Sections 115.005 and 115.205, in regard to enforcing an order rendered by the court from which the proceeding was transferred.”

original jurisdiction over trusts, except for jurisdiction conferred on Statutory Probate Courts. Section 115.001 originally contained a “laundry list” of trust matters over which the District Court had jurisdiction. Interpretation of this laundry list led to litigation, which ultimately caused the legislature to change the statute and give District Courts original and exclusive jurisdiction over “all proceedings by or against a trustee and all proceedings concerning trusts” When the legislature made these changes, it left the laundry list in Section 115.001. If a proceeding is brought by or against a trustee, or if a proceeding “concerns” a trust, then the laundry list is irrelevant—the District Court has jurisdiction.

2.2. District Courts and, to some extent, SPCs had original and exclusive jurisdiction over trust matters when TTC Section 115.001 was originally enacted. Over the years, this jurisdiction has been expanded to include other courts.

3. District Courts:

3.1. TTC Section 115.001(a) provides that, “[e]xcept as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts, including proceedings to:

- (1) construe a trust instrument;
- (2) determine the law applicable to a trust instrument;
- (3) appoint or remove a trustee;
- (4) determine the powers, responsibilities, duties and liability of a trustee;
- (5) ascertain beneficiaries;
- (6) make determinations of fact affecting the administration, distribution or duration of a trust;
- (7) determine a question arising in the administration or distribution of a trust;
- (8) relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or this subtitle;

PART 3: TRUST JURISDICTION

1. Definitions:

- 1.1. “TTC” refers to the Texas Trust Code.
- 1.2. TTC Section 111.004(7) defines an “interested person” as “a trustee, beneficiary, or any other person having an interest in or a claim against the trust or any person who is affected by the administration of the trust. Whether a person, excluding a trustee or named beneficiary, is an interested person may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.”

2. Preliminary Matters:

2.1. Trust jurisdiction is governed by Texas Trust Code Section 115.001. Originally, the District Court had exclusive and

- (9) require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and
 - (10) surcharge a trustee.”
- 3.2. TTC Section 115.001(a-1) provides that, “[t]he list of proceedings described by Subsection (a) over which a district court has exclusive and original jurisdiction is not exhaustive. A district court has exclusive and original jurisdiction over a proceeding against a trustee or a proceeding concerning a trust under Subsection (a) whether or not the proceeding is listed in Subsection (a).”
- 3.3. TTC Section 115.001(b) provides that, “[t]he district court may exercise the powers of a court of equity in matters pertaining to trusts.”
- 3.4. TTC Section 115.001(c) provides that, “[t]he court may intervene in the administration of a trust to the extent that the court’s jurisdiction is invoked by an interested person or as otherwise provided by law. A trust is not subject to continuing judicial supervision unless the court orders continuing judicial supervision.”
- 3.5. TTC Section 115.001(d) provides that the jurisdiction of the district court is exclusive except for jurisdiction conferred by law on:
- 3.5.1. a statutory probate court;
 - 3.5.1.1. [Note that bracketed comments are the author’s and are not part of TTC Section 115.001(d).]
 - 3.5.1.2. [TEC Section 32.006(1) provides that a SPC has jurisdiction over an action by or against a trustee.]
 - 3.5.1.3. [TEC Section 32.006(2) provides that a SPC has jurisdiction over an action involving an inter vivos trust, testamentary trust, or charitable trust.]
 - 3.5.1.4. [TEC Section 32.007(2) provides that a SPC has concurrent jurisdiction with the District Court over actions by or against a trustee.]
 - 3.5.1.5. [TEC Section 32.007(3) provides that a SPC has concurrent jurisdiction with the District Court over actions involving a inter vivos trust, testamentary trust, or charitable trust, including a charitable trust as defined by Section 123.001 of the Texas Property Code.]
 - 3.5.2. a court that creates a [management] trust under Section 867, Texas Probate Code [which has been repealed and is now TEC Section 1301.051 et seq.];
 - 3.5.2.1. [TEC Section 1301.052(a) provides that an application for the creation of a management trust under Section 1301.054 must be filed in the same court in which a proceeding for the appointment of a guardian of the person is pending, if any.]
 - 3.5.2.2. [TEC Section 1301.052(b) provides that, if a proceeding for the appointment of a guardian for an alleged incapacitated person is not pending on the date an application is filed for the creation of a trust under Section 1301.054 for the person, venue for a proceeding to create a trust must be determined in the same manner as venue for a proceeding for the appointment of a guardian is determined under Section 1023.001. This section does not confer jurisdiction on any court if a proceeding for the appointment of a guardian is not pending.]
 - 3.5.2.3. [To make this more confusing, TEC Section 1301.053(a) provides that, on application by an appropriate person, the court with jurisdiction over the proceedings may enter an order that creates a management trust.]
 - 3.5.2.4. [This section obviously contemplates that Section 1301 (management) trusts may be created by courts exercising jurisdiction over guardianship matters.]
 - 3.5.3. a court that creates a trust under Section 142.005 [of the Texas Property Code];
 - 3.5.3.1. [Texas Property Code Section 142.005(a) provides that “[a]ny court of record with jurisdiction to hear a suit involving a beneficiary” may create a Section 142.005 Trust. This would grant jurisdiction to District Courts and SPCs. Further, this could conceivably grant jurisdiction to CCLs exercising probate jurisdiction under TEC Section 31.002(b)(2) and (3).]
 - 3.5.4. a justice court under Chapter 27, Government Code;
 - 3.5.4.1. [Texas Government Code Section 27.031 does not expressly confer justice courts jurisdiction over trusts. There is, consequently, a question as to whether justice courts have any trust jurisdiction despite this provision. The phrase “except for jurisdiction conferred by law” in TTC Section 115.001(d) should relate to a court somehow being conferred specific trust jurisdiction.]

- 3.5.4.2. [Texas Government Code Section 27.031 does confer justice courts jurisdiction over “civil matters in which exclusive jurisdiction is not in the district or county court and in which the amount in controversy is not more than \$10,000, exclusive of interest.” TTC Section 115.001(b)(4) was probably inserted to prevent a District Court from hearing matters in which the amount in controversy does not exceed \$10,000.]
- 3.5.5. a small claims court under Chapter 28, Government Code; or
- 3.5.5.1. [In 2011, the Texas Legislature repealed all of Chapter 28, and the effective date of this repeal was August 31, 2013.]
- 3.5.5.2. [When it existed, Texas Government Code Section 28.003 did not expressly confer small claims courts jurisdiction over trusts. There is, consequently, a question as to whether small claims courts have any trust jurisdiction despite this provision. The phrase “except for jurisdiction conferred by law” in TTC Section 115.001(d) should relate to a court somehow being conferred specific trust jurisdiction.]
- 3.5.5.3. Texas Government Code Section 28.003 does confer small claims courts jurisdiction over “actions by any person for recovery of money in which the amount involved, exclusive of costs, [did] not exceed \$10,000.” TTC Section 115.001(d)(5) was probably inserted to prevent a District Court from hearing matters in which the amount in controversy did not exceed \$10,000.]
- 3.5.6. a county court at law.
- 3.5.6.1. [TEC Section 31.002(b)(2) provides that, in counties in which there is no SPC, but in which there is a CCL exercising original probate jurisdiction, the CCL has jurisdiction over the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court.]
- 3.5.6.2. [TEC Section 31.002(b)(3) provides that, in counties in which there is no SPC, but in which there is a CCL exercising original probate jurisdiction, the CCL has jurisdiction over the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate in the court.]

PART 4: DOMINANT JURISDICTION

1. Definition:

- 1.1 The principle of “dominant jurisdiction” is well-established in Texas jurisprudence. The general rule is that, “if two lawsuits concerning the same controversy and parties are pending in courts of coordinate jurisdiction, the court in which suit was first filed acquires dominant jurisdiction to the exclusion of the other court.” *Sweezy Constr., Inc. v. Murray*, 915 S.W.2d 527, 531 (Tex. App.—Corpus Christi 1995, orig. proceeding) (citing *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex. 1988)); *San Miguel v. Bellows*, 35 S.W.3d 702, 704 (Tex. App.—Corpus Christi 2000, pet. denied); *Hartley v. Coker*, 843 S.W.2d 743, 747-48 (Tex. App.—Corpus Christi 1992, no writ); *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974) (citing *Cleveland v. Ward*, 285 S.W. 1063 (Tex. 1926)).
- 1.2 Courts must answer the “dominant-jurisdiction question” only if there is an “inherent interrelation of the subject matter . . . in two pending lawsuits.” *In re J.B. Hunt Transp., Inc.*, 492 S.W.3d 287 (Tex. 2016) (orig. proceeding) (citing *Wyatt*, 760 S.W.2d at 247). If there is no inherent interrelation, “then dominant jurisdiction is not an issue, and both suits may proceed.” *Id.*

2. Preliminary Matters:

- 2.1. Dominant jurisdiction excludes multiple courts from exercising jurisdiction over the same case. *Curtis*, 511 S.W.2d at 267. Once dominant jurisdiction is established, any subsequent lawsuit involving the same parties and controversy must be dismissed. *Id.*; *In re Sims*, 88 S.W.3d 297, 303 (Tex. App.—San Antonio 2002, orig. proceeding) (court that first acquires jurisdiction retains jurisdiction undisturbed by the interference of another court). Dominant jurisdiction supports the longstanding policy of Texas courts to “avoid a multiplicity of lawsuits.” *Wyatt*, 760 S.W.2d at 246.
- 2.2. Dominant jurisdiction recognizes that, while tangential matters may arise, they should be decided by the first-filed court. As one court observed in analyzing a

dominant-jurisdiction issue, the first-filed court “is ordinarily in the best position to determine ancillary matters relating to the prosecution of that lawsuit.” *Sweezy Constr.*, 915 S.W.2d at 527.

3. Application:

- 3.1. For purposes of dominant jurisdiction, it is not required that the two lawsuits involve the exact same parties and issues. In most dominant-jurisdiction cases, “the parties and controversies are *similar*, but not *identical*.” *Hartley v. Coker*, 843 S.W.2d at 747-48 (emphasis added). “Nevertheless, abatement may still be mandatory.” *Id.* Further, “it is not required that the exact issues and all parties be included in the first action before the second is filed, provided that the claim in the first suit may be amended to bring in all necessary and proper parties and issues.” *Id.* at 748 (citing *Wyatt*, 760 S.W.2d at 247); *see also Niemeyer v. Tanner Oil & Gas Corp.*, 952 S.W.2d 941, 944 (Tex. App.—Austin 1997, no pet.); *In re ExxonMobil Prod. Co.*, 340 S.W.3d 852, 856 (Tex. App.—San Antonio 2011, orig. proceeding).
- 3.2. The “test is whether there is an inherent interrelation of the subject matter in the two suits.” *In re Sims*, 88 S.W.3d at 303; *Hartley*, 843 S.W.2d at 748 (citing *Wyatt*, 760 S.W.2d at 247); *Davis v. Guerro*, 64 S.W.3d 685, 690-91 (Tex. App.—Austin 2002, no pet.).
- 3.3. Dominant jurisdiction is established, and other courts must yield, if a litigant shows that: (1) there was a first-filed lawsuit that is still pending; (2) the first-filed lawsuit could be amended to include all of the parties; and (3) the controversies are the same or the first-filed lawsuit could be amended to include all of the same claims. *ExxonMobil*, 340 S.W.3d at 856. If these are shown, then the cases are inherently interrelated, and dominant jurisdiction is established. *See id.*
- 3.4. A document is often the link that makes cases “inherently interrelated.” For example, the San Antonio Court of Appeals concluded that two cases with the same document at the center of the controversy provided the “inherent

interrelation” to support dominant jurisdiction.

- 3.5. In the case *In re Sims*, Sims filed a breach-of-contract action and sued to enforce a divorce decree in Bexar County. 88 S.W.3d 297, 301 (Tex. App.—San Antonio 2002, orig. pet.) Frost Bank filed a subsequent suit in Medina County seeking declaratory judgment regarding the duty to pay under the parties’ agreement incident to divorce. *Id.* The Bexar County Court abated the first-filed case. *Id.* According to the court of appeals, however, “the same subject matter, the Agreement and its application to the Alamo Water Marmon Group transaction, exists in both suits.” *Id.* at 303. The court of appeals went on to explain that “it was not necessary that the exact same issues had to be included in the Bexar County action before Frost Bank filed its lawsuit in Medina County. The pleadings in Bexar County [the first-filed suit] *have been amended to bring the issues asserted in the second-filed suit.*” *Id.* at 304 (emphasis added); *see also Sweezy Constr.*, 915 S.W.2d at 531-32 (construction contract was the basis for establishing dominant jurisdiction).

4. Exceptions:

- 4.1. There are exceptions to the general rule that the first-filed court acquires dominant jurisdiction to the exclusion of coordinate courts. *In re J.B. Hunt Transp., Inc.*, 492 S.W.3d at 287. The first-filed court will not have dominant jurisdiction if: (1) the party seeking abatement is estopped from asserting the first-filed court’s jurisdiction; (2) all parties cannot be joined in the first-filed court, or the first-filed court does not have the power to bring such parties before itself; or (3) the parties in the first-filed court lack intent to prosecute that action. *Hartley v. Coker*, 843 S.W.2d at 747 (citing *Wyatt*, 760 S.W.2d at 248).
 - 4.1.1. The first exception, also known as the “inequitable-conduct exception,” provides that “the plaintiff in the first-filed suit may be guilty of such inequitable conduct as will estop him from relying on that first-filed suit to abate a subsequent proceeding brought by his adversary.” *In re J.B. Hunt*

Transp., Inc., 492 S.W.3d at 287 (citing *Curtis*, 511 S.W.2d at 267).

- 4.1.2. It is not clear when the second exception should apply. The court in *Hartley* stated that the second exception applies when “all persons cannot be joined in the first court, or the first court does not have the power to bring such parties before the court . . .” 843 S.W.2d at 747. In support of this, the *Hartley* court cited the Texas Supreme Court in *Wyatt*, but *Wyatt* says the second exception exists when there is a “lack of persons to be joined *if feasible* . . .” 760 S.W.2d at 248 (emphasis added).
- 4.1.3. The third exception is shown when the party filing the first suit did so “merely to obtain priority, without a bona fide intention to prosecute the suit.” *In re J.B. Hunt Transp., Inc.*, 492 S.W.3d at 287 (citing *Curtis*, 511 S.W.2d at 267). To avoid the application of this exception, the party filing the first suit “must exhibit ‘actual diligence [after filing suit] in getting out citation and otherwise prosecuting his suit.’” *Id.* (citing *Reed v. Reed*, 311 S.W.2d 628, 631 (Tex. 1958).