

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 98-9067

**APPROVAL OF AMENDMENTS TO LOCAL RULES
FOR THE HARRIS COUNTY DISTRICT COURTS
CIVIL TRIAL DIVISION**

ORDERED that:

Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court of Texas approves the following amendments to the Local Rules for the Civil Trial Division of the District Courts of Harris County, Texas. The approval of these rules is temporary pending further orders of the Court.

SIGNED AND ENTERED this 27th day of April, 1998.

Thomas R. Phillip
Thomas R. Phillips, Chief Justice

Raul A. Gonzalez
Raul A. Gonzalez, Justice

Nathan L. Hecht
Nathan L. Hecht, Justice

Craig T. Enoch
Craig T. Enoch, Justice

Rose Spector
Rose Spector, Justice

Priscilla R. Owen
Priscilla R. Owen, Justice

James A. Baker
James A. Baker, Justice

Greg Abbott
Greg Abbott, Justice

Deborah G. Hankinson
Deborah G. Hankinson, Justice

RULES of the CIVIL TRIAL DIVISION • Harris County District Courts

Rule 1. OBJECTIVE OF RULES.

The objective of the rules of the Civil Trial Division of the District Courts of Harris County is to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law and established rules of procedural law. To the end that this objective may be attained with as great expedition and dispatch and at the least expense, both to the litigants and to the state as may be practicable, the rules shall be applied to ensure that, so far as reasonably possible, all matters are brought to trial or final disposition in conformity with the following standards:

- (1) Civil jury cases within 18 months from appearance date;
- (2) Civil non-jury cases within 12 months from appearance date.

Rule 2. REPORTS TO ADMINISTRATIVE JUDGE.

The district clerk shall supply to the Administrative Judge of Harris County, on a monthly basis, information concerning the number of filings, dispositions, trials and other judicial activities in each court in the Civil Trial Division.

Rule 3. FLOW OF CASES.

3.1 FILING AND ASSIGNMENT. On being filed, a case in the civil trial Division shall be assigned randomly to the docket of one of the courts in that Division. Once assigned to a court, a case will remain on the docket of that court for all purposes unless transferred as provided in Rule 3.2 or 3.5.

3.2 TRANSFER.

- 3.2.1 Prior Judgment.** Any claim for relief based upon a prior judgment shall be assigned to the court of original judgment.
- 3.2.2 Non-suit.** If a case is filed in which there is a substantial identity of parties and causes of action as in a nonsuited case, the later case shall be assigned to the court where the prior case was pending.

3.2.3 Consolidation.

- (a) **Consolidate Cases.** Subject to subpart c, a motion to consolidate cases shall be heard in the court where the first filed case is pending. If the motion is granted, the consolidated case will be given the number of the first filed case and assigned to that court.
- (b) **Consolidate Discovery.** Subject to subpart c, motion to consolidate discovery in separate cases shall be heard in the court where the first filed case is pending. If the motion to consolidate discovery is granted, the case will not transfer, but the case management will be conducted by the consolidating court.
- (c) **Consolidation to Special Dockets.** Special dockets for the management of multi-court cases may be created by order of the Administrative Judge of the Civil Trial Division according to policies approved by the Board of Civil Judges.

Sub-parts (a) and (b) of Rule 3.2.3 do not apply to sub-part (c) of Rule 3.2.3.

3.2.4 Severance. If a severance is granted, the new case will be assigned to the court where the original case pends, bearing the same file date and the same number as the original case with a letter designation; provided, however, that when a severed case has previously been consolidated from another court, the case shall upon severance be assigned to the court from which it was consolidated.

3.2.5 Agreement. Any case may be transferred from one court to another court by written order of the Administrative Judge of the Civil Trial Division or by written order of the judge of the court from which the case is transferred; provided, however, that in the latter instance the transfer must be with the written consent of the court to which the case is transferred.

3.2.6 Presiding for Another. In all cases where a court presides for another court, the case shall remain pending in the original court. In any hearing on a motion for contempt, however, the judge who issued the order which is claimed to have been disobeyed must preside over the motion for contempt, except as otherwise provided in Sec. 21.002, Tex. Gov. Code.

3.2.7 Fair Distribution. The Administrative Judge of the Civil Trial Division may transfer cases between courts in the manner provided by Rule 3.1 above or may assign cases from one court to another court for hearing if he finds that a court has an inequitable burden due to illness, trial schedule, or other sufficient reasons.

3.2.8 Improper Court. If a case is on the docket of a court by any manner other than as prescribed by these rules, the Administrative Judge of the Civil Trial Division shall transfer the case to the proper court.

3.3 MOTIONS.

3.3.1 Form. Motions shall be in writing and shall be accompanied by a proposed order granting the relief sought. The proposed order shall be a separate instrument, unless the entire motion, order, signature lines and certificate of service are all on one page.

3.3.2 Response. Responses shall be in writing, shall be accompanied by a proposed order, and shall be filed at least two working days before the date of submission, except on leave of court. Failure to file a response may be considered a representation of no opposition.

3.3.3 Submission. Motions shall state Monday at 8:00 a.m. as the date for written submission. This date shall be at least 10 days from filing, except on leave of court.

3.3.4 Oral Argument. The motion or response shall include a request for oral argument if a party views it as necessary. The court may grant that request or order oral argument on its own motion. A request for an oral argument is not a response under Rule 3.3.2.

3.3.5 Certificate of Conference.

- a. Unopposed motions shall be labeled "Unopposed" in the caption.

b. Opposed motions shall contain a certificate that:

1. The movant and respondent have conferred with each other and in good faith have attempted to resolve the matter; and
2. identifies the basis of the disagreement between counsel; and
3. If the parties have not been able to confer, movant shall make a detailed statement of all efforts made to confer including dates and methods of attempted communication.

c. The clerk of each court is directed not to submit opposed motions to the judge which do not comply with this rule.

d. The provisions of subparts b and c of this rule do not apply to motions for summary judgment, default judgments, agreed judgments, motions for voluntary dismissal or non suit, and motions involving service of citation.

3.4 TRIALS.

3.4.1 Manner of Setting. Cases shall be set for trial by order of the court.

3.4.2 Date of Setting. Cases shall be set for trial for a date certain. If a case is not assigned to trial by the second Friday after the date it was set, whether because of a continuance or because it was not reached, the court shall reset the case to a date certain. Unless all parties agree otherwise, the new setting must comply with all requisites of T.R.C.P. 245.

3.4.3 Assignment to Trial. A case is assigned to trial when counsel are called to the court to commence the jury or non-jury trial on the merits. For purposes of engaged counsel, no court may have more than one case assigned to trial at any one time.

3.4.4 Dead Weeks. Except with the consent of all parties, no cases will be assigned to trial on the merits during:

- (1) The week of the 2nd Administrative Region conference (February or March);
- (2) The week of the State Bar Convention;
- (3) The week of the Conference of the Judicial Section (September); and
- (4) The last week of December.

3.5 ANCILLARY DOCKET.

3.5.1 The ancillary docket consists of:

- (1) Temporary restraining orders;
- (2) Temporary injunctions;
- (3) Writs of habeas corpus;
- (4) Writs of mandamus;
- (5) Temporary receiverships; and
- (6) Late-filed vacation designations and requests to amend vacation designations.

Provided, however, that the ancillary docket does not consist of any type of relief which might be granted pursuant to a discovery or protective order under T.R.C.P. 166b.

3.5.2 The Ancillary Judge is responsible for hearing all matters on the ancillary docket including temporary injunction hearings following the granting of a tem-

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porary restraining order by an earlier ancillary judge. Each judge will serve as Ancillary Judge for one-half of a calendar month in rotation in order of judicial district numbers. The Ancillary Judge will be available at the courthouse on business days during regular business hours, and will provide the county switchboard with the means to locate the Ancillary Judge at all other times.

If not available to serve at any time during his term, the Ancillary Judge will designate, in writing, another judge to serve ad interim, and will notify the Administrative Judge of the Civil Trial Division, the ancillary clerk, and the county switchboard of that designation.

In the absence or unavailability of the Ancillary Judge or his designee under the rule, matters requiring judicial attention will be presented to the Administrative Judge of the Civil Trial Division for ruling or assignment to another judge for ruling.

3.5.3 No judge other than the Ancillary Judge may grant ancillary relief without a written order from the Ancillary Judge or Administrative Judge of the Civil Trial Division.

3.5.4 In requests for ancillary relief in bills of review and application to enjoin execution on judgments, the Ancillary Judge shall hear the matter as "Judge Presiding" for the court in which the case is pending.

3.6 **DISMISSAL DOCKETS.** The following cases are eligible for dismissal for want of prosecution pursuant to T.R.C.P. 165a:

- (1) Cases on file for more than 180 days in which no answer has been filed or is required by law;
- (2) Cases which have been on file for more than eighteen months and are not set for trial;
- (3) Cases in which a party or his attorney has failed to take any action specified by the court.

3.7 **CERTAIN DISCOVERY NOT FILED WITH THE COURT**

(1) **Discovery Not Filed.** The listed discovery shall not be filed with the District Clerk except on special order of the Judge of the Court, unless filed with the original petition.

(a) The District Clerk shall not file the following discovery:

Texas Rules of Civil Procedure:

Rule 167. "Discovery and Production of Documents and Things for Inspections, Copying or Photographing and Responses"

Rule 168. "Interrogatories to Parties" Interrogatories

Rule 169. "Requests for Admission" Requests for admissions

Rule 621a. "Discovery and Enforcement of Judgment" Discovery requests

Texas Rules of Civil Evidence:

Rule 902(10) "Business records accompanied by affidavit"

(b) Discovery and related material listed in Rule 3.7(1)(a) shall be served upon all other counsel or parties as required by the Texas Rules of Civil Procedure.

(2) **Discovery Filed.** The listed discovery shall be filed with the District Clerk except on special order of the Judge of the Court.

(a) The District Clerk shall file the following discovery:

Texas Rules of Civil Procedure:

Rule 168. "Interrogatories to Parties" Answers and objections

Rule 169 "Requests for Admission" Answers and objections

Rule 621a. "Discovery and Enforcement of Judgment" Answers and objections

(3) **Certificate of Written Discovery.** A certificate entitled, "Certificate of Written Discovery" shall be signed by the attorney of record and filed with the Clerk whenever discovery and related materials listed in Rule 3.7(1)(a) are served.

The certificate may list more than one document and shall identify a) each document containing the discovery and related material; b) counsel or parties to whom each document is sent, and c) the date each document is served.

(4) **Retaining the Original.** The original or an exact copy of the discovery and related materials listed in Rule 3.7(1)(a) that is not filed with the clerk shall be retained by the party responsible for service while the case and any related appellate proceedings are pending and for one year thereafter.

(5) **Filing For Use in Discovery Disputes.** If relief is sought concerning any discovery dispute, a party may file copies of only those portions of the materials related to the dispute.

(6) **Filing for Use in Summary Judgment and Other Pretrial Motions.** A party may file discovery and related materials in support of a motion for summary judgment, or for any response or reply to such a motion, or for any other pretrial motion or response or reply.

(7) **Filing for Use in Appeals or Other Post-Judgment Purposes.** A party may file discovery materials not previously on file for use on appeal or other post-judgment purposes.

3.8 **ADMINISTRATIVE JUDGE OF THE CIVIL TRIAL DIVISION.**

3.8.1 The Administrative Judge of the Civil Trial Division shall be elected for a term on one calendar year by the judges of the Civil Trial Division at the regular December meeting of the judges of the Civil Trial Division.

3.8.2 The Administrative Judge of the Civil Trial Division may by written order designate any other judge of the Division to act in his place if he is absent or unable to act. The judge so designated shall have all the duties and authority granted by these Rules to the Administrative Judge of the Civil Trial Division during the period of the designation.

Rule 13. CONFLICTING ENGAGEMENTS.

13.1 **INTER-COUNTY.** The Rules of the Second Administrative Judicial Region control conflicts in settings of all kinds between a Harris County court and a court not in Harris County.

13.2 **INTRA-COUNTY.** Among the trial courts sitting in Harris County:

- (1) Trial/Non-Trial. Trial settings take precedence over conflicting non-trial settings; and
- (2) Trial/Trial. A trial setting that is assigned takes precedence over a conflicting trial setting not yet assigned.

13.3 **WAIVER.** The court with precedence may yield.

13.4 **LEAD COUNSEL.** This rule operates only where lead counsel, as defined by T.R.C.P. 8, is affected, unless the court expands coverage to other counsel.

Rule 14. VACATIONS OF COUNSEL.

14.1 **DESIGNATION OF VACATION.** Subject to the provision of subparts .2 and .3 of this rule, an attorney may designate not more than four weeks of vacation during a calendar year as vacation, during which that attorney will not be assigned to trial or required to engage in any pretrial proceedings. This rule operates only where lead counsel, as defined by T.R.C.P. 8, is affected, unless the trial court expands coverage to other counsel.

14.2 **SUMMER VACATIONS.** Written designation for vacation weeks during June, July, or August must be filed with the district clerk by May 15. Summer vacation weeks so designated will protect the attorney from trials during those summer weeks, even if an order setting the case for trial was signed before the vacation designation was filed.

14.3 **NON-SUMMER VACATIONS.** Written designation for vacation in months other than June, July, or August must be filed with the district clerk by February 1. Non-summer vacation weeks may not run consecutively for more than two weeks at a time. Non-summer vacation weeks so designated will not protect an attorney from a trial by an order signed before the date the designation is filed.

Rule 15. UNIFORMITY.

15.1 **TRIAL AND DISMISSAL DOCKETS.** The judges of the Civil Trial Division shall only use those docket management form letters and form orders under T.R.C.P. 165a and 166 which have been approved by the Board of District Judges of the Civil Trial Division.

15.2 **APPOINTEE FEE REPORT.** Each person appointed by a judge in the Civil Trial Division to a position for which any type of fee may be paid shall file the designated uniform report before any judgment, dismissal, or nonsuit is signed. This report is required for every appointment made whether or not a fee is charged.

15.3 **RECORDING AND BROADCASTING OF COURT PROCEEDINGS.** Recording or broadcasting court proceedings in the Civil Trial Division is governed by uniform rules adopted by the Board of Civil Judges.

Rule 16. MEETINGS.

The judges of the Civil Trial Division shall meet regularly on the first Tuesday of each month at noon in the Harris County Administration Building and at such times and places as the Administrative Judge of the Civil Division may direct by a written call distributed at least 72 hours in advance of the meeting.

Rule 17. EFFECTIVE DATE.

Effective October 20, 1987; amended 1/22/90; amended 7/1/90 amended 8/31/91 amended 1/3/96, effective 6/1/97, amended 4/14/98.

RULES of the CIVIL TRIAL DIVISION • Harris County District Courts

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the same file date and the same number as the original case with a letter designation; provided, however, that when a severed case has previously been consolidated from another court, the case shall upon severance be assigned to the court from which it was consolidated.

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3.3.5 Certificate of Conference.

a. Unopposed motions shall be labeled "Unopposed" in the caption.

b. Opposed motions shall contain a certificate that:

1. The movant and respondent have conferred with each other and in good

faith have attempted to resolve the matter; and

2. identifies the basis of the disagreement between counsel; and

3. If the parties have not been able to confer, movant shall make a detailed statement of all efforts made to confer including dates and methods of attempted communication.

c. The clerk of each court is directed not to submit opposed motions to the judge which do not comply with this rule.

d. The provisions of subparts b and c of this rule do not apply to motions for summary judgment, default judgments, agreed judgments, motions for voluntary dismissal or non suit, and motions involving service of citation.

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3.4.1 Manner of Setting. Cases shall be set for trial by order of the court.

3.4.2 Date of Setting. Cases shall be set for trial for a date certain. If a case is not assigned to trial by the second Friday after the date it was set, whether because of a continuance or because it was not reached, the court shall reset the case to a date certain. Unless all parties agree otherwise, the new setting must comply with all requisites of T.R.C.P. 245.

3.4.3 Assignment to Trial. A case is assigned to trial when counsel are called to the court to commence the jury or non-jury trial on the merits. For purposes of engaged counsel, no court may have more than one case assigned to trial at any one time.

3.4.4 Dead Weeks. Except with the consent of all parties, no cases will be assigned to trial on the merits during:

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3.5.1 The ancillary docket consists of:

- (1) Temporary restraining orders;
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- (3) Writs of habeas corpus;
- (4) Writs of mandamus;
- (5) Temporary receiverships; and
- (6) Late-filed vacation designations and requests to amend vacation designations.

Provided, however, that the ancillary docket does not consist of any type of relief which might be granted pursuant to a discovery or protective order under T.R.C.P. 166b.

3.5.2 The Ancillary Judge is responsible for hearing all matters on the ancillary docket including temporary injunction hearings following the granting of a temporary restraining order by an earlier ancillary judge. Each judge will serve as Ancillary Judge for one-half of a calendar month in rotation in order of judicial district numbers. The Ancillary Judge will be available at the courthouse on business days during regular business hours,

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and will provide the county switchboard with the means to locate the Ancillary Judge at all other times.

If not available to serve at any time during his term, the Ancillary Judge will designate, in writing, another judge to serve ad interim, and will notify the Administrative Judge of the Civil Trial Division, the ancillary clerk, and the county switchboard of that designation.

In the absence or unavailability of the Ancillary Judge or his designee under the rule, matters requiring judicial attention will be presented to the Administrative Judge of the Civil Trial Division for ruling or assignment to another judge for ruling.

3.5.3 No judge other than the Ancillary Judge may grant ancillary relief without a written order from the Ancillary Judge or Administrative Judge of the Civil Trial Division.

3.5.4 Granting of Relief

~~(1) If the Ancillary Judge grants a temporary injunction which is not agreed, the case shall be transferred to the docket of the Ancillary Judge's court;~~

~~(2) If an order for relief is an agreed order signed by all parties, the case will be returned to the court in which it is pending for signing and entry of the order.~~

~~3.5.5 If all the ancillary relief granted by the Ancillary Judge is reversed on appeal, the case shall be assigned on remand to the court in which it was originally filed.~~

3.5.6

3.5.4 In requests for ancillary relief in bills of review and application to enjoin execution on judgments, the Ancillary Judge shall hear the matter as "Judge Presiding" for the court in which the case is pending.

3.6 DISMISSAL DOCKETS. The following cases are eligible for dismissal for want of prosecution pursuant to T.R.C.P. 165a:

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14.1 **DESIGNATION OF VACATION.** Subject to the provision of subparts 2 and 3 of this rule, an attorney may designate not more than four weeks of vacation during a calendar year as vacation, during which that attorney will not be assigned to trial or required to engage in any pretrial proceedings. This rule operates only where lead counsel, as defined by T.R.C.P. 8, is affected, unless the trial court expands coverage to other counsel.

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Rule 17. EFFECTIVE DATE.

Effective October 20, 1987; amended 1/22/90; amended 7/1/90 amended 8/31/91 amended 1/3/96, effective 6/1/97, amended 4/14/98.

AMENDMENT TO RULES OF THE CIVIL TRIAL DIVISION
HARRIS COUNTY DISTRICT COURTS

The Rules of the Civil Trial Division of the Harris County District Courts are amended by deleting Rule 3.5.4 and Rule 3.5.5 and renumbering Rule 3.5.6 to 3.5.4.

The sections deleted are:

3.5.4 Granting of Relief.

- (1) If the Ancillary Judge grants a temporary injunction which is not agreed, the case shall be transferred to the docket of the Ancillary Judge's court;
- (2) If an order for relief is an agreed order signed by all parties, the case will be returned to the court in which it is pending for signing and entry of the order.

3.5.5 If all the ancillary relief granted by the Ancillary Judge is reversed on appeal, the case shall be assigned on remand to the court in which it was originally filed.

The complete Rule 3.5 as amended is printed on the following page.

AMENDED RULE 3.5 OF THE RULES OF THE CIVIL TRIAL DIVISION OF HARRIS COUNTY
DISTRICT COURTS

3.5 ANCILLARY DOCKET.

3.5.1 The ancillary docket consists of:

- (1) Temporary restraining orders;
- (2) Temporary injunctions;
- (3) Writs of habeas corpus;
- (4) Writs of mandamus;
- (5) Temporary receiverships; and
- (6) Late-filed vacation designations and requests to amend vacation designations.

Provided, however, that the ancillary docket does not consist of any type of relief which might be granted pursuant to a discovery or protective order under T.R.C.P. 166b.

3.5.2 The Ancillary Judge is responsible for hearing all matters on the ancillary docket including temporary injunction hearings following the granting of a temporary restraining order by an earlier ancillary judge. Each judge will serve as Ancillary Judge for one-half of a calendar month in rotation in order of judicial district numbers. The Ancillary Judge will be available at the courthouse on business days during regular business hours, and will provide the county switchboard with the means to locate the Ancillary Judge at all other times.

If not available to serve at any time during his term, the Ancillary Judge will designate, in writing, another judge to serve ad interim, and will notify the Administrative Judge of the Civil Trial Division, the ancillary clerk, and the county switchboard of that designation.

In the absence or unavailability of the Ancillary Judge or his designee under the rule, matters requiring judicial attention will be presented to the Administrative Judge of the Civil Trial Division for ruling or assignment to another judge for ruling.

3.5.3 No judge other than the Ancillary Judge may grant ancillary relief without a written order from the Ancillary Judge or Administrative Judge of the Civil Trial Division.

3.5.4 In requests for ancillary relief in bills of review and application to enjoin execution on judgments, the Ancillary Judge shall hear the matter as "Judge Presiding" for the court in which the case is pending.



SECOND ADMINISTRATIVE JUDICIAL
REGION OF TEXAS

OLEN UNDERWOOD
PRESIDING JUDGE

JUDY M. GEIGER
ADMINISTRATIVE ASSISTANT

VIKKI L. NELSON
REGIONAL OFFICE MANAGER

April 20, 1998

Honorable Nathan Hecht
Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711

Local Rules: Harris County Civil District Courts

Dear Justice Hecht:

Enclosed are amendments to the Local Rules of the Harris County Civil Trial Division of the District Courts, in the Second Administrative Region.

I hereby approve these Local Rules, and forward a copy to you. Please advise this office upon the Court's approval.

Thank you for your usual courtesies.

Sincerely,

A handwritten signature in cursive script, appearing to read "Olen Underwood".

Olen Underwood

Enclosures

Cc: Jack Thompson
District Court Administrator

Administrative Office of the District Courts

Harris County, Texas

Jack E. Thompson
DISTRICT COURT ADMINISTRATOR
Fax No. 755-8973

301 San Jacinto, Room 100
Houston, Texas 77002-2022
713-755-6575

April 16, 1998

Hon. Olen Underwood
Montgomery County Courthouse
301 North Main, Suite 228
Conroe, Texas 77301

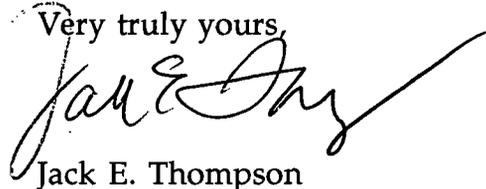
Dear Judge Underwood:

At the April meeting of the Board of District Judges, the following amendments to the Local Rules of the Civil Trial Division of the Harris County District Courts were approved (per attachments):

- Section 3.5.4 deleted
- Section 3.5.5 deleted
- Section 3.5.6 renumbered to 3.5.4

We are submitting these rules for your approval. If so approved, please transmit them to the Chief Justice of the Supreme Court of Texas for his consideration for approval.

Very truly yours,



Jack E. Thompson

JET:np

Attachment A –repealed sections 3.5.4 & 3.5.5 deleted

Attachment B –repealed sections 3.5.4 & 3.5.5 highlighted with "strikethru" feature and the new section number 3.5.4 underlined):



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

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CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

JUSTICES
RAUL A. GONZALEZ
NATHAN L. HECHT
CRAIG T. ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON

April 29, 1998

Mr. Jack E. Thompson
District Court Administrator
301 San Jacinto, Room 100
Houston, Texas 77002-2022

Dear Mr. Thompson,

Please find enclosed, a copy of the order of the Supreme Court that approved local rules for the Civil Trial Division of the District courts for Harris County.

Sincerely,

SIGNED

John T. Adams
Clerk

Encl.

cc: Hon. Olen Underwood
2nd Admin Judicial Rgn

District Clerk

County Clerk

Supreme Court Adv Committee

Mr. Jerry Benedict
Office of Court Admin

State Law Library