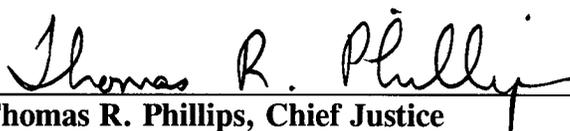


ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 96- 9273

Pursuant to Section 14.013 of the Texas Civil Practice and Remedies Code, the Supreme Court hereby adopts the attached Rule for Magistrates in Inmate Litigation.

In Chambers, this 11th day of December, 1996.



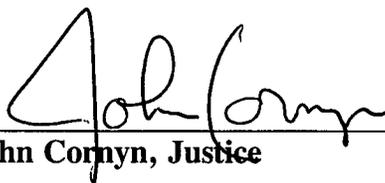
Thomas R. Phillips, Chief Justice



Raul A. Gonzalez, Justice



Nathan L. Hecht, Justice



John Cornyn, Justice



Craig T. Enoch, Justice



Rose Spector, Justice


Priscilla R. Owen, Justice


James A. Baker, Justice


Greg Abbott, Justice

RULE FOR MAGISTRATES IN INMATE LITIGATION

1.01 AUTHORITY

This rule is promulgated under authority of Section 14.013, Civil Practice and Remedies Code.

2.01 APPOINTMENT

(a) A judge of a court having jurisdiction of a suit subject to Chapter 14, Civil Practice and Remedies Code, may appoint a full-time or part-time magistrate to perform the duties authorized by that chapter if the commissioners court of a county in which the court has jurisdiction authorizes the employment of a magistrate.

(b) If a court has jurisdiction in more than one county, a magistrate appointed by that court may serve only in a county in which the commissions court has authorized the magistrate's appointment.

(c) If more than one court in a county has jurisdiction of a suit under Chapter 14 the commissioners court may authorize the appointment of a magistrate for each court or may authorize one or more magistrates to share service with two or more courts.

(d) If a magistrate serves more than one court, the magistrate's appointment must be made with the unanimous approval of all the judges under whom the magistrate serves.

3.01 QUALIFICATIONS

To be eligible for appointment as a magistrate, a person must meet the requirements and qualifications to serve as a judge of the court or courts for which the magistrate is appointed.

4.01 COMPENSATION

(a) If funds are provided to the Supreme Court by appropriation or interagency contracts as provided by Section 14.013 (b), Civil Practice and Remedies Code, a magistrate may be paid a salary, on a hourly basis, on a per-case basis, or on such other basis as may be specified by administrative order of the Supreme Court.

(b) If funds are not provided the Supreme Court, a magistrate may be paid a salary or fees provided in the schedule of fees adopted by the judges of the county pursuant to Article 26.05, Code of Criminal Procedure, as approved by the commissioners court in which the magistrate serves.

(c) If paid a salary, the magistrate's salary is paid from the county fund available for payment of officers' salaries. If paid by fee, the magistrate's fees are paid from the general fund of county.

Rule for Magistrates in Inmate Litigation - con't

5.01 , TERMINATION OF MAGISTRATE

(a) A magistrate who serves a single court serves at the will of the judge of that court.

(b) The employment of a magistrate who serves more than two courts may only be terminated by a majority vote of all the judges of the courts which the magistrate serves.

(c) The employment of a magistrate who serves two courts may be terminated by either of the judges of the courts which the magistrate serves.

6.01 CASES THAT MAY BE REFERRED

Except as provided by this rule, a judge of a court may refer to a magistrate any suit brought by an inmate in a district, county, justice of the peace, or small claims court in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate. This rule does not apply to an action brought under the Family Code.

7.01 ORDER OF REFERRAL

(a) In referring a case to a magistrate, the judge of the referring court shall render:

- (1) an individual order of referral; or
- (2) a general order of referral specifying the class and type of cases to be heard by the magistrate.

(b) The order of referral may limit the power or duties of a magistrate.

8.01 AUTHORITY OF MAGISTRATE

Except as limited by an order of referral, a magistrate has the same jurisdiction, authority, and power as the judge of the referring court under Chapter 14, Civil Practice and Remedies Code, including, but not limited to the authority to:

- (1) dismiss a claim pursuant to Sections 14.003, 14.005, 14.006, or 14.010, Civil Practice and Remedies Code,
- (2) order payment of costs pursuant to Sections 14.006 and 14.007, Civil Practice and Remedies Code, and
- (3) hold hearings as provided in Section 14.008, Civil Practice and Remedies Code.

Rule for Magistrates in Inmate Litigation - con't

9.01 POWERS OF MAGISTRATE

A magistrate may:

- (1) conduct a hearing;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue a summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) recommend an order to be rendered in a case;
- (11) regulate all proceedings in a hearing before the magistrate, and
- (12) take action as necessary and proper for the efficient performance of the magistrate's duties.

10.1 ATTENDANCE OF BAILIFF

A bailiff may attend a hearing by a magistrate if directed by the referring court.

11.01 COURT REPORTER

- (a) A court reporter is not required during a hearing held by a magistrate appointed under this rule.
- (b) A party, the magistrate, or the referring court may provide for a reporter during the hearing.
- (c) The record may be preserved by any other means approved by the magistrate.
- (d) The referring court or magistrate may tax the expense of preserving the record as costs.

12.01 WITNESS

- (a) A witness appearing before a magistrate is subject to the penalties for perjury provided by law.
- (b) A referring court may fine or imprison a witness who:
 - (1) failed to appear before a magistrate after being summoned; or
 - (2) improperly refused to answer questions if the refusal has been certified to the court by the magistrate.

Rule for Magistrates in Inmate Litigation - con't

13.01 REPORT

(a) The magistrate's report may contain the magistrate's findings, conclusion, or recommendations. The magistrate's report must be in writing in the form directed by the referring court. The form may be a notation on the referring court's docket sheet.

(b) After a hearing, the magistrate shall provide the parties participating in the hearing notice of the substance of the magistrate's report.

(c) Notice may be given to the parties:

- (1) in open court, or an oral statement or a copy of the magistrate's written report; or
- (2) by certified mail, return receipt requested.

(d) The magistrate shall certify the date of mailing of notice by certified mail. Notice is considered given on the third day after the date of mailing.

(e) After a hearing conducted by a magistrate, the magistrate shall send the magistrate's signed and dated report and all other papers relating to the case to the referring court.

14.01 NOTICE OF RIGHT TO APPEAL

(a) Notice of the right of appeal to the judge of the referring court shall be given to all parties.

(b) The notice may be given:

- (1) by oral statement in open court;
- (2) by posting inside or outside the courtroom of the referring court; or
- (3) as otherwise directed by the referring court.

15.01 ORDER OF COURT

(a) Pending appeal of the magistrate's report to the referring court, the decisions and recommendations of the magistrate are in full force and effect and are enforceable as an order of the referring court, except for orders providing for incarceration or for the appointment of a receiver.

(b) If an appeal to the referring court is not filed or the right to an appeal to the referring court is waived, the findings and recommendations of the magistrate become the order of the referring court only on the referring court's signing an order conforming to the magistrate's report.

Rule for Magistrates in Inmate Litigation - con't

16.01 JUDICIAL ACTION ON MAGISTRATE'S REPORT

Unless a party files a written notice of appeal, the referring court may:

- (1) adopt, modify, or reject the magistrate's report;
- (2) hear further evidence; or
- (3) recommit the matter to the magistrate for further proceedings.

17.01 APPEAL TO REFERRING COURT

(a) A party may appeal a magistrate's report by filing notice of appeal not later than the third day after the date the party receives notice of the substance of the magistrate's report as provided by 13.01.

(b) An appeal to the referring court must be in writing specifying the findings and conclusions of the magistrate to which the party objects. The appeal is limited to the specified findings and conclusions.

(c) On appeal to the referring court, the parties may present witnesses as in a hearing de novo on the issues raised in the appeal.

(d) Notice of an appeal to the referring court shall be given to the opposing attorney under Rule 21a, Texas Rules of Civil Procedure.

(e) If an appeal to the referring court is filed by a party, any other party may file an appeal to the referring court not later than the seventh day after the date the initial appeal was filed.

(f) The referring court, after notice to the parties, shall hold a hearing on all appeals not later than the 30th day after the date on which the magistrate's report was adopted by the referring court.

(g) The parties may waive the right of appeal to the referring court in writing or on the record.

18.01 APPELLATE REVIEW

(a) Failure to appeal to the referring court, by waiver or otherwise, the approval by the referring court of a magistrate's report does not deprive a party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) The date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

Rule for Magistrates in Inmate Litigation - con't

19.01 IMMUNITY

A magistrate appointed under the subchapter has the judicial immunity of a district judge. All existing immunity granted a magistrate by law, express or implied, continues in full force and effect.