

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 06- 9136

POLICIES FOR TRANSFER OF CASES BETWEEN COURTS OF APPEALS

ORDERED that:

The transfer of cases between courts of appeals, for the equalization of dockets as mandated by the Legislature in the General Appropriations Act, and for other good cause pursuant to the Supreme Court's authority under Chapter 73 of the Government Code, will in general be in accordance with these guidelines. This order supercedes and vacates Misc. Docket No. 96-9224 (Oct. 24, 1996) and any other Supreme Court orders regarding policies for the transfer of cases between courts of appeals.

General Guidelines for Docket Equalization Transfers

- 1.01 The decision to transfer cases for docket equalization purposes will be made by the Supreme Court based on the relative number of cases filed in each of the courts of appeals compared to the statewide average per justice of cases filed, adjusted for historical case filing data. Other factors which may be considered include the availability of appropriated funds for reimbursing the travel and living expenses of the court to which cases are transferred to hear oral arguments at the location of the transferring court and the past or expected absence of justices from a court due to illness, disqualification, absence, or good cause.
- 1.02 Cases transferred shall not include original proceedings; appeals from interlocutory orders; appeals from denial of writs of habeas corpus; appeals in extradition cases; appeals regarding the amount of bail set in a criminal case; appeals from trial courts and pretrial courts in

multidistrict litigation pursuant to Rule 13.9(b) of the Rules of Judicial Administration; and those cases that, in the opinion of the Chief Justice of the transferring court, contain extraordinary circumstances or circumstances indicating that emergency action may be required.

- 1.03 Any case that is a companion to a case transferred for docket equalization purposes shall also be transferred to the same court of appeals if, for the case designated for transfer, appeal was perfected prior to appeal being perfected in any companion cases. If the case for which appeal was first perfected was not designated for transfer for docket equalization purposes but one or more later-perfected companion cases is designated for such transfer, the first-perfected appeal and any companion cases shall be retained by the court in which originally filed. For purposes of this provision, companion cases are appeals that arise out of the same trial-court proceeding and are not otherwise excluded from docket equalization transfers under §1.02.
- 1.04 The transferring court, through its clerk, shall transfer the appellate record in each case, and certify all orders made, to the court of appeals to which the cases are transferred. When a block of cases is transferred, the transferring court will implement the transfer of the case files in groups not less than once a month, or after all the requisite number of cases have been filed, if that number of new filings is reached before 30 days after the transfer is effective.
- 1.05 The transferring court shall immediately notify the parties or their attorneys in the cases transferred of the transfer and the court to which transferred.
- 1.06 Upon completion of the transfer of a group of the cases ordered transferred, the transferring court shall submit a list of the cases transferred, identified by style and number, to the Office of Court Administration.

Transfer of Future-Filed Cases for Docket Equalization Purposes

- 2.01 The Supreme Court may order transferred a block of cases consisting of a specified number of the cases next filed in the transferring court on and after a certain date in the future. The order of the Supreme Court may specify that the cases be all the next civil or all the next criminal cases filed, or all the next cases filed, regardless of whether civil or criminal. When the Supreme Court orders the transfer of any case for which appeal has not been perfected prior to the date of the transfer order, until the transfer of the first group of cases has been completed and the notices required by paragraph 1.05 have been issued, the existence and content of a proposed or final transfer order of the Supreme Court shall be a confidential record of the judiciary until the transfers described therein have been completed, and until

the completion of all such transfers no justice or employee of the court from which cases are transferred, the court to which cases are transferred, the Supreme Court, the Office of Court Administration, or other employee of the judicial branch of government shall release or divulge any information concerning the transfer, except as necessary to effect transfer of the cases. Any order of the Supreme Court ordering transfer of one or more cases next filed in the transferring court on and after a certain date in the future shall be filed separate from any transfer order ordering transfer of one or more cases next filed in the transferring court on and after a certain date in the past, *i.e.*, prior to the date the transfer order is signed.

- 2.02 The transferring court shall make the necessary orders for the transfer.

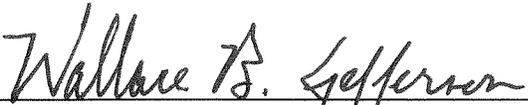
Transfer of Blocks of Pending Cases

- 3.01 Upon the agreement of the Chief Justices of two courts of appeals, the Supreme Court may order the transfer of a specified number of cases pending in the transferring court. The Chief Justices shall communicate their agreement to the Supreme Court along with an agreed criteria for the selection of the cases to be transferred, such as the oldest pending cases ready for oral argument but not yet set.
- 3.02 Upon approval by the Supreme Court, the Chief Justice of the proposed transferring court shall communicate to the Office of Court Administration a sequential list beginning with the oldest case meeting the agreed criteria proposed to be transferred, listed by docket number and style. In addition to those cases specified by paragraphs 1.02 and 1.03, cases may not be placed on this list if any of the following criteria apply:
- 3.021 the case has been set for oral argument within the next thirty days and all parties have been notified of the date of the setting;
- 3.022 the clerk has been notified by both parties that a settlement has been reached in the case and that an agreed order is being prepared for submission to the court; or
- 3.023 other similar circumstances exist that counsel against transfer of a particular case which would normally be included in the transfer order.
- 3.03 The transferring court shall make the necessary orders for the transfer of the specified list of cases.

**Procedure for Requesting Re-Transfer of Individual Pending
Cases Transferred for Docket Equalization, and for Requesting
Transfer of Cases Pursuant to Government Code Chapter 73.**

- 4.01 Any party to a case transferred for docket equalization purposes may file a motion, pursuant to the procedures described in this section, with the court of appeals to which the case has been transferred stating good cause for why the case should be returned to the court of appeals in which the appeal was originally filed. The procedures stated in this section shall also govern a party's motion to transfer a case from one court of appeals to another pursuant to the Supreme Court's authority under Government Code Chapter 73.
- 4.02 A motion to transfer or to re-transfer shall be addressed to the Supreme Court, but filed simultaneously in the court in which the case is pending as well as in the court to which the movant requests transfer. The motion should request the Chief Justices of the respective courts of appeals, after considering the transfer request, to forward a copy of the motion to the Supreme Court, along with a letter from each of the two Chief Justices stating his or her concurrence or non-concurrence with the request to transfer the case. Any briefing by a party regarding the transfer motion also should be simultaneously filed in both courts of appeals and forwarded to the Supreme Court.
- 4.03 The Chief Justices of the two courts of appeals involved should independently consider the transfer request and forward to the Supreme Court a letter commenting thereon within ten business days after receipt of the transfer motion, unless exceptional circumstances require additional time.
- 4.04 After receipt of a motion and letters from the Chief Justices of both courts of appeals commenting on the requested transfer, along with any briefs of the parties forwarded by the courts of appeals, the Supreme Court will consider the motion.

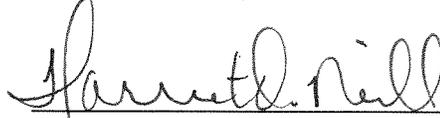
SIGNED this 22nd day of September, 2006.



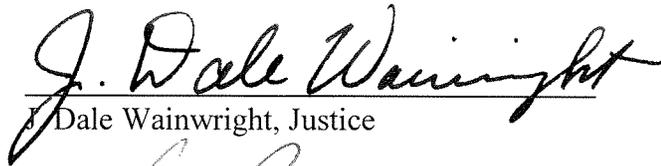
Wallace B. Jefferson, Chief Justice



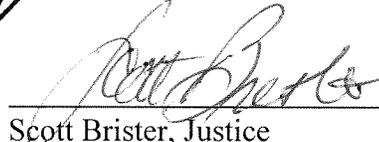
Nathan L. Hecht, Justice



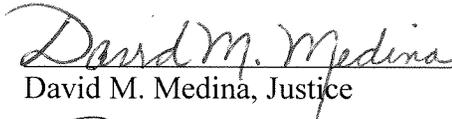
Harriet O'Neill, Justice



J. Dale Wainwright, Justice



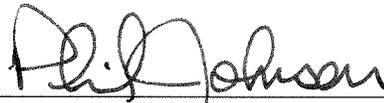
Scott Brister, Justice



David M. Medina, Justice



Paul W. Green, Justice



Phil Johnson, Justice



Don R. Willett, Justice