

SCAC Meeting
August 24-25, 2007
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Tommy Bastian

TO: Supreme Court Rules Advisory Committee

August 15, 2007

FROM: Jody Hughes

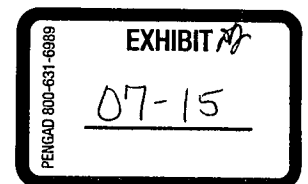
RE: Draft E-Filing Rules for Justice of the Peace Courts

Government Code §22.004(f), which took effect May 11, 2007 following the passage of Senate Bill 237, requires the Supreme Court of Texas to “adopt rules governing the electronic filing of documents in civil cases in justice of the peace courts” by January 1, 2008. To meet the legislative deadline, the Court created a Task Force on E-Filing in Justice Courts and appointed Justice of the Peace (“JP”) Tom Lawrence as Chair.¹ *See* Misc. Docket No. 07-9097 (June 18, 2007) (electronic copy attached as Appendix A). As discussed by Justice Hecht at the June 2007 SCAC meeting, the Court has asked the Task Force to develop a set of draft rules to be discussed by the SCAC at the August 24 meeting. After the SCAC makes its recommendation and the Court approves a final version, the rules will be published in the Texas Bar Journal at least sixty days before they take effect, as with civil procedure rules adopted by the Court. *See* Tex. Gov’t Code §22.004(b). The Task Force hereby submits the attached draft rules to the SCAC in accordance with that schedule.

The Task Force initially discussed via e-mail the procedural approach to drafting JP e-filing rules, including the assumption that it would use as a model the existing templates for e-filing in district and county courts, modified as appropriate for justice of the peace courts.² On

¹ In addition to the Task Force members named in the order, Mike Griffith (Bearing Point), Burnett Treat (Travis County District Clerk’s Office), and Ted Wood (Office of Court Administration) also participated—at the Court’s invitation—as members in all respects, including voting on approval of draft rules. A future administrative order will likely recognize these participants’ status as Task Force members.

² A major preliminary item concerned how to define “justice of the peace court” in the e-filing rules. Although used in Tex. Gov’t Code §22.004(f), the term is not clearly defined in Texas law. The Texas Constitution provides that “Justice of the peace courts shall have original jurisdiction in criminal matters of misdemeanor cases punishable by fine only, exclusive jurisdiction in civil matters where the amount in controversy is two hundred dollars or less, and such other jurisdiction as may be provided by law.” Tex. Const. art. V, §19. Government Code chapter 27 provides that justices of the peace preside in justice courts, the procedural rules for which are found in the Texas Rules of Civil Procedure. *See* Tex. Gov’t Code ch. 27; Tex. R. Civ. P. 523-591. However, JPs also preside in small claims courts, the procedural rules of which are found in chapter 28. *See* Tex. Gov’t Code ch. 28. Justice courts and small claims courts have partially overlapping jurisdiction. *Compare* Tex. Gov’t Code §27.031 with *id.* §28.003; *see also id.* §28.003(a) (“The small claims court has concurrent jurisdiction with the justice court in actions by any person for the recovery of money in which the amount involved, exclusive of costs, does not exceed \$5,000.”). This dichotomy between justice courts and small claims courts supports the notion that both jointly comprise the “justice of the peace courts.” However, other statutes distinguish between justice of the peace courts and small claims



July 20, the Task Force met in Austin and discussed modifications to the district and county e-filing templates, and over the following week developed draft rules based on the modifications approved at the meeting. Following a vote on July 27, Judge Lawrence noted that a majority of the Task Force approved the draft rules with no members objecting, while recognizing that additional editing would be required. Although votes were not taken on subsequent changes, the revised rules—attached as Appendix B—were circulated to all members for comment and represent the consensus of the Task Force. A redline version showing changes to the district/county e-filing template is attached as Appendix C.

Judge Lawrence will present the Task Force's draft rules at the August 24 SCAC meeting, and several members of the Task Force who were involved in the drafting of the county and district court e-filing rules template will be available to discuss the draft JP e-filing rules. To facilitate the presentation, following is a summary of the significant modifications to the district/county e-filing rules template, discussed first at the general level and then on the basis of changes to specific rules (references to rule numbers at left are to the JP e-filing draft rules, not to the district/county court e-filing template rule):

General changes

Perhaps the most significant change is that these are statewide rules rather than a template to be customized and submitted as local rules for supreme court approval under Tex. R. Civ. P. 3a. Because Rule 3a does not authorize JP courts to submit local rules, and only Harris County's justice courts have statutory local rules authority, the Task Force initially envisioned that the Supreme Court would review and approve individual counties' rules in a process similar to, but separate from, the local rules process under Rule 3a. The Task Force initially conceived the JP e-filing rules as a template that individual counties would submit for approval upon the request of a certain percent—all, perhaps, or a majority—of the justice of the peace with jurisdiction in that county, although a JP's request for approval of local rules for the county would not require that JP court to participate in e-filing. Accordingly, the Task Force also initially drafted a separate set of rules to govern the process of approving local rules applications. However, it later rejected the "local rules" model in favor of a single set of non-modifiable, statewide rules.

courts, indicating that the latter is not a subset of the former. *See* Tex. Civ. Prac. & Rem. Code §31.004(c) (defining "lower trial court" as "a small claims court, a justice of the peace court, a county court, or a statutory county court"); *id.* §31.005 ("A judgment or a determination of fact or law in a proceeding in small claims court or justice of the peace court is not res judicata and does not constitute a basis for estoppel by judgment in a proceeding in a county court or statutory county court . . .").

The legislative history of SB 237 is indeterminate. The Task Force concluded that the Legislature intended the Court to adopt e-filing rules for both justice courts and small claims courts, and it drafted the JP e-filing rules accordingly. A staffer for Sen. Florence Shapiro, the author of SB 237, indicated that the Task Force's conclusion is consistent with legislative intent.

E-filing rules for district and county courts are submitted at the county level because a single elected official, the county or district clerk (or the joint clerk in some counties), generally receives and files pleadings for all of the courts of a given level within the county. However, JP courts are not so served by the district or county clerk. Moreover, although JPs are authorized to hire clerks, the level of clerical assistance varies greatly. Because JP courts process filings themselves and the county or district clerk plays no role, the Task Force saw no need to organize submission of rules at the county level. Also, the Task Force recognized that some JP courts would choose not to participate in e-filing, and that the rules would have to provide for such choice on a court-by-court basis. Accordingly, the Task Force decided to recommend a single set of statewide rules that provide for opt-in participation by individual JP courts. Because no "local rules" process is involved, individual courts or counties do not need approval from the Supreme Court and may not modify the statewide rules. Elimination of the local rules concept required numerous changes to the district/county court template, most of which are not discussed in this memo.

Changes to specific rules

Rule 1.1: The Task Force voted to move the provisions in template rule 3.1 ("Scope") to rule 1.1, and changed the title of the rule accordingly.

Rule 1.2(b): the language "file, serve, or file and serve" was added to clarify that the court may order parties to electronically file documents independent of electronic service, and vice versa.

Rule 1.3: explains the mechanics of individual JP court participation and notice to the county clerk, who is required to maintain and post a list of JP courts in the county that participate in e-filing.

Rule 2.1: adds new terms to define JP courts and explain participation in e-filing.

Rule 3.1: deletes provisions not applicable to JP courts, which do not have jurisdiction in probate matters or in applications for judicial bypass of parental notification and consent requirements.

Rule 3.2(d): deletes the template rule 3.4(d)'s reference to "third" parties, such that the JP rule authorizes parties—not third parties—to ask the court to allow inspection of a filer's original document.

Rule 4.1: more accurately states the respective roles of TexasOnline and the Department of Information Resources (DIR), and reflects DIR's statutory authority to set a maximum fee a court may charge for e-filing through TexasOnline. *See* Tex. Gov't Code 2054.111.

Rule 4.3(e): Because not all JP courts employ clerks and staffing varies considerably, many Task Force members—particularly JP members—were concerned about the potential ramifications of the rules requiring a court to "accept" any filing that it did not affirmatively reject within one day. To balance this concern with the desire on the part of parties and attorneys to be assured

that e-filed documents have been filed with the court, the Task Force eliminated the first sentence, which required the court to decide whether to accept or reject a filing within one business day. The revised version simply provides that any filing not affirmatively rejected within that period is deemed filed.

Rule 4.4: the Task Force believed that this language, originally added to make parties, judges, and lawyers feel more comfortable about e-filing, is no longer necessary. No substantive change is intended.

Rule 5.1: several provisions have been changed to clarify the circumstances under which documents can be e-served. The draft rules require an e-filing party to register with TexasOnline, thereby making the party's registered address accessible to other registered users. The Task Force chose to explicitly provide that documents may be e-served either through TexasOnline or directly from party to party via e-mail. It was suggested that a provision be added requiring all parties who receive electronic service to register with TexasOnline, thereby making the party's email address available to all e-filing parties and all parties receiving e-service. However, there was a concern that some parties will inevitably agree to receive e-service but then fail to register, thereby potentially availing themselves of an argument that e-service upon a willing (but unregistered) recipient is invalid. One potential solution would be to require registration of all parties who agree to receive e-service but clarify that the recipient's failure to register does not invalidate otherwise valid e-service.

Rule 5.3: The Task Force recognized that the provision in TRCP 21a adding 3 days following service by fax is carried over into Rule 5.3 of the district/county court e-filing template, but it concluded that this provision serves no valid purpose in the e-filing context and should be eliminated in the JP e-filing rules, if not in the district/county court e-filing template as well. The Task Force also recommends several changes to the certificate of service required for electronically served documents, including mandatory inclusion of the filer's e-mail address and revisions to the descriptive statement regarding service.

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 07-9097

APPOINTMENTS TO THE TASK FORCE ON E-FILING IN JUSTICE COURTS

Government Code §22.004(f), which took effect May 11, 2007 following the passage of Senate Bill 237, requires the Supreme Court of Texas to “adopt rules governing the electronic filing of documents in civil cases in justice of the peace courts.” Senate Bill 237 requires these rules to be adopted by January 1, 2008. In accordance with these legislative directives, the Court hereby creates the Task Force on E-Filing in Justice Courts and appoints the following members:

The Honorable Orlinda Naranjo, 419th District Court, Travis County
The Honorable George H. Boyett, Justice of the Peace Court Precinct 3, Brazos County
The Honorable Albert B. Cercone, Justice of the Peace Court Precinct 3-1, Dallas County
The Honorable Jim F. Humphrey, Justice of the Peace, Clay County
The Honorable Tom Lawrence, Justice of the Peace Court Precinct 4-2, Harris County
The Honorable Linda Penn, Justice of the Peace Court Precinct 4, Bexar County
The Honorable Dan Sanchez, Justice of the Peace Court Precinct 7-2, Cameron County
The Honorable Kent Walker, Justice of the Peace Court Precinct 4, Hardin County
Mark P. Blenden, Dallas
R. David Fritsche, San Antonio
Melissa Young Goodwin, Austin
Gary W. Hutton, San Antonio
Bronson T. Tucker, Austin
Peter S. Vogel, Dallas
Dr. Dianne Wilson, Richmond

The Honorable Tom Lawrence is appointed Chair. The Task Force is ordered to submit a report and recommendations to the Court no later than August 13, 2007.

STATEWIDE RULES
concerning the
ELECTRONIC FILING OF DOCUMENTS
in **PARTICIPATING JUSTICE OF THE PEACE COURTS**

PART 1. GENERAL PROVISIONS

Rule 1.1 Scope

These rules govern the electronic filing and service of court documents in civil cases in all justice of the peace courts that accept electronic filing. These rules are adopted pursuant to Texas Government Code §22.004(f), and may be known as the Statewide Rules Concerning the Electronic Filing of Documents in Participating Justice of the Peace Courts.

Rule 1.2 Electronic Filing and Service Optional Unless Ordered by Court

(a) Except as provided by subsection (b) below and subject to Rule 5.1(b), the electronic filing and service of court documents is wholly optional.

(b) A justice of the peace court may order any party or parties in a particular case to electronically file, serve, or file and serve court documents that are permitted to be electronically filed under Rule 3.1.

Rule 1.3. Justices of the Peace To Individually Determine Participation in Electronic Filing

(a) Each justice of the peace in Texas may determine whether the court over which the justice of the peace presides will accept electronically filed documents. These rules do not require any individual justice of the peace to accept electronically filed documents. Documents may be electronically filed and served only in those justice of the peace courts that have set up a TexasOnline account to accept electronically filed documents and have notified the county clerk in the county where the justice of the peace court is located that the court participates in electronic filing.

(b) The county clerk of each county must maintain a current list, available to the public at no charge in the county clerk's office—and, if the county has a website accessible by the public at no cost, on the county's website as well—of those justice of the peace courts in the county that accept electronically filed documents. After a justice of the peace court has begun accepting electronic filings, it must continue to do so until the justice of the peace has notified the county

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clerk and TexasOnline that the court will no longer participate and that the Texas Online account has been closed, at which time the county clerk must promptly update the list to reflect the change. Each justice of the peace statewide is responsible for notifying the county clerk as to whether that justice of the peace court accepts electronically filed documents and of any subsequent changes to that status.

PART 2. DEFINITIONS

Rule 2.1 Specific Terms

The following definitions apply to these rules:

- (a) "Civil cases" means all cases filed in small claims court and all non-criminal cases filed in the justice courts. The term does not include matters handled by a justice of the peace acting as a magistrate.
- (b) "Convenience fee" is a fee charged in connection with electronic filing that is in addition to regular filing fees. A convenience fee charged by the justice of the peace court will be considered as a court cost.
- (c) "Digitized signature" means a graphic image of a handwritten signature.
- (d) "Document" means a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, paper, or other instrument in paper form or electronic form. The term does not include court orders.
- (e) "Electronic filing" is a process by which a filer files a court document with the justice of the peace court by means of an online computer transmission of the document in electronic form. For purposes of these rules, the process does not include the filing of faxed documents described as the "electronic filing of documents" in Tex. Gov't Code §51.801.
- (f) "Electronic filing service provider" (EFSP) means a business entity that provides electronic filing services and support to its customers (filers). An attorney or law firm may act as an EFSP.
- (g) "Electronic order" means a computerized, non-paper court order that a justice of the peace signs by applying his or her digitized signature to the order.
- (h) "Electronic service" is a method of serving a document upon a party in a case by electronically transmitting the document to that party's e-mail address.
- (i) "Electronically file" means to file a document by means of electronic filing.
- (j) "Electronically serve" means to serve a document by means of electronic service.

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(k) "Filer" means a person who files a document, including an attorney. (l) "Justice of the peace court" means a justice court or a small claims court, as defined by chapters 27 and 28 of the Texas Government Code and Texas Constitution Article V, §19.

(m) "Participating justice of the peace court" means a justice of the peace court that has set up a TexasOnline account to accept electronically filed documents and has notified the county clerk of the court's participating status, as provided in Rule 1.3(a).

(n) "Party" means a person appearing in any case or proceeding, whether represented or appearing *pro se*, or an attorney of record for a party in any case or proceeding.

(o) "Registered e-mail address" means an e-mail address a filer has registered with TexasOnline for the transmission or receipt of electronically filed documents.

(p) "Regular filing fees" are those filing fees charged in connection with traditional filing.

(q) "Rules" are Statewide Rules Concerning the Electronic Filing of Documents in Participating Justice of the Peace Courts.

(r) "Traditional court order" means a court order that is on paper.

(s) "Traditional filing" is a process by which a filer files a paper document with a justice of the peace court.

Rule 2.2 Application to Pro Se Litigants

The term "attorney" shall apply to an individual litigant in the event a party appears *pro se*.

PART 3. APPLICABILITY

Rule 3.1 Documents That May Be Electronically Filed

(a) A document that can be filed in a traditional manner may be electronically filed with a justice of the peace court that accepts electronically filed documents, with the exception of the following documents:

- i) citations or writs bearing the seal of the court;
- ii) returns of citation;
- iii) bonds;

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iv) subpoenas;

v) proof of service of subpoenas;

vi) documents to be presented to a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents; and,

vii) documents sealed pursuant to Tex. R. Civ. P. 76a.

(b) A motion to have a document sealed, as well as any response to such a motion, may be electronically filed.

Rule 3.2. Documents Containing Signatures

(a) A document that is required to be verified, notarized, acknowledged, sworn to, or made under oath may be electronically filed only as a scanned image.

(b) A document that requires the signatures of opposing parties (such as a Rule 11 agreement) may be electronically filed only as a scanned image.

(c) Any affidavit or other paper described in Rule 3.2(a) or (b) that is to be attached to an electronically filed document may be scanned and electronically filed along with the underlying document.

(d) Where a filer has electronically filed a scanned image under this rule, a court may require the filer to file the document in a traditional manner. A party may request the court in which the matter is pending to allow inspection of a document maintained by the filer.

PART 4. FILING MECHANICS

Rule 4.1 TexasOnline

(a) Texas Online is a project of the Texas Department of Information Resources (DIR), a state entity charged with establishing a common electronic infrastructure through which state agencies and local governments may electronically send and receive documents and required payments.

(b) To become registered to electronically file documents, filers must follow registration procedures outlined by TexasOnline. The procedure can be accessed from TexasOnline's website at www.texasonline.com.

(c) Filers do not electronically file documents directly with the justice of the peace court. Rather, filers indirectly file with the justice of the peace court by electronically transmitting the document to an electronic filing service provider (EFSP), which electronically transmits the

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document to TexasOnline, which then electronically transmits the document to the justice of the peace court. A filer filing a document must have a valid account with a TexasOnline EFSP.

(d) Consistent with standards promulgated by the Judicial Committee on Information Technology (JCIT), TexasOnline will specify the permissible formats for documents that will be electronically filed and electronically served.

(e) Filers who electronically file documents will pay regular filing fees to the justice of the peace court indirectly through TexasOnline by a method set forth by TexasOnline.

(f) An EFSP may charge filers a convenience fee to electronically file documents. This fee will be in addition to regular filing fees.

(g) TexasOnline will charge filers a convenience fee to electronically file documents. This fee will be in addition to regular filing fees and will be in an amount not to exceed the amount approved by the DIR Board.

(h) The justice of the peace court may charge filers a convenience fee to electronically file documents, in an amount not to exceed the amount approved by the DIR Board. This fee will be in addition to regular filing fees, credit card fees, or other fees.

Rule 4.2 Signatures

(a) Upon completion of the initial registration procedures, each filer will be issued a confidential and unique electronic identifier. Each filer must use his or her identifier in order to electronically file documents. Use of the identifier to electronically file documents constitutes a digital signature on the particular document.

(b) The attachment of a digital signature on an electronically filed document is deemed to constitute a signature on the document for purposes of signature requirements imposed by the Texas Rules of Civil Procedure or any other law. The person whose name appears first in the signature block of an initial pleading is deemed to be the attorney in charge for the purposes of Texas Rules of Civil Procedure 8, unless otherwise designated. The digital signature on any document filed is deemed to be the signature of the attorney whose name appears first in the signature block of the document for the purpose of Texas Rules of Civil Procedure 13 and 57.

(c) A digital signature on an electronically filed document is deemed to constitute a signature by the filer for the purpose of authorizing the payment of document filing fees.

Rule 4.3 Time Document is Filed

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(a) A filer may electronically transmit a document through an EFSP to TexasOnline 24 hours per day each and every day of the year, except during brief periods of state-approved scheduled maintenance which will usually occur in the early hours of Sunday morning.

(b) Upon the electronic transmission of a document to a filer's EFSP, the filer is deemed to have delivered the document to the justice of the peace court and, subject to Rule 4.3(h), the document is deemed to be filed. If a document is electronically transmitted to the filer's EFSP on or before the last day for filing the same, the document shall be filed by the court and deemed filed in time. A transmission report by the filer to the filer's EFSP shall be prima facie evidence of date and time of transmission.

(c) On receipt of a filer's document, the filer's EFSP must send the document to TexasOnline in the required electronic file format along with an indication of the time the filer sent the document to the EFSP and the filer's payment information. TexasOnline will electronically transmit to the filer an acknowledgment that the document has been received by TexasOnline. The acknowledgment will note the date and time that the electronically-transmitted document was received by TexasOnline.

(d) Upon receiving a document from a filer's EFSP, TexasOnline shall electronically transmit the document to the justice of the peace court. If the document was not properly formatted, Texas Online will transmit a warning to the filer's EFSP.

(e) The justice of the peace court shall accept the document for filing provided that the document is not misdirected and complies with all filing requirements. The justice of the peace court shall handle electronically-transmitted documents that are filed in connection with an affidavit of inability to afford court costs in the manner required by TEX. R. CIV. P. 145. If the justice of the peace court fails to accept or reject a document within one business day, the document is deemed to have been filed.

(f) If the document is accepted for filing, the justice of the peace court shall note the date and time of filing which, with the exception of subsection (h) below, shall be the date and time that the filer transmitted the document to the filer's EFSP. The justice of the peace court shall inform TexasOnline of its action the same day action is taken. TexasOnline shall, on that same day, electronically transmit to the filer's EFSP a confirmation that the document has been accepted for filing by the justice of the peace court. The EFSP will electronically transmit the confirmation to the filer. This confirmation will include an electronically file-marked copy of the front page of the document showing the date and time the justice of the peace court considers the document to have been filed.

(g) If the document is not accepted for filing, the justice of the peace court shall inform TexasOnline of its action, and the reason for such action, the same day action is taken. TexasOnline shall, on that same day, electronically transmit to the filer's EFSP an "alert" that

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the document was not accepted along with the reason the document was not accepted. The EFSP will electronically transmit the alert to the filer.

(h) Except in cases of attachment, garnishment, sequestration, or distress proceedings, documents that serve to commence a civil suit will not be deemed to have been filed on Sunday when the document is electronically transmitted to the filer's EFSP, TexasOnline, or the justice of the peace court on Sunday. Such documents will be deemed to have been filed on the succeeding Monday.

Rule 4.4 Multiple Documents

(a) Except as provided by subsection (b) below, a filer may include only one document in an electronic transmission to TexasOnline.

(b) A filer may electronically transmit a document to TexasOnline that includes another document as an attachment (e.g., a motion to which is attached a brief in support of the motion).

Rule 4.5 Official Document

(a) The justice of the peace court's file for a particular case may contain a combination of electronically filed documents and traditionally filed documents.

(b) The justice of the peace court may maintain and make available electronically filed documents in any manner allowed by law.

Rule 4.6 Registered E-mail Address Required

In addition to the information required on a pleading by TEX. R. CIV. P. 57, a filer must include the filer's registered e-mail address on any electronically filed document.

Rule 4.7 Document Format

(a) Electronically-filed documents must be computer-formatted as specified by TexasOnline. Electronically-filed documents must also be formatted for printing on 8 1/2-inch by 11-inch paper.

(b) An electronically filed pleading is deemed to comply with TEX. R. CIV. P. 45.

PART 5. SERVICE OF DOCUMENTS OTHER THAN CITATION

Rule 5.1 Electronic Service of Documents Permissible

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(a) In addition to the methods of serving documents (other than the citation to be served upon the filing of a cause of action) set forth in Tex. R. Civ. P. 21a, a filer may serve documents upon another party in the case by electronically transmitting the document to that party, either through TexasOnline to the party's registered e-mail address or directly to the party at the e-mail address provided by the party upon agreeing to receive electronic service, or as updated by the party as provided in paragraph (c) below. Service in either manner is known as "electronic service" and is permissible in the circumstances set out in paragraph (b) below.

(b) Documents may be electronically served upon a party only where that party has agreed to receive electronic service or where the court has ordered the serving party to electronically serve documents.

(c) By virtue of electronically filing or serving a document or by agreeing to receive electronic service, a filer additionally agrees to provide information regarding any change in his or her e-mail address to TexasOnline, the justice of the peace court, and all parties in the case within 24 hours of the change.

(d) A party who electronically files a document is not required to electronically serve documents upon other parties unless the court has ordered the party to electronically serve documents.

(e) A filer may electronically serve a document in instances where the document is traditionally filed as well as in instances where the document is electronically filed.

Rule 5.2 Completion of Service and Date of Service

(a) Service shall be complete upon electronic transmission of the document by the filer to the party.

(b) Except as provided by subsection (c) below, the date of service shall be the date the electronic service is complete.

(c) When electronic service is complete after 5:00 p.m. (recipient's time), then the date of service shall be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

Rule 5.3 Certification of Service

(a) Documents to be electronically served upon another party shall be served before the time or at the same time that the document is filed.

(b) A document served electronically must contain a certificate of electronic service that must include, in addition to any other requirements imposed by the Texas Rules of Civil Procedure, the following:

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- (i) the filer's e-mail address and, if available, the filer's telecopier (fax machine) number;
- (ii) the recipient's e-mail address;
- (iii) the date and time of electronic service; and
- (iv) a statement either that the document has been electronically served and that the electronic transmission was reported as complete, or that the document is being electronically served concurrent with the electronic filing of the document.

PART 6. ELECTRONIC ORDERS AND VIEWING OF ELECTRONICALLY-FILED DOCUMENTS

Rule 6.1 Courts Authorized to Make Electronic Orders

- (a) A justice of the peace may electronically sign an order by applying his or her digitized signature to the order. Justices of the peace are not required to electronically sign orders.
- (b) Upon electronically signing an order, the justice of the peace may maintain the electronic order as an official copy of the order or print the electronic order and treat the printed order as an official copy of the order.
- (c) The justice of the peace court may electronically scan a traditional court order. The scanned court order may then serve as the official copy of the court order. The court is not required to electronically scan traditional court orders in order to create official electronic court orders. Electronic scanning of traditional court orders is at the option of the court.

Rule 6.2 Viewing of Electronically-filed Documents

- (a) The justice of the peace court shall ensure that all the records of the court, except those made confidential or privileged by law or statute, may be viewed in some format by all persons for free.
- (b) Independent of the TexasOnline system and the requirement of viewing access described in subsection (a), a justice of the peace court may choose to provide for both filers and the general public to electronically view documents or court orders that have been electronically filed or scanned. Where such provision has been made, persons may electronically view documents or court orders that have been electronically filed or scanned.
- (c) Nothing in this rule allows for the viewing of documents or court orders, in any form, that are legally confidential (e.g., papers in mental health proceedings) or otherwise restricted by judicial rule or order.

PART 7. MISCELLANEOUS PROVISIONS

Rule 7.1 Assigned Court to Resolve Disputes

In the event a dispute should arise involving the application of these rules or various electronic filing issues, the justice of the peace court assigned to the case in which the dispute arises shall decide any dispute.

Rule 7.2. Rule Guiding Interpretation

These rules shall be liberally construed so as to avoid undue prejudice to any person on account of using the electronic filing system or sending or receiving electronic service in good faith.

[County name] COUNTY
~~LOCAL STATEWIDE RULES OF THE DISTRICT COURTS~~
and
STATUTORY COUNTY COURTS
concerning the
ELECTRONIC FILING OF ~~COURT~~ DOCUMENTS

in PARTICIPATING JUSTICE OF THE PEACE COURTS

PART 1. GENERAL PROVISIONS

Rule 1.1 Purpose Scope

These rules govern the electronic filing and service of court documents, ~~by any method other than fax filing, in [County name] County. These rules are adopted pursuant to Rule 3a civil cases in all justice of the Texas Rules of Civil Procedure and may be known as the "[County name] County Local Rules of the District Courts and Statutory County Courts Concerning the Electronic Filing of Court Documents."~~ peace courts that accept electronic filing. These rules are adopted pursuant to Texas Government Code §22.004(f), and may be known as the Statewide Rules Concerning the Electronic Filing of Documents in Participating Justice of the Peace Courts.

Rule 1.2 Effect on Existing Local Rules
Rule 1.2 Electronic Filing and Service Optional Unless Ordered by Court

These rules are adopted in addition to any other local rules (a) Except as provided by subsection (b) below and subject to Rule 5.1(b), the electronic filing and service of court documents is wholly optional.

(b) A justice of the district courts and statutory county courts in [County name] County. These rules do not supersede peace court may order any party or replace any previously adopted local rules. These rules are in addition to current local rules, Part 5 electronic court documents (fax filing):

Rule 1.3 Electronic Filing Optional Unless Ordered by Court

(a) ~~Except as provided by subsection (b) below, the electronic filing and serving of court documents is wholly optional.~~

(b) ~~Upon the motion of a party and for good cause shown, a district court or statutory county court may order the parties in a particular case to electronically file, serve, or file and serve court documents that are permitted to be electronically filed under Rule 3.31.~~

Rule 1.3. Justices of the Peace To Individually Determine Participation in Electronic Filing

~~(a) Each justice of the peace in Texas may determine whether the court over which the justice of the peace presides will accept electronically filed documents. These rules do not require any individual justice of the peace to accept electronically filed documents. Documents may be electronically filed and served only in those justice of the peace courts that have set up a TexasOnline account to accept electronically filed documents and have notified the county clerk in the county where the justice of the peace court is located that the court participates in electronic filing.~~

~~(b) The county clerk of each county must maintain a current list, available to the public at no charge in the county clerk's office—and, if the county has a website accessible by the public at no cost, on the county's website as well—of those justice of the peace courts in the county that accept electronically filed documents. After a justice of the peace court has begun accepting electronic filings, it must continue to do so until the justice of the peace has notified the county clerk and TexasOnline that the court will no longer participate and that the Texas Online account has been closed, at which time the county clerk must promptly update the list to reflect the change. Each justice of the peace statewide is responsible for notifying the county clerk as to whether that justice of the peace court accepts electronically filed documents and of any subsequent changes to that status.~~

PART 2. DEFINITIONS

Rule 2.1 Specific Terms

The following definitions apply to these rules:

(a) ~~“Civil cases” means all cases filed in small claims court and all non-criminal cases filed in the justice courts. The term does not include matters handled by a justice of the peace acting as a magistrate.~~

(b) ~~“Convenience fee” is a fee charged in connection with electronic filing that is in addition to regular filing fees. A Convenience Fee convenience fee charged by the District Clerk justice of the peace court will be considered as a court cost.~~

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- (b) ~~“District clerk” means the [County name] County District Clerk.~~
- (c) ~~“Digitized signature” means a graphic image of a handwritten signature.~~
- (d) ~~“Document” means a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, paper, or other instrument in paper form or electronic form. The term does not include court orders.~~
- (e) ~~“Electronic filing” is a process by which a filer files a court document with the district clerk’s office justice of the peace court by means of an online computer transmission of the document in electronic form. For purposes of these rules, the process does not include the filing of faxed documents which is described as the “electronic filing of documents” in Section 51.801, Government Code Tex. Gov’t Code §51.801.~~
- (f) ~~“Electronic filing service provider” (EFSP) is means a business entity that provides electronic filing services and support to its customers (filers). An attorney or law firm may act as an EFSP.~~
- (g) ~~“Electronic order” means a computerized, non-paper court order that a judge justice of the peace signs by applying his or her digitized signature to the order. A digitized signature is a graphic image of the judge’s handwritten signature.~~
- (h) ~~“Electronic service” is a method of serving a document upon a party in a case by electronically transmitting the document to that party’s e-mail address.~~
- (i) ~~“Electronically file” means to file a document by means of electronic filing.~~
- (j) ~~“Electronically serve” means to serve a document by means of electronic service.~~
- (k) ~~“Filer” means a person who files a document, including an attorney. (l) “Justice of the peace court” means a justice court or a small claims court, as defined by chapters 27 and 28 of the Texas Government Code and Texas Constitution Article V, §19.~~
- (l) ~~“Party” means a person appearing in any case or proceeding, whether represented or appearing pro se, or an attorney of record for a party in any case or proceeding (m) “Participating justice of the peace court” means a justice of the peace court that has set up a TexasOnline account to accept electronically filed documents and has notified the county clerk of the court’s participating status, as provided in Rule 1.3(a).~~
- (m) ~~“Regular filing fees” are those filing fees charged in connection with traditional filing (n) “Party” means a person appearing in any case or proceeding, whether represented or appearing pro se, or an attorney of record for a party in any case or proceeding.~~

APPENDIX C

~~(n) "Rules" are the [County name] County Local Rules of the District Courts and Statutory County Courts concerning the Electronic Filing of Documents. (o) "Registered e-mail address" means an e-mail address a filer has registered with TexasOnline for the transmission or receipt of electronically filed documents.~~

~~(o) "Traditional court order" means a court order that is on paper.~~

~~(p) "Regular filing fees" are those filing fees charged in connection with traditional filing.~~

~~(q) "Rules" are Statewide Rules Concerning the Electronic Filing of Documents in Participating Justice of the Peace Courts.~~

~~(r) "Traditional court order" means a court order that is on paper.~~

~~(s) "Traditional filing" is a process by which a filer files a paper document with a clerk or a judge justice of the peace court.~~

Rule 2.2 Application to Pro Se Litigants

The term "~~counsel~~attorney" shall apply to an individual litigant in the event a party appears pro se.

PART 3. APPLICABILITY

Rule 3.1 Scope Documents That May Be Electronically Filed

~~(a) These rules apply to the filing of documents in all non-juvenile civil cases, including cases that are appeals from lower courts, before the various district courts and statutory county courts with jurisdiction in [County name] County. (a) A document that can be filed in a traditional manner may be electronically filed with a justice of the peace court that accepts electronically filed documents, with the exception of the following documents:~~

~~(b) These rules apply to the filing of documents in cases before the various district courts and statutory county courts referred to in paragraph (a) above that are subsequently assigned to associate judges or any other similar judicial authorities.~~

Rule 3.2 Clerks

These rules apply only to the filing of documents with the district clerk. These rules do not apply to the filing of documents directly with a judge as contemplated by TEX. R. CIV. P. 74.

Rule 3.3 Documents That May Be Electronically Filed

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~~(a) A document that can be filed in a traditional manner with the district clerk may be electronically filed with the exception of the following documents:~~

- ~~i) citations or writs bearing the seal of the court;~~
- ~~ii) returns of citation;~~
- ~~iii) bonds;~~
- ~~iv) wills and codicils thereto;~~
- ~~v) subpoenas;~~
- ~~vi) proof of service of subpoenas;~~
- ~~vii) documents to be presented to a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents; and,~~
- ~~viii) documents sealed pursuant to TEX. TEX. R. CIV. CIV. P. 76a; and~~
- ~~ix) documents to which access is otherwise restricted by law or court order, including a document filed in a proceeding under Chapter 33, Family Code.~~

(b) A motion to have a document sealed, as well as any response to such a motion, may be electronically filed.

Rule 3.4.2: Documents Containing Signatures

- (a) A document that is required to be verified, notarized, acknowledged, sworn to, or made under oath may be electronically filed only as a scanned image.
- (b) A document that requires the signatures of opposing parties (such as a Rule 11 agreement) may be electronically filed only as a scanned image.
- (c) Any affidavit or other paper described in Rule 3.4.2(a) or (b) that is to be attached to an electronically filed document may be scanned and electronically filed along with the underlying document.
- (d) Where a filer has electronically filed a scanned image under this rule, a court may require the filer to ~~properly~~ file the document in a traditional manner ~~with the district clerk~~. A third-party

APPENDIX C

may request the court in which the matter is pending to allow inspection of a document maintained by the filer.

PART 4. FILING MECHANICS

Rule 4.1 TexasOnline

(a) Texas Online is a project of the ~~TexasOnline Authority~~ Texas Department of Information Resources (DIR), a state entity charged with establishing a common electronic infrastructure through which state agencies and local governments may electronically send and receive documents and required payments.

(b) To become registered to electronically file documents, filers must follow registration procedures outlined by TexasOnline. The procedure can be accessed from TexasOnline's website at "www.texasonline.com."

(c) Filers do not electronically file documents directly with the ~~district clerk justice of the peace court~~. Rather, filers indirectly file ~~a document~~ with the ~~district clerk justice of the peace court~~ by electronically transmitting the document to an electronic filing service provider (EFSP); which ~~then~~ electronically transmits the document to TexasOnline, which then electronically transmits the document to the ~~district clerk justice of the peace court~~. A filer filing ~~or serving~~ a document must have a valid account with ~~an~~ TexasOnline EFSP and with TexasOnline.

(d) Consistent with standards promulgated by the Judicial Committee on Information Technology (JCIT), TexasOnline will specify the permissible formats for documents that will be electronically filed and electronically served.

(e) Filers who electronically file documents will pay regular filing fees to the ~~district clerk justice of the peace court~~ indirectly through TexasOnline by a method set forth by TexasOnline.

(f) An EFSP may charge filers a convenience fee to electronically file documents. This fee will be in addition to regular filing fees.

(g) TexasOnline will charge filers a convenience fee to electronically file documents. This fee will be in addition to regular filing fees and will be in an amount not to exceed the amount approved by the ~~TexasOnline Authority~~ DIR Board.

(h) The ~~district clerk justice of the peace court~~ may charge filers a convenience fee to electronically file documents in an amount not to exceed the amount approved by the DIR Board. This fee will be in addition to regular filing fees, credit card fees, or other fees.

Rule 4.2 Signatures

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(a) Upon completion of the initial registration procedures, each filer will be issued a confidential and unique electronic identifier. Each filer must use his or her identifier in order to electronically file documents. Use of the identifier to electronically file documents constitutes a "digital signature" on the particular document.

(b) The attachment of a digital signature on an electronically filed document is deemed to constitute a signature on the document for purposes of signature requirements imposed by the Texas Rules of Civil Procedure or any other law. The person whose name appears first in the signature block of an initial pleading is deemed to be the attorney in charge for the purposes of Texas Rules of Civil Procedure 8, unless otherwise designated. The digital signature on any document filed is deemed to be the signature of the attorney whose name appears first in the signature block of the document for the purpose of Texas Rules of Civil Procedure 13 and 57.

(c) A digital signature on an electronically filed document is deemed to constitute a signature by the filer for the purpose of authorizing the payment of document filing fees.

Rule 4.3 Time Document is Filed

(a) A filer may electronically transmit a document through an EFSP to TexasOnline 24 hours per day each and every day of the year, except during brief periods of state-approved scheduled maintenance which will usually occur in the early hours of Sunday morning.

(b) Upon ~~sending an electronically transmitted~~ the electronic transmission of a document to a filer's EFSP, the filer is deemed to have delivered the document to the clerk justice of the peace court and, subject to Rule 4.3(h), the document is deemed to be filed. If a document is electronically transmitted to the filer's filer's EFSP and is ~~electronically transmitted~~ on or before the last day for filing the same, the document, ~~if received by the clerk not more than ten days tardily,~~ shall be filed by the clerk court and deemed filed in time. A transmission report by the filer to the filer's filer's EFSP shall be prima facie evidence of date and time of transmission.

(c) On receipt of a filer's filer's document, the filer's filer's EFSP must send the document to TexasOnline in the required electronic file format along with an indication of the time the filer sent the document to the EFSP and the filer's filer's payment information. TexasOnline will electronically transmit to the filer an "acknowledgment" that the document has been received by TexasOnline. The acknowledgment will note the date and time that the electronically-transmitted document was received by TexasOnline.

(d) Upon receiving a document from a filer's EFSP, TexasOnline shall electronically transmit the document to the district clerk justice of the peace court. If the document was not properly formatted, Texas Online will transmit a warning to the filer's EFSP.

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(e) ~~Not later than the first business day after receiving a document from TexasOnline, the district clerk shall decide whether The justice of the document will be accepted for filing. The district clerk~~peace court shall accept the document for filing provided that the document is not misdirected and complies with all filing requirements. The ~~district clerk~~justice of the peace court shall handle electronically-transmitted documents that are filed in connection with an affidavit of inability to afford court costs in the manner required by TEX. R. CIV. P. 145. If the ~~clerk~~justice of the peace court fails to accept or reject a document within ~~the time period~~one business day, the document is deemed to have been ~~accepted and~~ filed.

(f) If the document is accepted for filing, the ~~district clerk~~justice of the peace court shall note the date and time of filing which, with the exception of subsection (h) below, shall be the date and time that the filer transmitted the document to the ~~filer's~~filer's EFSP. The ~~district clerk~~justice of the peace court shall inform TexasOnline of its action the same day action is taken. TexasOnline shall, on that same day, electronically transmit to the filer's EFSP a "confirmation" that the document has been accepted for filing by the ~~district clerk~~justice of the peace court. The EFSP will electronically transmit the confirmation to the filer. This confirmation will include an electronically "file-marked" copy of the front page of the document showing the date and time the ~~district clerk~~justice of the peace court considers the document to have been filed.

(g) If the document is not accepted for filing, the ~~district clerk~~justice of the peace court shall inform TexasOnline of its action, and the reason for such action, the same day action is taken. TexasOnline shall, on that same day, electronically transmit to the filer's EFSP an "alert" that the document was not accepted along with the reason the document was not accepted. The EFSP will electronically transmit the alert to the filer.

(h) Except in cases of ~~injunction~~, attachment, garnishment, sequestration, or distress proceedings, documents that serve to commence a civil suit will not be deemed to have been filed on Sunday when the document is electronically transmitted to the ~~filer's~~filer's EFSP, TexasOnline, or the ~~Clerk~~justice of the peace court on Sunday. Such documents will be deemed to have been filed on the succeeding Monday.

Rule 4.4 Filing Deadlines Not Altered

~~The electronic filing of a document does not alter any filing deadlines.~~

Rule 4.5 Multiple Documents

(a) Except as provided by subsection (b) below, a filer may include only one document in an electronic transmission to TexasOnline.

(b) A filer may electronically transmit a document to TexasOnline that includes another document as an attachment (e.g., a motion to which is attached a brief in support of the motion).

Rule 4.6-5 Official Document

- (a) The ~~district clerk~~justice of the peace court's file for a particular case may contain a combination of electronically~~-~~ filed documents and traditionally~~-~~ filed documents.
- (b) The ~~district clerk~~justice of the peace court may maintain and make available electronically~~-~~ filed documents in any manner allowed by law.

Rule 4.7-6 Registered E-mail Address Required

In addition to the information required on a pleading by TEX. R. CIV. P. 57, a filer must include ~~an~~the filer's registered e-mail address on any electronically~~-~~ filed document.

Rule 4.8-7 Document Format

- (a) Electronically-filed documents must be computer-formatted as specified by TexasOnline. Electronically-filed documents must also be formatted for printing on 8 ~~1/2~~1/2-inch by 11-inch paper.
- (b) An electronically~~-~~ filed pleading is deemed to comply with TEX. R. CIV. P. 45.

PART 5. SERVICE OF DOCUMENTS OTHER THAN CITATION

Rule 5.1 Electronic Service of Documents Permissible

- (a) In addition to the methods of serving documents (other than the citation to be served upon the filing of a cause of action) set forth in ~~TEX. R. CIV. P. 21a~~Tex. R. Civ. P. 21a, a filer may serve documents upon another party in the case by electronically transmitting the document to that party, either through TexasOnline to the party's registered e-mail address or directly to the party at the party's e-mail address, provided by the party upon agreeing to receive electronic service, or as updated by the party as provided in paragraph (c) below. Service in ~~such~~either manner is known as ~~"Electronic"~~electronic service," and is permissible in the circumstances set out in paragraph (b) below.
- (b) Documents may be electronically served upon a party only where that party has agreed to receive electronic service or where the court has ordered the ~~parties~~serving party to electronically serve documents.
- (c) By virtue of electronically filing or serving a document or ~~serving a document~~ or by agreeing to ~~accept~~receive electronic service, a filer additionally agrees to provide information regarding any change in his or her e-mail address to TexasOnline, the ~~district clerk~~justice of the peace court, and all parties in the case within 24 hours of the change.

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(d) A party who electronically files a document is not required to electronically serve documents upon other parties unless the court has ordered the ~~parties~~ party to electronically serve documents.

(e) A filer may electronically serve a document in instances where the document is traditionally filed as well as in instances where the document is electronically filed.

Rule 5.2 Completion of Service and Date of Service

(a) ~~Electronic service~~ Service shall be complete upon electronic transmission of the document by the filer to the party ~~at the party's e-mail address~~.

(b) Except as provided by subsection (c) below, the date of service shall be the date the electronic service is complete.

(c) When electronic service is complete after 5:00 p.m. (recipient's time), then the date of service shall be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

Rule 5.3 Time for Action After Service

~~Whenever a party has the right or is required to do some act within a prescribed period of time after service of a document upon the party and that document is electronically served, then three days shall be added to the prescribed period of time.~~

Rule 5.4 Certification of Service

(a) Documents to be electronically served upon another party shall be served before the time or at the same time that the document is filed.

(b) ~~A filer who document served electronically serves must contain a document upon another party shall make a written certification certificate of such electronic service that shall accompany the document when that document is filed. The written certification shall must~~ include, in addition to any other requirements imposed by the Texas Rules of Civil Procedure, the following:

(i) the filer's e-mail address ~~and, if available, the filer's~~ telecopier (facsimile fax machine) number;

(ii) the recipient's e-mail address;

(iii) the date and time of electronic service; and

APPENDIX C

(iv) a statement either that the document ~~was~~has been electronically served and that the electronic transmission was reported as complete, or that the document is being electronically served concurrent with the electronic filing of the document.

PART 6. ELECTRONIC ORDERS AND VIEWING OF OF ELECTRONICALLY-FILED DOCUMENTS

Rule 6.1 Courts Authorized to Make Electronic Orders

(a) A ~~judge~~justice of the peace may electronically sign an order by applying his or her digitized signature to the order. ~~Judges~~Justices of the peace are not required to electronically sign orders.

(b) Upon electronically signing an order, the ~~judge shall electronically forward the order to the district clerk who~~justice of the peace may treat~~maintain~~ the electronic order as ~~the~~an official copy of the order. ~~Alternatively, the district clerk may~~ or print the electronic order and treat the printed order as ~~the~~an official copy of the order.

(c) The ~~district clerk~~justice of the peace court may electronically scan a traditional court order. The scanned court order may then serve as the official copy of the court order. The ~~district clerk court~~ is not required to electronically scan traditional court orders in order to create official electronic court orders. Electronic scanning of traditional court orders is at the option of the ~~district clerk~~court.

Rule 6.2 Viewing of Electronically-filed Documents

(a) The ~~district clerk~~justice of the peace court shall ensure that all the records of the court, except those made confidential or privileged by law or statute, may be viewed in some format by all persons for free.

(b) Independent of the TexasOnline system and the requirement of viewing access described in subsection (a), ~~the district clerk a~~justice of the peace court may choose to provide for both filers and the general public to electronically view documents or court orders that have been electronically filed or scanned. Where such provision has been made, persons may electronically view documents or court orders that have been electronically filed or scanned.

(c) Nothing in this rule allows for the viewing of documents or court orders, in any form, that are legally confidential (e.g., papers in mental health proceedings) or otherwise restricted by judicial rule or order.

PART 7. MISCELLANEOUS PROVISIONS

Rule 7.1 Assigned Court to Resolve Disputes

In the event a dispute should arise involving the application of these rules or various electronic filing issues, the ~~justice of the peace~~ court assigned to the case in which the dispute arises shall decide any dispute.

Rule 7.2. Rule Guiding Interpretation:

These rules shall be liberally construed so as to avoid undue prejudice to any person on account of using the electronic filing system or sending or receiving electronic service in good faith.

ADOPTION OF RULES

The foregoing "[County name] County Local Rules of the District Courts and Statutory County Courts concerning the Electronic Filing of Documents" are hereby adopted by the undersigned district judges and statutory county court judges in [County name] County on this the _____ day of _____, 2004 and submitted to the Supreme Court of Texas for approval.

These rules shall become effective upon their approval by the Supreme Court of Texas.

[signature blocks]

TO: SCAC
FROM: Mike A. Hatchell – Chair of Rules of Judicial Admin. Subcommittee
DATE: August 23, 2007
RE: MDL Remand Rule 13.7

Dear SCAC Committee Members:

Previously, the chairman referred to the subcommittee on the Rules of Judicial Administration two items: (i) whether MDL judges should be given the power to appoint a master in chancery to assist the trial judges; and (ii) whether the MDL rules should be amended to provide specific guidelines regarding trial dates for cases remanded from the MDL judge to a conventional trial court. Below is the recommendation of the subcommittee with an attached draft rule.

RJA Rule 13.7 - Remand to Trial Court:

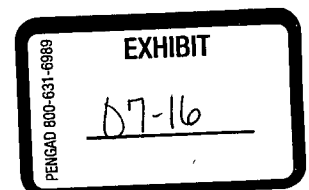
The rule is provided for discussion purposes in response to the letter from Justice Hecht and the referral to our subcommittee from our chairman.

Please note, however, that, after consideration of comments by Judge Christopher (an MDL judge) and Judge Dietz (who administers the Austin central docketing system) regarding the need for a detailed rule governing remand to a trial court from an MDL judge, the subcommittee has unanimously voted (with 5 members present) not to recommend adoption of this rule or any amendment of the present rule.

RJA Rules - Power to Appoint a Master in Chancery:

The subcommittee has also unanimously rejected (6 members voting) the suggestion that the RJA MDL rules be amended to provide that the MDL judge have the power to appoint a master in chancery.

The subcommittee followed the recommendations of Judges Christopher and Davidson that the ability to appoint additional judges filled any need that prompted this referral. The subcommittee adds its comment that it does not see any adverse effects from giving MDL judges the power to appoint a master, but it believes the MDL judges who administer the rules are the best arbiters of the need for changing the rules in matters like this.



Current Text:

Rule 13.7. Remand to Trial Court

(b) Remand. The pretrial court may order remand of one or more cases, or separable triable portions of cases, when pretrial proceedings have been completed to such a degree that the purposes of the transfer have been fulfilled or no longer apply.

Draft Text:

Rule 13.7. Remand to Trial Court

- (b) Remand. The pretrial court may remand one or more cases, or separable triable portions of cases, when pretrial proceedings have been completed to such a degree that the purposes of the transfer have been fulfilled or no longer apply.
- (c) Date for trial on remand. The pretrial court may determine the date by which the trial on remand must commence as necessary for the efficient operation of the MDL system.
- (1) Remand in Counties without a central docket system. If the trial court determines that it is unable to commence the trial on remand by the date specified, the trial court must notify the presiding administrative judge for the judicial region. The presiding administrative judge for the judicial region must appoint a qualified judge to preside over the remanded proceeding.
 - (2) Remand in Counties with a central docket system.
 - a. The pretrial court may specify that the remanded proceeding will be assigned and decided in due order according to the local rules regarding a central docket system.
 - b. The pretrial court may specify that the remanded proceeding be assigned to a trial court to preside over the remanded proceeding. The assigned trial court will be determined as follows.

- i. If the central docketing system in use in the county to which the proceeding is remanded provides for the assignment of a specific trial court to preside over a case pending in that county, that procedure will be utilized to select the trial court to preside over the remanded proceeding.
- ii. If the central docketing system in use in the county to which the case is remanded does not provide for the assignment of a specific trial court to preside over a proceeding, the judge assigned oversight for the administration of the central docketing system must assign a trial court to preside over the remanded proceeding.
- iii. If a trial court is not assigned as required by either the operation of the central docketing system or the judge administering the central docketing system within 28 days after the order remanding the proceeding and ordering that the proceeding be assigned for an identified trial court to preside over the remanded proceeding, the pretrial court may assign the trial court that will preside over the remanded proceeding.



RECEIVED

AUG 16 2007

The Supreme Court of Texas

CHIEF JUSTICE
WALLACE B. JEFFERSON

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

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OSLER MCCARTHY

August 13, 2007

Mr. G. Tommy Bastian
Barrett Burke Wilson
Castle Daffin & Frappier, L.L.P.
Suite 1000, Department 4000
15000 Surveyor Boulevard
Addison, Texas 75001

Dear Mr. Bastian:

Thank you for your recent letter advising the Court of needed amendments to Texas Rules of Civil Procedure 735 and 736. By copy on this letter, I am referring the matter to the Supreme Court Advisory Committee and ask that it be placed on the agenda for their next meeting.

The SCAC may agree that another Home Equity Loan Foreclosure Task Force is warranted. If so, I will enthusiastically welcome recommendations from you, Mr. Mike Baggett, and my esteemed former colleague James A. Baker on its membership.

In the meantime, I hope your travels will allow you to attend the meeting. It will begin at 9 a.m. on August 24, 2007, at the State Bar Building. For more information, please contact me directly or Jody Hughes at jody.hughes@courts.state.tx.us or 512.463.1353.

Sincerely,

A handwritten signature in cursive script that reads "Wallace B. Jefferson".

Wallace B. Jefferson
Chief Justice

c: Honorable Nathan Hecht
Jody Hughes
W. Mike Baggett
James A. Baker
Chip Babcock

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July 13, 2007

The Honorable Chief Justice Wallace B. Jefferson
Supreme Court of Texas
201 W. 14th Street
Austin, Texas 78701

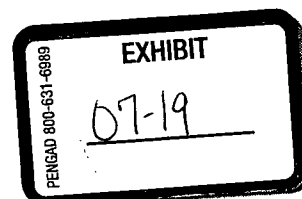
Re: HOME EQUITY LOAN FORECLOSURE TASK FORCE

Dear Chief Justice Jefferson:

Over the last few months, several members of the 1997 and 1999 Supreme Court Home Equity and Reverse Mortgage Rules Task Forces have discussed whether Tex. R. Civ. P. 735 and 736 needs to be reviewed to:

- (a) Add home equity line of credit loans to Rules 735 and 736, because this loan type was not added to Tex. Const. art. XVI §50(a)(6)(F) until September 13, 2003;
- (b) Add transferred tax lien loans to Rule 736 as required by Senate Bill 1520 that amends Tex. Tax Code §32.06(c)(2), effective September 1, 2007;
- (c) Make Rules 735 and 736 correspond to changes made in the last three legislative sessions to various sections of the Texas Property Code that relate to real property foreclosures;
- (d) Clarify how a reverse mortgage foreclosure must be conducted under Tex. Const. art. XVI §50(k)(11) if the maturing event is the death of the mortgagor and, after foreclosure, how title is transferred from the heirs-at-law of the mortgagor to the mortgagee; and
- (e) Update Rules 735 and 736 to resolve practical problems that have arisen in the foreclosure of home equity loans over the last nine years.

The purpose of this letter is to request the Texas Supreme Court to consider convening a new Foreclosure Task Force to review and recommend changes to Rules 735 and 736 under the chairmanship of W. Mike Baggett, who chaired both of the original Task Forces.

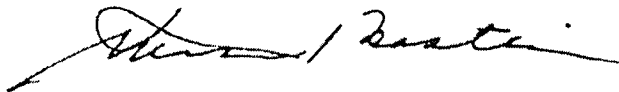


At your convenience, Mr. Baggett, James A. Baker, the Supreme Court's liaison to both of the original Task Forces, and the undersigned, who was the principal draftsman of the Rules, would be glad to respond to any questions that you may have, to include old and potential new members of the Task Force who would effectively represent the constituencies affected by Rules 735 and 736.

Mike Baggett's phone number is 214.745.5303, Judge Baker's phone number is 214.939.5403 and my phone number is 972.341.0539.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Tommy Bastian". The signature is fluid and cursive, with a long horizontal stroke at the end.

G. Tommy Bastian

cc: W. Mike Baggett
5400 Renaissance Tower
1201 Elm St.
Dallas, Texas 75270-2199

James A. Baker
1717 Main Street, Ste. 2800
Dallas, Texas 75201

GTB/ejh

DRAFT

**Texas Supreme Court Advisory Committee
Legislative Mandates Subcommittee
August 1, 2007**

Assignment: Develop proposed rule for dealing with “complex cases”

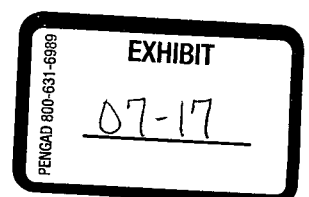
Based on discussions with Justice Hecht, Chip Babcock, as Chair of the Supreme Court Advisory Committee, has asked our Subcommittee to develop a proposed rule for dealing with “complex cases.” As you may be aware, the Texas Legislature considered such a proposal as part of Senate Bill 1204 during the recent 80th Legislative Session, but that bill did not pass. The Court would now like to consider alternatives for enacting such a proposal as a Court rule, in the absence of a legislative mandate.

Chip has suggested that the rule should provide that the presiding judge of each administrative region will appoint one judge who sits within that region to serve as the region’s Complex Case Judge. This judge would be assigned to preside over all Complex Cases in that region, and would sit in the court in which the case was filed (i.e., the judge would go to the case, not the case to the judge).

The rule would have to define a “Complex Case” (or at least provide factors for identifying a Complex Case) in detail, and would have to provide detailed procedures for the assignment of such a case to the Complex Case Judge and that Judge’s handling of the case. It could include procedures to require or allow for a more expedited resolution of the case (i.e., rocket-docket or fast-track resolutions).

This rule could be similar to the proposals in SB 1204, and draw conceptually from the old MDL Rule 11 (which applies only to cases filed prior to 2003). In fact, the Court could adopt it as a replacement to that rule.

For background information, see the following attached documents:



DRAFT

1. SB 1204, Article 8 (dealing with complex cases);
2. Govt Code Chap 74 (selected provisions dealing with administrative regions);
3. Tex. R. Judic. Admin Rule 11.

Article 8 of SB 1204, 80th Legislature, Introduced Version (did not pass)

COMPLEX CASES

SECTION 8.01. Subchapter H, Chapter 74, Government Code, is amended by adding Section 74.165 to read as follows:

Sec. 74.165. LIMITATION. If a civil case is being or has been considered for transfer under this subchapter by the judicial panel on multidistrict litigation, the case may not be referred to the judicial panel on complex cases under Subchapter I for a determination of whether the case is complex, regardless of whether the judicial panel on multidistrict litigation transfers the case.

SECTION 8.02. Chapter 74, Government Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. JUDICIAL PANEL ON COMPLEX CASES

Sec. 74.181. DEFINITION. In this subchapter, "panel" means the judicial panel on complex cases established under Section 74.182.

Sec. 74.182. JUDICIAL PANEL ON COMPLEX CASES. The judicial panel on complex cases consists of five members designated by the chief justice of the supreme court. The members of the panel must be active court of appeals justices or regional presiding judges.

Sec. 74.183. OPERATION AND RULES IN GENERAL. (a) The panel must operate according to rules of practice and procedure adopted by the supreme court under Section 74.024.

(b) The panel may prescribe additional rules for the conduct of its business not inconsistent with the law or rules adopted by the supreme court, including rules adopted

under Section 74.184.

Sec. 74.184. RULES TO GUIDE DETERMINATION OF WHETHER CASE IS COMPLEX. (a) The supreme court shall adopt rules regarding the types of civil cases that constitute complex cases.

(b) In developing the rules, the supreme court shall consider the following factors with respect to a type of civil case:

(1) whether there are likely to be a large number of separately represented parties;

(2) whether coordination may be necessary with related actions pending in one or more courts in other counties, states, or countries, or in a United States federal court;

(3) whether it would be beneficial for the case to be heard by a judge who is knowledgeable in the specific area of the law involved;

(4) whether it is likely that there will be numerous pretrial motions, or that pretrial motions will present difficult or novel legal issues that will be time-consuming to resolve;

(5) whether it is likely that there will be a large number of witnesses or a substantial amount of documentary evidence;

(6) whether it is likely that substantial post-judgment supervision will be required;

(7) whether it is likely that the amount in controversy will exceed an amount specified by the supreme court; and

(8) whether there is likely to be scientific, technical, medical, or other

evidence that requires specialized knowledge.

Sec. 74.185. DETERMINATION BY PANEL. (a) On the motion of a party to a civil case, the judge of the court in which the case is pending shall refer the case to the panel for a determination of whether the case constitutes a complex case.

(b) Using the rules adopted by the supreme court under Section 74.184, the panel shall determine whether the case is a complex case. The concurrence of three panel members is necessary to make the determination that the case is complex.

Sec. 74.186. ASSIGNMENT OF JUDGE. (a) On determining that a case is a complex case, the panel shall assign a judge to hear the case. The panel may assign:

(1) an active judge from the administrative region in which the court from which the case was referred is located; or

(2) a retired or former judge from any administrative region, provided that the retired or former judge agrees to travel to the administrative region described by Subdivision (1) to preside over the case.

(b) A retired or former judge assigned to preside over a complex case is not subject to an objection under Section 74.053, other than an objection made as authorized by Section 74.053(d).

Sec. 74.187. LIMITATION. If a civil case is or has been referred to the panel for a determination of whether the case is complex, the case may not be transferred by the judicial panel on multidistrict litigation as provided by Subchapter H, regardless of the determination made by the panel under this subchapter.

Sec. 74.188. MANDAMUS. On the determination by the panel that a case is not complex, a party to the case may apply to the supreme court for a writ of mandamus to

the panel for a determination to the contrary. The supreme court shall review the application under an abuse of discretion standard.

SECTION 8.03. Subchapter B, Chapter 51, Civil Practice and Remedies Code, is amended by adding Section 51.016 to read as follows:

Sec. 51.016. PERMISSIVE APPEALS IN MULTIDISTRICT LITIGATION AND COMPLEX CASES. The judge of a district court to which multidistrict litigation has been transferred under Section 74.162, Government Code, or the judge of a district court assigned to hear a complex case under Section 74.186, Government Code, may by written order permit an appeal from an interlocutory order made in the case if:

- (1) the interlocutory order is not otherwise appealable;
- (2) the interlocutory order involves a controlling question of law with respect to which there is a substantial ground for differences of opinion; and
- (3) an immediate appeal from the interlocutory order may materially advance the ultimate termination of the litigation.

SECTION 8.04. Not later than January 1, 2008, the Texas Supreme Court shall adopt rules regarding complex cases and designate the initial members of the judicial panel on complex cases required by Subchapter I, Chapter 74, Government Code, as added by this Act.

SECTION 8.05. The changes in law made by this article apply to cases pending on or after January 1, 2008.

Texas Supreme Court Advisory Committee
Subcommittee on Legislative Mandates
Assignment on "Complex Cases"

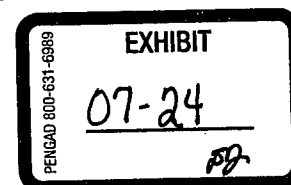
READING MATERIALS

A. General Materials (State Surveys, History, Discussion)

1. A Survey of Existing State Business and Technology Courts, Univ. of Maryland School of Law, March 2005 (available at www.law.umaryland.edu/journal/jbtl/documents/bus_tech_courts.doc)
2. Complex Litigation, Commercial Litigation, and Commercial Courts (table summary provided by L Parsley and TLR) (available at [http://www.tkbpl.com/WebPublisher2.nsf/Docs/FE28B165BF9DC6F9862573590071119C/\\$File/Complex Business Litigation and Commerical Courts.pdf](http://www.tkbpl.com/WebPublisher2.nsf/Docs/FE28B165BF9DC6F9862573590071119C/$File/Complex_Business_Litigation_and_Commerical_Courts.pdf))
3. A History of the Creation and Jurisdiction of Business Courts in the Last Decade, 60 Busin. Lawyer 1 (Nov. 2004) (available at <http://www.eckertseamans.com/file/pdf/publications/historybusinesscourts2.pdf>).
4. NCSC, Focus on Business and Complex Litigation Courts (available at http://www.ncsconline.org/wc/publications/Res_SpePro_CivilActionV1N1Pub.pdf)
5. NCSC, "Mass Torts" definition survey (available at <http://www.ncsconline.org/WC/Publications/MassTorts/Survey/MassTortCategoryDetail.asp?cat=2>)
6. NCSC, "Mass Torts" infrastructure survey (available at <http://www.ncsconline.org/WC/Publications/MassTorts/Survey/MassTortCategoryDetail.asp?cat=8>)
7. Junge, Sen. E. Reichgott, *Business Courts: Efficient Justice or Two-Tiered Elitism?*, 24 WM MITCHELL L. REV. 315 (1998).
8. Judicial Selection Methods in the United States (available at http://www.ajs.org/selection/sel_state-select-map.asp).

B. State-Specific Materials (Statutes, Rules, Orders, etc.)

1. **Arizona**
 - a. Final Report of the Commission to Study Complex Litigation, Sept. 2002 (available at www.supreme.state.az.us/courtserv/ComplexLit/ComplexLitFinal.pdf).
 - b. In re: Authorizing a Complex Civil Litigation Pilot Program Applicable in Maricopa County, Admin. Order 2002-107 (Ariz. S. Ct., Nov. 22, 2002) (available at <http://supreme.state.az.us/orders/admorder/Orders02/2002-107.pdf>).
 - c. Ariz. Rules of Civil Procedure 8(h), 8(i), 16.3, 39.1 (available at <http://supreme.state.az.us/orders/admorder/Orders02/2002-107.pdf>).
 - d. Complex Civil Litigation Pilot Program in Maricopa County: Joint Report to the Arizona Supreme Court, submitted by the Superior Court in



- Maricopa County and the Complex Civil Litigation Court Evaluation Committee (Dec. 2006) (available at <http://www.supreme.state.az.us/courtserv/ComplexLit/JointRptFinal.pdf>).
- e. In re: Extension of Authorization for the Complex Civil Litigation Pilot Program Applicable in Maricopa County, Admin. Order 2006-20060123 (Ariz. S. Ct., Dec. 20, 2006) (available at <http://supreme.state.az.us/orders/admorder/Orders06/2006-123.pdf>).
2. **California**
 - a. Complex Civil Litigation Program, Fact Sheet (available at <http://www.courtinfo.ca.gov/reference/documents/factsheets/complit.pdf>)
 - b. California Rules of Court 3.400 – 3.403 (available at http://www.courtinfo.ca.gov/rules/documents/pdfFiles/title_3.pdf).
 - c. Superior Court of California, County of Santa Clara, Complex Civil Litigation Pilot Program, Department Rules & Procedures (available at <http://www.sccomplex.org/model/handout.html>).
 - d. Guidelines, Complex Civil Litigation Department, Santa Clara County Superior Ct (available at <http://www.scefilng.org/GuideDepart17C.pdf>).
 3. **Colorado**
 - a. Final Report of Governor's Task Force on Civil Justice Reform, July 24, 2000, with Report of the Committee on Business Courts and Business Courts Operating Statement (available at <http://www.state.co.us/cjrtf/report/report.htm>) ((homepage with links to orders, agendas, and minutes, available at <http://www.state.co.us/cjrtf/>)).
 4. **Connecticut**
 - a. Notice to Attorneys re Complex Litigation Docket, Superior Court, Civil Division, June 3, 2002 (available at <http://www.jud.ct.gov/external/super/ComplexLitigationNotice.pdf>)
 5. **Delaware**
 - a. Administrative Directive No. 117, Delaware Supreme Court, April 1, 1998 (available at <http://courts.state.de.us/Courts/Supreme%20Court/Administrative%20Directives/?ad117.pdf>).
 - b. Del. Code Title 10 Section 346, 347 (SB 58), May 23, 2003 (available at <http://delcode.delaware.gov/sessionlaws/ga142/chp036.shtml>)
 6. **Florida**
 - a. Business Court Procedures for the Ninth Judicial Circuit Court, in and for Orange County, Florida (available at <http://www.ninja9.org/Courts/Business/Index-BC.htm>).
 - b. Administrative Order No. 2003-17-1, Ninth Judicial Circuit Court in and for Orange County, Florida (available at http://www.flcourts.org/gen_public/cmplx_lit/bin/reference/Business%20a

nd%20other%20Specialized%20Courts/Florida%209th%20Circ%20Business%20Court/Fla9thCircBusCtAO1.pdf).

- c. In re Creation of Section 40 (“Complex Business Litigation Section”) in the General Jurisdiction Division, Admin. Order 06-40, Eleventh Judicial Circuit, Miami-Dade County, Florida, November 2006 (available at http://reports.jud11.flcourts.org/Administrative_Orders/1-06-40-Creation%20Section%2040-Complex%20Business%20Litigation.pdf).
- d. Complex Business Litigation Section Procedures for the Eleventh Judicial Circuit Court, in and for Miami-Dade County, Florida (available at http://jud11.flcourts.org/programs_and_services/CBLCourtProcedure01-17-2007%20_2_.pdf).
- e. Complex Business Litigation Division, Admin. Order S-2007-004, Jan. 4, 2007, Thirteenth Judicial Cir., Hillsborough County, FL (available at <http://www.fljud13.org/AO/DOCS/2007-004.pdf>).
- f. Complex Business Litigation Division Procedures, for the Thirteenth Judicial Circuit, Hillsborough County, FL, Jan. 22, 2007 (available at <http://www.fljud13.org/pdfs/geniv/Complex%20Bus%20Litigation.pdf>)

7. Maine

- a. Maine Business and Consumer Court, General Scope and Purpose (available at <http://www.courts.state.me.us/mainecourts/bcd/index.html>).
- b. Establishment of the Business and Consumer Docket, Admin. Order JB-07-1, Maine Supreme Judicial Court, June 1, 2007 (with Pilot Rules for Business and Consumer Docket) (available at www.courts.state.me.us/opinions/adminorders/JB_07_1%20BCD.htm).

8. Maryland

- a. Maryland Business and Technology Court Task Force Report (available at <http://www.courts.state.md.us/finalb&treport.pdf>).
- b. Maryland Business and Technology Case Management Program: Final Report of the Implementation Committee of the Conference of Circuit Judges (available at <http://www.courts.state.md.us/b&t-ccfinal.pdf>).
- c. Maryland Rule 16-205 (available at <http://www.michie.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp=mdrules>).
- d. Baltimore City Circuit Court, Business and Technology Case Management Program (available at <http://www.baltocts.sailorsite.net/civil/BTCMP/BTCMP.html>)

9. Massachusetts

- a. Notice to the Bar, Business Litigation Session, Suffolk Superior Court (available at <http://www.gesmer.com/blog/businesslitigationrules1.pdf>).
- b. Administrative Directive No. 03-1, Superior Court Business Litigation Session, Extension and Expanded Venue, Feb. 12, 2003 (available at http://www.mass.gov/courts/courtsandjudges/courts/superiorcourt/03_01.pdf).

- 10. Michigan**
 - a. Mich. Compiled Laws Annotated §§ 600.8001-.8011 (2002) (available at [http://www.legislature.mi.gov/\(S\(h32nsf455oq42055smj2bu45\)\)/mileg.aspx?page=home](http://www.legislature.mi.gov/(S(h32nsf455oq42055smj2bu45))/mileg.aspx?page=home)).

- 11. Nevada**
 - a. Rule 2.1 of the Local Rules of Practice for the Second Judicial District Court of Nevada (available at <http://www.leg.state.nv.us/CourtRules/SecondDCR.html>)
 - b. Rules 1.33 & 1.61 of the Local Rules of Practice for the Eighth Judicial District Court of Nevada (available at: <http://www.co.clark.nv.us/ClarkCountyCourts/clerk/rules/EDCR.pdf>)

- 12. New Jersey**
 - a. Notice to the Bar re: Pilot Program for Handling Complex Commercial Cases in General Equity (available at <http://www.judiciary.state.nj.us/notices/n040624a.htm>)

- 13. New York**
 - a. A Brief History of the Commercial Division of the Supreme Court (available at <http://www.nycourts.gov/courts/comdiv/history.shtml>).
 - b. Section 202.70 Rules of the Commercial Division of the Supreme Court (available at <http://www.nycourts.gov/rules/trialcourts/202.shtml#70>).
 - c. Report of the Office of Court Administration to the Chief Judge on Commercial Division Focus Groups, July 2006 (available at <http://www.nycourts.gov/reports/ComDivFocusGroupReport.pdf>).
 - d. Haig, Bob, *Can New York's New Commercial Division Resolve Business Disputes as Well as Anyone?*, 1996 ANDREWS DEL. CORP. LIT. RPTR 19373 (1996).

- 14. North Carolina**
 - a. Introduction to the North Carolina Business Court (available at www.ncbusinesscourt.net).
 - b. General Rules of Practice and Procedure for the North Carolina Business Court, as revised July 31, 2006 (available at www.ncbusinesscourt.net).
 - c. Report on Activities of the North Carolina Business Court 1996-2000 (available at <http://www.ncbusinesscourt.net/ref/Report%20on%20Businesscourt%20Activities.htm>)
 - d. Report on Activities of the North Carolina Business Court 2000-2001 (available at <http://www.ncbusinesscourt.net/ref/2001%20General%20Assembly.htm>)
 - e. Chief Justice's Commission on the Future of the North Carolina Business Court, Final Report and Recommendation, Oct. 28, 2004 (available at <http://www.ncbusinesscourt.net/ref/Final%20Commission%20Report.htm>)

15. Oklahoma

- a. Okl. Statutes § 20-91.7, Business Court Divisions (authorizing Supreme Court to create business court divisions) (available through search at <http://www.lsb.state.ok.us/>)
- b. *Oklahoma House Speaker Lance Cagill: Business Courts would boost*, The Journal Record (Okl City), Feb. 22, 1987 (available at http://findarticles.com/p/articles/mi_qn4182/is_20070222/ai_n18627498/print).

16. Oregon

- a. Operating Statement, Commercial Court Program, Second Judicial District, Lane County Circuit Court (available at <http://www.ojd.state.or.us/lan/documents/commercial%20court%20operating%20statement%20september%2026%202006.pdf>).
- b. Rule 7.031 (“Commercial Court”), Supplementary Local Rules of the Circuit Court of Lane County, Oregon, Feb. 1 2007, (available at <http://www.ojd.state.or.us/lan/documents/commercial%20court%20slr%207%20031.pdf>)

17. Pennsylvania

- a. In re Commerce Case Management Program, Admin. Docket 02 of 2003, April 29, 2003 (available at <http://fjd.phila.gov/pdf/regs/2003/cptad02-03.pdf>).
- b. Philadelphia Courts, First Judicial District of Pennsylvania, Guidelines for Cases Assigned to Commerce Program (specific links available at <http://courts.phila.gov/common-pleas/trial/civil/commerce-program.html>).
- c. Allegheny County (Pittsburgh), Court of Common Pleas, Local Rule 249 (available at http://www.alleghencycourts.us/pdf/civil/local_rules/Business%20of%20the%20Courts.pdf)

18. Rhode Island

- a. R.I. Superior Court, Administrative Order 2001-09 (available at <http://www.courts.state.ri.us/superior/pdfadministrativeorders/2001-9.pdf>)

C. Texas Materials

1. Legislation/Statutes/Rules
 - a. SB 1204, Article 8 (80th Leg., 2007) (introduced version)
 - b. Texas: SB 1204, Article 8 (80th Leg., 2007) (engrossed version)
 - c. Tex. Govt. Code Chap 74 (administrative regions)
 - d. Tex. R. Jud. Admin. 11 (MDL)

2. Commentaries/Discussions
 - a. 36 Tex. Prac. Guide, County And Special District Law § 22.13 (2d ed., 2002).
 - b. Recommendations for Reform, The Texas Judicial System, TLR Foundation 2007 at 83-84, 93-103.
 - c. Analysis of SB 1204, Prepared by The Texas Association of Defense Counsel.

3. News Reports and Editorials
 - a. *Controversial Issue is Back*, Tex Parte Blog , Aug. 22, 2007 (available at http://texaslawyer.typepad.com/texas_lawyer_blog/2007/08/controversial-i.html).
 - b. *End Run*, Editorial, Houston Chronicle, August 29, 2007 (available at <http://www.chron.com/disp/story.mpl/editorial/5093994.html>).
 - c. *Court Advisory Committee's Look at Complex Case Rule Causes Concern*, Mary Alice Robbins, Tex. Lawyer, Sept. 3, 2007.

4. Correspondence
 - a. Letter, Rep. Bryan Hughes to Chip Babcock (8/22/07)
 - b. Letter, Sen. Jeff Wentworth to Chip Babcock (8/22/07)
 - c. Letter, Dallas County Civil District Judges to Chip Babcock (8/23/07)
 - d. Letter, Steve Bresnen to Chip Babcock (8/24/07)
 - e. Letter, Rep. Dan Gattis to Chip Babcock (8/24/07)
 - f. Email, Randy Gathany to Jeff Boyd (8/28/07) (with reply)
 - g. Letter, Chip Babcock to Rep. Dan Gattis (8/29/07)
 - h. Letter, Chip Babcock to Dallas County Civil District Judges (8/29/07)

CONTACTS

1. Hon. Julie Kocurek (Tex. Assn. of District Judges)
2. Hon. John Dietz (Tex. Assn. of District Judges)
3. Lee Parsley (Texans for Lawsuit Reform(?))
4. Senator Robert Duncan (Porter Wilson, Lisa Kaufman)
5. Hon. Ken Wise (Co-Chair, SBOT Task Force on Court Administration)
6. Martha Dickie (Co-Chair, SBOT Task Force on Court Administration)
7. Gary W. Hutton (Bexar County Civil Dist. Ct. Administrator)

Steve Bresnen & Associates

August 24, 2007

Mr. Charles L. Babcock, Chair
Supreme Court Advisory Committee
Jackson Walker L.L.P.
900 Main Street
Suite 6000
Dallas, Texas 75202

Dear Mr. Babcock:

I represent the Texas Family Law Foundation and the purpose of this letter is to express the Foundation's opposition to the adoption of so-called "complex case" rules.

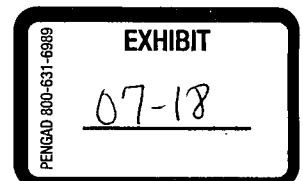
During the 80th Regular Legislative Session, Foundation President Jack Marr testified in the Senate State Affairs Committee against Senate Bill 1204 as filed. That bill allowed a case to be administratively removed from a sitting, elected judge in a proper venue and with clear jurisdiction over the case, if the case was considered "complex."

The bill suggested criteria for what might constitute a complex case that would apply to some family law cases. Moreover, the bill would have allowed appointment in each such case of another judge deemed sufficiently capable of handling that *particular* case, which we viewed as a repudiation of the qualifications of a judge duly elected by the people when the Texas Constitution and state statutes have conferred jurisdiction on that court for just such cases.

The unprecedented centralization of administrative authority within the courts of Texas represented by S.B. 1204 as filed was viewed as anathema to members of the Foundation. The document by which development of a complex case rule was transmitted to your Legislative Mandate Subcommittee proposes having a *single judge to handle all* "complex cases" within a judicial administrative region. That proposal would appear to constitute even greater centralization of power within the court system than S.B. 1204 proposed by funneling all such cases to a single person selected for these case not by Texas voters but by administrative presiding judges appointed by the Court.

While most family law cases would not seem to fit the complex case model, and family law cases could be exempted altogether from any complex case proposal, Foundation members typically practice in general jurisdiction courts. They work with these judges day in and day out and have heard the rank and file judiciary's strong opposition to the complex case proposal. In addition, what affects the judges' dockets affects the practices of family lawyers. While the Foundation's officers would review any specific complex case proposal that might be considered by the Court or the Legislature, I think the views of the elected judges of the trial courts in this state would weigh heavily, if not conclusively, on the results of that review.

5908 London Austin, Texas 78745
phone 512.917.0011 fax 512.326.5495
stevebresnen@sbcglobal.net



Mr. Charles L. Babcock
August 24, 2007
Page 2

Finally, I have been authorized by the Foundation to state its position that any policy for addressing complex cases should be addressed by the Legislature and not by court rules. The complex case provisions of S.B. 1204 were rejected by the 80th Legislature. Rather, there was wide support in the Legislature—and the Foundation—for directing additional resources to those courts facing particularly burdensome litigation. Coupled with the power of elected judges to get help at their request in the form of visiting judges, the Foundation believes that providing additional resources to our elected judges is the sound approach to this matter.

Accordingly, we respectfully request that your committee defer to the Legislature and table further work on complex case rules.

Thanks for the work you do for Texas.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Bresnen". The signature is fluid and cursive, with a prominent initial "S" and "B".

Steve Bresnen
Attorney at Law

Cc: Justices, Texas Supreme Court

MEMORANDUM

TO: SCAC members
FROM: Jody Hughes
RE: TRAP Amendments to Require Redaction of Minors' Names

August 22, 2007

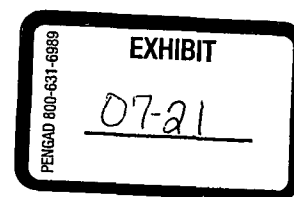
Below is a revised version of proposed TRAP 9.8 drafted based on the discussion at the June SCAC meeting. It has been reviewed by Bill Dorsaneo and Justice Patterson but not the remainder of the appellate rules subcommittee. The draft rule below allows use of either initials (single or multiple) or pseudonyms and also extends beyond parties' briefs to include court opinions; I deliberately did not include court orders or judgments, since those are not as widely circulated as opinions and courts might prefer to use minors' true names in judgments even while using initials or pseudonyms in their opinions. I also added specific authority to order substitution in other cases as appropriate, and to issue sanctions for willful or persistent rule violations.

Rule 9. Papers Generally

9.8 Use of Minors' Initials in Parental-Rights Termination Appeals.

(a) In Appellate Briefing and Opinions. In an appeal of a suit under Family Code Title 2 (Child in Relation to the Family), Title 3 (Juvenile Justice Code), Title 4 (Protective Orders and Family Violence), or Title 5 (The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship), a minor child shall be identified only by one or more initial letters of the minor's name or by a pseudonym in any party's brief, petition, motion, or other submission to an appellate court, or in any opinion issued by an appellate court, unless the court orders otherwise. An appellate court may order the parties to substitute initials or pseudonyms for minors' names in other appropriate cases involving minor children not included the case categories identified above, and a court may make such substitutions in opinions in such other cases where substitution of initials or pseudonyms is not required by this rule. An appellate court may sanction a party or an attorney for willful or persistent violations of either this rule or a court order issued pursuant to this rule.

(b) In Copies of Appendix Items. In an appeal of any category of case identified in subsection (a), for any necessary or optional appendix items to be included with a party's brief, petition, or motion, copies of any appendix items containing the name of a minor child shall be redacted so that the minor is identified only by one or more the initial letters of the minor's name or by a pseudonym. Nothing in this rule authorizes alteration of the original appellate record except as specifically authorized by court order.



Garnishment Revisions

Draft 4

July 30, 2007

SECTION 4. GARNISHMENT

Rule 658a. Bond for Garnishment

No writ of garnishment shall issue before final judgment until the party applying therefore has filed with the ~~officer~~ clerk of a district or county court or a justice of the peace authorized to issue such writ a bond payable to the defendant in the amount fixed by the court's order, with sufficient surety or sureties as provided by statute, conditioned that the plaintiff will prosecute his suit to effect and pay to the extent of the penal amount of the bond all damages and costs as may be adjudged against him for wrongfully suing out such writ of garnishment.

After notice to the opposite party, either before or after the issuance of the writ, the defendant or plaintiff may file a motion to increase or reduce the amount, of such bond, or to question the sufficiency of the sureties. Upon hearing, the court shall enter its order with respect to such bond and the sufficiency of the sureties.

Should it be determined from the garnishee's answer if such is not controverted that the garnishee is indebted to the defendant, or has in his hands effects belonging to the defendant, in an amount or value less than the amount of the debt claimed by the plaintiff, then after notice to the defendant the court in which such garnishment is pending upon hearing may reduce the required amount of such bond to double the sum of the garnishee's indebtedness to the defendant plus the value of the effects in his hands belonging to the defendant.

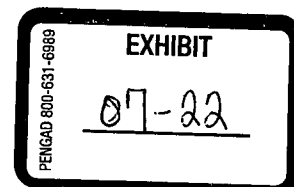
Rule 661. Form of Writ

The following form of writ may be used:

"The State of Texas

To E. F., Garnishee, greeting:

Whereas, in the _____ Court of _____ County (if a justice court, state also the number of the precinct), in a certain cause wherein A.B. is plaintiff and C.D. is defendant, the plaintiff claiming an indebtedness against the said C.D. of _____ dollars, besides interest and costs of suit, has applied for a writ of garnishment against you, E.F.; therefore you are hereby commanded to be and appear before said court at _____ in said county (if the writ is issued from the county or district court, here proceed: 'at 10 o'clock a.m. on the Monday next following the expiration of twenty days from the date of service hereof.' If the writ is issued from a justice of the peace court, here proceed: 'at or before 10 o'clock a.m. on the Monday next after the expiration of ten days from the date of service hereof.' In either event, proceed as follows:) then and there to answer upon oath what, if anything, you are indebted to the said C.D., and were when this writ was served upon you, and what effects, if any, of the said C.D. you have in your possession, and had when this writ was served, and what other persons, if any, within your knowledge, are indebted to the said C.D. or have effects belonging to him in their possession. You are further commanded NOT to pay to



defendant any debt or to deliver to him any effects, pending further order of this court. Herein fail not, but make due answer as the law directs.”

Rule 662. Delivery of Writ

The writ of garnishment shall be ~~dated and tested~~ attested with the seal of the office of the clerk or justice of the peace as other writs, and may be delivered to ~~the~~ (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than 18 years of age, (3) any person certified under order of the Supreme Court by the ~~office~~ clerk of the district or county court or justice of the peace who issued it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

Rule 663. Execution and Return of Writ

The writ of garnishment may be executed by (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than 18 years of age, or (3) any person certified under order of the Supreme Court. The ~~sheriff or constable~~ person receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof as of other citations.

Rule 663a. Service of Writ on Defendant

The defendant shall be served in any manner prescribed for service of citation or as provided in Rule 21a with a copy of the writ of garnishment, the application, accompanying affidavits and orders of the court as soon as practicable following the service of the writ. There shall be prominently displayed on the face of the copy of the writ served on the defendant, in ten-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

“To _____, Defendant:

You are hereby notified that certain properties alleged to be owned by you have been Garnished. If you claim any rights in such property, you are advised:

“YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISOLVE THIS WRIT.”

Rule 664. Defendant May Replevy

VERSION # 1

At any time before judgment, should the garnished property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the ~~office~~ sheriff or constable who levied the writ, the court, or the clerk of a county or district court, payable to plaintiff, in the amount fixed by the court’s order, or, at the defendant’s option, for the value of the property or indebtedness, sought to be replevied (to be estimated by the ~~office~~ sheriff or constable, court or

the clerk of a county or district court), plus one year's interest thereon at the legal rate from the date of the bond, conditioned that the defendant, garnishee, shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the ~~officer~~ sheriff or constable, or the clerk of the county or district court or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that garnished, for the property garnished. Provided that there has been located sufficient property of the defendant's to satisfy the order of garnishment, the court may authorize substitution of one or more items of defendant's property for all or for part of the property garnished. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from garnishment shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of garnishment or modification thereof shall be terminated. Garnishment of substituted property shall be deemed to have existed from date of garnishment on the original property garnished, and no property on which liens have become affixed since the date of garnishment of the original property may be substituted.

VERSION # 2

At any time before judgment, should the garnished property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the ~~officer~~ sheriff or constable who levied the writ, or the court, payable to plaintiff, in the amount fixed by the court's order, or, at the defendant's option, for the value of the property or indebtedness, sought to be replevied (to be estimated by the ~~officer~~ sheriff or constable, or the court), plus one year's interest thereon at the legal rate from the date of the bond, conditioned that the defendant, garnishee, shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the ~~officer~~ sheriff or constable, or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that garnished, for the property garnished. Provided that there has been located sufficient property

of the defendant's to satisfy the order of garnishment, the court may authorize substitution of one or more items of defendant's property for all or for part of the property garnished. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from garnishment shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of garnishment or modification thereof shall be terminated. Garnishment of substituted property shall be deemed to have existed from date of garnishment on the original property garnished, and no property on which liens have become affixed since the date of garnishment of the original property may be substituted.

VERSION # 3

At any time before judgment, should the garnished property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the ~~officer~~ sheriff or constable who levied the writ, the court, or the clerk of a county or district court, payable to plaintiff, in the amount fixed by the court's order, or, at the defendant's option, for the value of the property or indebtedness, sought to be replevied (to be estimated by the ~~officer~~ sheriff or constable if the writ of garnishment was served by the sheriff or constable), plus one year's interest thereon at the current legal rate from the date of the bond, conditioned that the defendant, garnishee, shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the ~~officer~~ sheriff or constable, or the clerk of the county or district court or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that garnished, for the property garnished. Provided that there has been located sufficient property of the defendant's to satisfy the order of garnishment, the court may authorize substitution of one or more items of defendant's property for all or for part of the property garnished. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from garnishment shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of garnishment or modification thereof shall be terminated. Garnishment of substituted property shall be deemed to have existed from date of garnishment on the original property garnished, and no property on which liens have become affixed since the date of garnishment of the original property may be substituted.

Rule 669. Judgment for Effects

Should it appear from the garnishee's answer, or otherwise, that the garnishee has in his possession, or had when the writ was served, any effects of the defendant liable to execution, including any certificates of stock in any corporation or joint stock company, the court shall

render a decree ordering sale of such effects under execution in satisfaction of plaintiff's judgment and directing the garnishee to deliver them, or so much thereof as shall be necessary to satisfy plaintiff's judgment, to the proper ~~office~~ sheriff or constable for that purpose.

Rule 670. Refusal to Deliver Effects

Should the garnishee adjudged to have effects of the defendant in his possession, as provided in the preceding rule, fail or refuse to deliver them to the sheriff or constable on such demand, the ~~office~~ sheriff or constable shall immediately make return of such failure or refusal, whereupon on motion of the plaintiff, the garnishee shall be cited to show cause upon a date to be fixed by the court why he should not be attached for contempt of court for such failure or refusal. If the garnishee fails to show some good and sufficient excuse for such failure or refusal, he shall be fined for such contempt and imprisoned until he shall deliver such effects.

Rule 672. Sale of Effects

The sale so ordered shall be conducted in all respects as other sales of personal property under execution; and the ~~office~~ sheriff or constable making such sale shall execute a transfer of such effects or interest to the purchaser with a brief recital of the judgment of the court under which the same was sold.

Comment-----2007

VERSION # 1

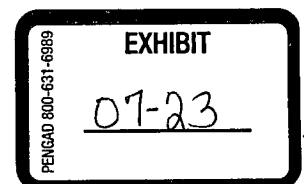
The 2006 amendments to Rule 103 allows private process servers to serve citation and other notices, writs, orders and papers issued by the court, except for writs that require the actual taking of property. Although a writ of garnishment may be served by a private process server under Rule 663 and Rule 663a, only a sheriff or constable may accept delivery of the effects of the garnishee under Rule 670, or conduct a sale of the effects under Rule 672. The replevy bond in Rule 664 may be approved by the sheriff or constable who levied the writ, or by the clerk of the county or district court or by the court.

VERSION # 2

The 2006 amendments to Rule 103 allows private process servers to serve citation and other notices, writs, orders and papers issued by the court, except for writs that require the actual taking of property. Although a writ of garnishment may be served by a private process server under Rule 663 and Rule 663a, only a sheriff or constable may accept delivery of the effects of the garnishee under Rule 670, or conduct a sale of the effects under Rule 672. The replevy bond in Rule 664 may be approved by the sheriff or constable who levied the writ, or by the court.

Admonitory Instruction Subcommittee
Report to Supreme Court Advisory Committee
[date], 2007

1. **The Draft:** The Pattern Jury Charge Oversight Committee has prepared a plain language draft of the admonitory instructions ordered by the Court pursuant to Rule 226a, which are also included in the Pattern Jury Charges. The draft is the culmination of a plain language project that included field testing of current Pattern Jury Charges and plain language revisions. The field testing determined that average jurors often do not understand some words used in a jury charge. Wayne Schiess, a member of the Committee, and a member of the Legal Writing faculty at the University of Texas School of Law, prepared the draft of the admonitory instructions, which was discussed at length by a subcommittee of the PJC Oversight Committee and the full committee. Our final report is included here.
2. **Instructions under consideration:** Rule 226a now contains PJC 100.1 (Instructions to Jury Panel Before Voir Dire Examination), 100.2 (Instructions to Jury after Jury Selection), 100.3 (Charge of the Court) and 100.5 (Instructions to Jury after Verdict). The PJC has a number of other admonitory instructions that are not included in the Supreme Court's Order under Rule 226a (bifurcated trial, if permitted to separate, disagrees about testimony, circumstantial evidence, proximate cause, deadlocked jury, note-taking, privilege-no adverse interest).
3. **What we did:**
 - a. **PJC admonitory instructions.** We looked at all the PJC admonitory instructions even though they are not part of the Supreme Court 226a Order. Although not technically part of our report to the SCAC, we have included all of our recommendations.
 - b. **Additional admonitory instructions.** We polled judges for suggested instructions, and added the instruction on language interpreters, which we recommend be included as an optional instruction under Rule 226a. We also recommend that the instruction on juror note-taking be included as an additional instruction under Rule 226a. And we included the rules on juror oaths (Rules 226 and 236).



Admonitory Instruction Subcommittee
PJC Oversight Committee

Report to Supreme Court Advisory Committee
On Plain Language Rewrite of Admonitory Instructions

June 28, 2007

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**Current Texas Rule of Civil Procedure
226a(I) (PJC 100.1)**

Instructions to Jury Panel and Jury

**Ladies and Gentlemen of the Jury
Panel:**

The case that is now on trial is _____ vs. _____. This is a civil action which will be tried before a jury.

Your duty as jurors will be to decide the disputed facts. It is the duty of the judge to see that the case is tried in accordance with the rules of law. In this case, as in all cases, the actions of the judge, parties, witnesses, attorneys and jurors must be according to law.

The Texas law permits proof of any violation of the rules of proper jury conduct. By this I mean that jurors and others may be called upon to testify in open court about acts of jury misconduct. I instruct you, therefore, to follow carefully all instructions which I am now going to give you, as well as others which you will receive while this case is on trial. If you do not obey the instructions I am about to give you, it may become necessary for another jury to retry this case with all of the attendant waste of your time here and the expense to the litigants and the taxpayers of this county for another trial.

**Proposed Texas Rule of Civil Procedure
226a(I) (PJC 100.1)**

**Instructions to the panel before jury
selection**

Members of the Jury Panel [*or Ladies and Gentlemen*]: We are about to begin selecting a jury. Right now, you are members of what we call a panel. After the lawyers ask you some questions, 12 of you will be chosen for the jury. But before we start asking questions and choosing jurors, I will give you some information and then go over the instructions.

First of all, we thank you for being here. Even if you are not chosen for the jury, you are performing a valuable service that is your right and duty as a citizen of a free country.

Now I will give you some background about this case. This is a civil trial, which means it is a lawsuit that is not a criminal case. The parties are as follows: The plaintiff is _____, and the defendant is _____.

[description of the current case]

Jurors sometimes ask what it means when I say we want jurors who do not have any bias or prejudice. The word "prejudice" comes from "pre-judge" or judging something before you have all the information. We want jurors who will not pre-judge the case and who will decide the case based only on the evidence presented in court and the law that I explain.

If you are chosen for the jury, you will listen to the evidence and decide the facts of the case. I, as the judge, will manage the process and make sure the law is applied

<p>These instructions are as follows:</p> <ol style="list-style-type: none">1. Do not mingle with nor talk to the lawyers, the witnesses, the parties, or any other person who might be connected with or interested in this case, except for casual greetings. They have to follow these same instructions and you will understand it when they do.2. Do not accept from, nor give to, any of those persons any favors however slight, such as rides, food or refreshments.3. Do not discuss anything about this case, or even mention it to anyone whomsoever, including your wife or husband, nor permit anyone to mention it in your hearing until you are discharged as jurors or excused from this case. If anyone attempts to discuss the case, report it to me at once.4. The parties through their attorneys have the right to direct questions to each of you concerning your qualifications, background, experiences and attitudes. In questioning you, they are not meddling in your personal affairs, but are trying to select fair and impartial jurors who are free	<p>correctly. I assure you we will handle this case as fast as we can, but we cannot rush things. We have to do it fairly and we have to follow the law.</p> <p>Every juror must obey the instructions that I am about to give you. If you do not follow these instructions, I may have to order a new trial and start this process over again. That would be a waste of time and money. It is also possible that you may be held in contempt or punished in some other way, so please listen carefully to these instructions.</p> <p>These are the instructions:</p> <ol style="list-style-type: none">1. Remember that you took an oath that you will tell the truth, so be honest when the lawyers ask you questions, and always give complete answers. Sometimes a lawyer will ask a question of the whole panel instead of just one person. If the question applies to you, raise your hand and keep it raised until you are called on.2. Do not mingle or talk with the lawyers, the witnesses, the parties, or anyone involved in the case. You can exchange casual greetings like "hello" and "good morning." Other than that, do not talk with them at all. They have to follow these instructions too, so they will not be offended. Also, do not accept any favors from the lawyers, the witnesses, the parties, or anyone involved in the case, and do not do any favors for them. This includes
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from any bias or prejudice in this particular case.

a. Do not conceal information or give answers which are not true. Listen to the questions and give full and complete answers.

b. If the attorneys ask some questions directed to you as a group which require an answer on your part individually, hold up your hand until you have answered the questions.

Do you understand these instructions? If not, please let me know now. Whether you are selected as a juror for this case or not, you are performing a significant service which only free people can perform. We shall try the case as fast as possible consistent with justice, which requires a careful and correct trial. If selected on the jury, unless I instruct you differently, you will be permitted to separate at recesses and for meals, and at night. The attorneys will now proceed with their examination.

favours such as giving rides and food. We ask you not to mingle or accept favours to avoid looking like you are friendly with one side of the case.

3. Do not discuss this case with anyone, even your spouse or friend. Do not allow anyone to discuss the case with you or in front of you. If anyone tries to discuss the case with you, tell me. We ask you not to discuss the case with others because we do not want you to be influenced by something other than the evidence presented in court.

Do you understand these instructions? If you do not, please tell me now.

The lawyers will now begin asking questions.

**Current Texas Rule of Civil Procedure
226a(II) (PJC 100.2)**

Oral Instructions

Ladies and Gentlemen:

By the oath which you take as jurors, you become officials of this court and active participants in the public administration of justice. I now give you further instructions which you must obey throughout this trial.

It is your duty to listen to and consider the evidence and to determine fact issues later submitted to you, but I, as judge, will decide matters of the law. You will now receive written instructions which you will observe during this trial, together with such other instructions as I may hereafter give, or as heretofore I have given to you.

(A copy of the written instructions set out below in this Section II shall thereupon be handed to each juror.)

As you examine the instructions which have just been handed to you, we will go over them briefly together. The first three instructions have previously been stated, and you will continue to observe them throughout the trial. These and the other instructions just handed to you are as follows:

(The written instructions set out below in this Section II shall thereupon be read by the court to the jury.)

Counsel, you may proceed.

**Proposed Texas Rule of Civil Procedure
226a(II) (PJC 100.2)
Instructions for the jury after it has been
selected**

Members of the Jury [*or Ladies and Gentlemen*]: You have now been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

Written Instructions

[New Electronic Device Instruction]

1. Do not mingle with nor talk to the lawyers, the witnesses, the parties, or any other person who might be connected with or interested in this case, except for casual greetings. They have to follow these same instructions and you will understand it when they do.
2. Do not accept from, nor give to, any of those persons any favors however slight, such as rides, food or refreshments.
3. Do not discuss anything about this case, or even mention it to anyone whomsoever, including your wife or husband nor permit anyone to mention it in your hearing until you are discharged as jurors or excused from this case. If anyone attempts to discuss the case, report it to me at once.
4. Do not even discuss this case among yourselves until after you have heard all of the evidence, the court's charge, the attorneys' arguments and until I have sent you to the jury room to consider your verdict.
5. Do not make any investigation about the facts of this case. Occasionally we have a juror who privately seeks out information about a case on trial. This is improper. All evidence must be presented in open court so that each side may question the

[hand out the written instructions]

What you are receiving is a set of written instructions, and I am going to discuss them with you now. Some of them you have heard before, and some are new.

1. It is your duty to listen to and consider the evidence and to determine fact issues later submitted to you.
2. Please turn off all cell phones and electronic devices. Do not record or photograph any part of these court proceedings.
3. Please remember what I said about not mingling with those involved in this case, not accepting favors from those involved with this case, and not discussing the case with anyone. We ask you not to mingle or accept favors to avoid looking like you are friendly with one side of the case. We ask you not to discuss the case with others because we do not want you to be influenced by something other than the evidence presented in court.
4. Please discuss this case only with other jurors and only after I have given you the final instructions and sent you to the jury room to reach a verdict. This will be after you have heard all the evidence, all my instructions, and all the lawyers' arguments. We ask you not to discuss the case with your fellow jurors until the end of the case so that you do not form opinions about the case before you have heard everything.
5. Do not investigate this case on your

witnesses and make proper objection. This avoids a trial based upon secret evidence. These rules apply to jurors the same as they apply to the parties and to me. If you know of, or learn any-thing about, this case except from the evidence admitted during the course of this trial, you should tell me about it at once. You have just taken an oath that you will render a verdict on the evidence submitted to you under my rulings.

6. Do not make personal inspections, observations, investigations, or experiments nor personally view premises, things or articles not produced in court. Do not let anyone else do any of these things for you.

7. Do not tell other jurors your own personal experiences nor those of other persons, nor relate any special information. A juror may have special knowledge of matters such as business, technical or professional matters or he may have expert knowledge or opinions, or he may know what hap-pened in this or some other lawsuit. To tell the other jurors any of this information is a violation of these instructions.

8. Do not discuss or consider attorney's fees unless evidence about attorney's fees is admitted.

9. Do not consider, discuss, nor speculate whether or not any party is or is not protected in whole or in part by insurance of any kind.

10. Do not seek information contained in law books, dictionaries, public or private records or elsewhere, which is not admitted in evidence.

At the conclusion of all the evidence, I may submit to you a written charge asking

own. Do not inspect places or items from this case unless they are presented as evidence in court. Do not let anyone do those things for you. This rule is very important because we cannot have a trial based on evidence not presented in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom. All the evidence must be presented in open court so the parties and their lawyers can test it and object to it. For example:

- Do not try to get information about the case from outside this courtroom.
- Do not go to places mentioned in the case to inspect the places for yourself.
- Do not look things up in law books, dictionaries, public records, or on the Internet.

These rules are very important. If a juror does any of these, tell that person to stop and report it to me immediately.

6. Do not tell other jurors your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another case. But keep it to yourself. Telling other jurors about it is wrong because it means the jury will be considering things that were not presented in court.

you some specific questions. You will not be asked, and you should not consider, whether one party or the other should win. Since you will need to consider all of the evidence admitted by me, it is important that you pay close attention to the evidence as it is presented.

The Texas law permits proof of any violation of the rules of proper jury conduct. By this I mean that jurors and others may be called upon to testify in open court about acts of jury misconduct. I instruct you, therefore, to follow carefully all instructions which I have given you, as well as others which you later receive while this case is on trial.

You may keep these instructions and review them as the case proceeds. A violation of these instructions should be reported to me.

7. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.

8. Do not consider insurance or who might be covered by insurance unless I tell you to. Do not guess about who might or might not be covered by insurance.

Do you understand these instructions? If you do not, please tell me now.

After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked which side should win, so do not be concerned about that. Instead, you will need to answer the specific questions I give you.

As I have said before, if you do not follow these instructions, I may have to order a new trial and start this process over again.

Keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.

**Current Texas Rule of Civil Procedure
226a(III) (PJC 100.3)
Court's Charge**

Ladies and Gentlemen of the Jury:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the Court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern

**Proposed Texas Rule of Civil Procedure
226a(III) (PJC 100.3)
General Instructions to the jury before
answering the questions and reaching a
verdict**

Members of the Jury [*or Ladies & Gentlemen*]: You are about to go to the jury room to reach a verdict. This means you will apply the law and answer the questions I will give you.

Remember: You are to make up your own minds about the facts. You are the only judges of the credibility of the witnesses and the weight to give their testimony. But on matters of the law, you must follow the instructions I have given you before and those I will give you now. Please remember what I said about not discussing the case until you are in the jury room.

In just a moment I will be giving you a set of questions. Here are the instructions for answering the questions:

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on what was presented in court and on the law I explain to you. Please remember what I have said about not sharing your own special knowledge or experiences. This case must be decided only on the facts presented in court and on the law I give you.
3. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

yourselves with the effect of your answers.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. Unless otherwise instructed, you may answer a question upon the vote of ten or more jurors. If you answer more than one question upon the vote of ten or more jurors, the same group of at least ten of you must agree upon the answers to each of those questions.

4. All the questions and answers are important. No one should say that any question or answer is not important.

5. A yes answer must be based on a preponderance of the evidence unless you are told otherwise.

- The term "preponderance of the evidence" is a legal phrase that means the greater weight and degree of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a yes answer, then answer no.

Note: Testing revealed a lack of comprehension of this term, but the Committee recommends no change.

- Whenever a question requires an answer other than yes or no, your answer must be based on a preponderance of the evidence unless you are told otherwise.

6. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win.

7. Do not answer questions by drawing straws or by any method of chance.

8. Some questions might ask you for a dollar amount. Do not decide on a dollar amount by adding up each juror's amount and then figuring the average.

9. Do not trade your answers. For example, do not say "I will answer this question your way if you answer

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

[Definitions, questions and special instructions given to the jury will be transcribed here.]

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

Judge Presiding

another question my way.”

10. The answers to the questions must be based on the decision of at least 10 of the 12 jurors unless otherwise instructed. The same 10 jurors must agree on all the answers and then to the entire verdict. Specifically—

- Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.
- If all 12 jurors agree, the presiding juror, or the elected foreperson, signs the verdict certificate for the entire jury.
- If all 12 jurors do not agree, the 10 or more jurors who agree each sign the verdict certificate.

As I have said before, if you do not follow these instructions, I may have to order a new trial and start this process over again. That would be a waste of time and money. It is also possible that you may be held in contempt or punished in some other way. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

[Definitions, questions and special instructions given to the jury will be transcribed here.]

When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

The presiding juror has these duties:

- The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

[Note: The Committee felt that this instruction was not necessary if each juror receives a copy of the charge.]

- To preside over your deliberations. This means the presiding juror will take the lead in discussions, write down the answers that 10 or more of you agree on, and see that you follow the instructions.
- To give written questions or comments to the judge. The presiding juror should give them to the bailiff, who will give them to me.
- To vote on the answers to questions, just as all jurors do.
- To sign the verdict if all 12 jurors agree or to get the signatures of all those who agree if the verdict is not by all 12.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Once you have reached a verdict, the presiding juror must notify the bailiff. Do not notify the bailiff that you have reached a verdict until—

1. you have answered all the questions,

	<ol style="list-style-type: none">2. the presiding juror has written down the answers, and3. the presiding juror has signed the verdict certificate if all 12 jurors agree, or had all those who agree sign the verdict certificate if it is not signed by all 12.
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**Current Texas Rule of Civil Procedure
226a(III) on Exemplary Damages**

If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D1 and D2, instructions in substantially the following form must immediately precede such questions:

Preceding question (ii):

Answer Question (ii) for D1 only if you unanimously answered "Yes" to Question[s] (i) regarding D1. Otherwise, do not answer Question (ii) for D1. [Repeat for D2.]

You are instructed that in order to answer "Yes" to [any part of] Question (ii), your answer must be unanimous. You may answer "No" to [any part of] Question (ii) only upon a vote of 10 or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

Answer Question (iii) for D1 only if you answered "Yes" to Question (ii) of D1.

**Proposed Texas Rule of Civil Procedure
226a(III)/Proposed New PJC 100.3A
Exemplary Damages**

If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D1 and D2, instructions in substantially the following form must immediately precede such questions:

Preceding question (ii):

Answer Question (ii) for D1 only if all of you answered "Yes" to Question[s] (i) regarding D1. Otherwise, do not answer Question (ii) for D1. [Repeat for D2.]

You are instructed that in order to answer "Yes" to [any part of] Question (ii), you must unanimously agree (all of you) to your answer. You may answer "No" to [any part of] Question (ii) only upon a vote of 10 or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

Answer Question (iii) for D1 only if you

<p><i>Otherwise, do not answer Question (iii) for D1. [Repeat for D2.]</i></p> <p><i>You are instructed that you must unanimously agree on the amount of any award of exemplary damages.</i></p> <p><i>These examples are given by way of illustration.]</i></p>	<p><i>answered "Yes" to Question (ii) of D1. Otherwise, do not answer Question (iii) for D1. [Repeat for D2.]</i></p> <p><i>You are instructed that you must unanimously agree (all of you) on the amount of any award of exemplary damages.</i></p> <p><i>These examples are given by way of illustration.]</i></p>
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**Current Texas Rule of Civil Procedure
226a(III) Certificates**

[The jury must certify to every answer in the verdict. The presiding juror may, on the jury's behalf, make the required certificate for any answers on which the jury is unanimous. For any answers on which the jury is not unanimous, the jurors who agree must each make the required certificate. If none of the jury's answers must be unanimous, the following certificate should be used:

CERTIFICATE

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror if unanimous.)

Presiding Juror

Printed Name of Presiding Juror

(To be signed by those rendering the verdict if not unanimous.)

Jurors' Signatures Jurors' Printed Names

[Insert the appropriate number of lines—11 or 5—for signatures and for printed names.]

If some of the jury's answers must be unanimous and others need not be, the

**Proposed Texas Rule of Civil Procedure
226a(III)/PJC 100.3B Certificates**

Certificate: Regular Verdict

We, the jury, have answered the questions as indicated and now submit them as our verdict.

If all jurors agree, the presiding juror signs here:

Presiding Juror _____
Printed name

If all jurors do not agree, those ten who do agree on all the answers and to the entire verdict, sign here:

	Signature	Printed name
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

court should obtain the required certificate in a clear and simple manner, which will depend on the nature of the charge. The court may consider using the following certificate at the end of the charge:

CERTIFICATE

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

I certify that the jury was unanimous in answering the following questions:

Answer "All" or list the answers:

Presiding Juror

Printed Name of Presiding Juror

(If the answers to some questions were not unanimous, the jurors who agreed to those answers must certify as follows:)

We agree to the answers to the following questions:

List the questions:

Jurors' Signatures Jurors' Printed Names

[Insert the appropriate number of lines—11 or 5—for signatures and for printed names.]

[The court may also determine that a clearer way of obtaining the required certificate is to segregate the questions to which the jury's answers must be unanimous and request a certificate for each part of the charge.]

[Or]

Certificate: Mixed Unanimous and non-unanimous Verdict

[If some of the jury's answers must be unanimous and others need not be, the court should prepare the required certificate in a clear and simple manner, which will depend on the nature of the charge. The court may consider using the following certificate at the end of the charge:]

We, the jury, have answered the questions as indicated and now submit them as our verdict.

The presiding juror fills out the next section:

I certify that all jurors agreed on the these questions (Answer "All" or list the answers):

Presiding Juror

Printed name

If all of you did not agree on the answers to some questions, the jurors who did agree to those answers must certify as follows:

We agree to the answers to the following questions:

List the questions:

	Signature	Printed name
	<p><i>[Insert the appropriate number of lines—11 or 5—for signatures and for printed names.]</i></p>	
	<p>[The court may also decide that a clearer way of obtaining the required certificate is to segregate the questions to which the jury's answers must be unanimous and request a certificate for each part of the charge.]</p>	
	<p style="text-align: center;"><i>[Or]</i></p>	
	<p>Certificate: Second Part of Two-Part Trial with Unanimous Verdict</p>	
	<p>We, the jury, have answered the questions as indicated and now submit them as our verdict.</p>	
	<p><i>The presiding juror fills out the next section:</i></p>	
	<p>I certify that all jurors agreed on the these questions (Answer "All" or list the answers):</p> <hr/>	
	<hr/> <p>Presiding Juror</p>	<hr/> <p>Printed name</p>

**Current Texas Rule of Civil Procedure
226a(IV) (PJC 100.5)**

The court has previously instructed you that you should observe strict secrecy during the trial and during your deliberations, and that you should not discuss this case with anyone except other jurors during your deliberations. I am now about to discharge you. After your discharge, you are re-released from your secrecy. You will then be free to discuss the case and your deliberations with anyone. However, you are also free to decline to discuss the case and your deliberations if you wish.

After you are discharged, it is lawful for the attorneys or other persons to question you to determine whether any of the standards for jury conduct which I have given you in the course of this trial were violated and to ask you to give an affidavit to that effect. You are free to discuss or not to discuss these matters and to give or not to give an affidavit.

**Proposed Texas Rule of Civil Procedure
226a(IV) (PJC 100.5)
Instructions after a verdict**

Thank you for your verdict.

I now release you from jury duty. I have told you that the only time you can discuss the case is with the other jurors in the jury room. Now you can discuss the case with anyone. But you can choose not to discuss the case; that is your right.

After you are released from jury duty, the lawyers and others can ask you questions to see if the jury followed the instructions, and they can ask you to give a sworn statement. You are free to discuss the case with them and to give a sworn statement if you want. But you may choose not to discuss the case and not to give a sworn statement; that is your right.

Current PJC 100.6 Instruction to Jury If Permitted to Separate	Proposed PJC 100.6 Instructions if permitted to separate
<p>You are again instructed that it is your duty not to converse with, or permit yourselves to be addressed by, any other person on any subject connected with this trial.</p>	<p>During this trial, you will be allowed to separate from each other in the evening.</p> <p>I remind you of the rule I explained before: Do not discuss this case with anyone, even your spouse or friend. Do not allow anyone to discuss the case with you or in front of you. If anyone tries to discuss the case with you, tell me.</p>

<p align="center">Current PJC 100.7 Instruction if Jury Disagrees about Testimony</p>	<p align="center">Proposed PJC 100.7 Instructions if jurors disagree about testimony</p>
<p>MEMBERS OF THE JURY:</p> <p>You have made the following request in writing:</p> <p align="center"><i>[Insert copy of request.]</i></p> <p>Your request is governed by the following rule:</p> <p>“If the jury disagree as to the statement of any witness, they may, upon applying to the court, have read to them from the court reporter’s notes that part of such witness’ testimony on the point in dispute”</p> <p>If you report that you disagree concerning the statement of a witness and specify the point on which you disagree, the court reporter will search his notes and read to you the testimony of the witness on the point.</p> <p align="center">_____ JUDGE PRESIDING</p>	<p>You have asked to hear testimony from the trial.</p> <p>If you disagree about the testimony of a witness, please write down the exact point you disagree about, and I will have the court reporter search the record and read you the testimony of the witness. It will take some time for the court reporter to find this testimony and prepare to read it to you, so please be patient.</p>

<p style="text-align: center;">Current PJC 100.8 Circumstantial Evidence</p> <p>A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.</p>	<p style="text-align: center;">Proposed PJC 100.8 Direct and indirect evidence</p> <p>During this trial, you may have heard two kinds of evidence. They are direct evidence and indirect evidence.</p> <p>Direct evidence means a fact was proved by a document, by an item, or by testimony from a witness who heard or saw the fact directly.</p> <p>Indirect evidence means the circumstances reasonably suggest the fact. Indirect evidence means that based on the evidence, you can conclude the fact is true. Indirect evidence is also called “circumstantial evidence.”</p> <p>For example, suppose a witness was outside and saw that it was raining. The witness could testify that it was raining, and this would be direct evidence. Now suppose the witness was inside a building and the witness testified that people walked into the building with wet umbrellas. This could prove by indirect evidence that it was raining outside.</p> <p>A fact may be proved by direct evidence or by indirect evidence or by both.</p>
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Current PJC 100.9 Proximate Cause	No Proposed Changes
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**Current PJC 100.10
Instructions to Deadlocked Jury**

I have your note that you are deadlocked. In the interest of justice, if you could end this litigation by your verdict, you should do so.

I do not mean to say that any individual juror should yield his or her own conscience and positive conviction, but I do mean that when you are in the jury room, you should discuss this matter carefully, listen to each other, and try, if you can, to reach a conclusion on the questions. It is your duty as a juror to keep your mind open and free to every reasonable argument that may be presented by your fellow jurors so that this jury may arrive at a verdict that justly answers the consciences of the individuals making up this jury. You should not have any pride of opinion and should avoid hastily forming or expressing an opinion. At the same time, you should not surrender any conscientious views founded on the evidence unless convinced of your error by your fellow jurors.

If you fail to reach a verdict, this case may have to be tried before another jury. Then all of our time will have been wasted.

Accordingly, I return you to your deliberations.

**Proposed PJC 100.10
Instructions for a jury that cannot reach
a verdict**

You have told me you cannot reach a verdict.

If, in the interest of justice, you can end this case by reaching a verdict, you should.

But none of you should give in on what you believe is right or what you believe is the truth unless you are convinced to change your mind.

Continue to discuss the case carefully, listen to each other, and try your best to reach a verdict. Keep your minds open to every reasonable argument the other jurors present. Perhaps you will change your mind. That way, you can reach a verdict that is fair, and you can feel good about it because you did not give in on what you believe.

Do not assume your opinion is the only right one. You should be willing to consider other opinions. Do not be hasty in forming and expressing your opinions. But as I said, none of you should give in on what you believe is right or what you believe is the truth unless you are convinced to change your mind.

If you cannot reach a verdict, I may have to order a new trial. That means we would have to do this over again and our time and money spent on this trial would be a waste. So please do your best to reach a verdict.

Please return to the jury room and continue your discussions.

**Current PJC 100.11
Instructions on Jurors' Note-Taking
(Comment)**

A number of trial judges permit jurors to take notes during the presentation of evidence. *See Manges v. Willoughby*, 505 S.W.2d 379 (Tex. Civ. App.—San Antonio 1974, writ ref'd n.r.e.). The Committee expresses no opinion on this practice. If, however, jurors are allowed to take notes during the trial, they should be instructed, both after jury selection and before retiring to deliberate, on how the notes are to be taken and used. Some of the points a judge may wish to cover are contained in the following sample instructions.

[To be included in PJC 100.2 (instructions to jury after jury selection):]

During trial, if taking notes will help focus your attention on the evidence, you may take notes. If taking notes will distract your attention from the evidence, you should not take notes. Any notes you take are for your own personal use, and you may not share them with other jurors. Your personal recollection of the evidence takes precedence over any notes you have taken. A juror may not rely on the notes of another juror.

[To be included in PJC 100.3 (charge of the court):]

During trial it was permissible for you to take notes. You may carry those notes to the jury room for your personal use during deliberation on the court's charge. You may not share these notes with other jurors. Your personal recollection of the evidence takes precedence over any notes you have taken. A juror may not rely on the notes of

**Proposed 226a/PJC 100.11
Optional Instructions on Jurors' Note-Taking**

During the trial, if taking notes will help focus your attention on the evidence, you may take notes. If taking notes will distract your attention from the evidence, you should not take notes. Any notes you take are for your own personal use and may be taken back into the jury room and consulted during deliberations. Do not take your notes out of the courtroom. Do not share your notes with other jurors. Do not rely on another juror's notes.

<p>another juror. If you disagree about the evidence, the presiding juror may apply to the court and have the court reporter's notes read to the jury.</p>	
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<p style="text-align: center;">Current PJC 100.12 Privilege—No Adverse Inference</p> <p>You are instructed that you may not draw an adverse inference from [name of party]'s claim of [privilege asserted] privilege.</p>	<p style="text-align: center;">Proposed PJC 100.12 Instructions if someone exercises a privilege other than 5th Amendment privilege</p> <p>You cannot assume anything from [name of party]'s claim of [privilege asserted] privilege.</p>
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<p>No Current PJC on Language Interpreters</p>	<p style="text-align: center;">Proposed New 226a/PJC 100.13 Instruction Instructions to the jury on language interpreters</p> <p><i>Note: The Committee decided not to include an instruction that requires a juror to inform the judge if the juror disagrees with the official interpretation.</i></p> <p>During this trial, one or more witnesses or documents may be introduced in another language and interpreted into English. The interpreter has been certified by the State of Texas and has sworn to truly and wholly interpret into English the evidence given in this case.</p> <p>You may have special knowledge of the language being interpreted. But do not rely on your special knowledge and do not tell any other jurors any of your special knowledge.</p> <p>The official testimony of the witness or document is the English interpretation, and you must rely on the official interpretation personally and in your discussions with other jurors. Do not tell any of the other jurors if your own interpretation differs from the official interpretation.</p>
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<p style="text-align: center;">Current Rule 226 Oath to Jury Panel</p> <p>Before the parties or their attorneys begin the examination of the jurors whose names have thus been listed, the jurors shall be sworn by the court or under its direction, as follows: “You, and each of you, do solemnly swear that you will true answers give to all questions propounded to you concerning your qualifications as a juror, so help you God.”</p>	<p style="text-align: center;">Proposed Rule 226 Jury panel’s oath</p> <p>Before the parties or their lawyers begin asking questions of those on the jury panel, the judge, or someone acting under the judge’s direction, must swear in the panel members in substance as follows:</p> <p style="padding-left: 40px;">Do you swear or affirm that you will truthfully answer all questions asked of you concerning your qualifications as a juror, so help you God?</p>
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<p style="text-align: center;">Current Texas Rule of Civil Procedure 236 Oath to Jury</p> <p>The jury shall be sworn by the court or under its direction, in substance as follows: “You, and each of you, do solemnly swear that in all cases be-tween parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God.”</p>	<p style="text-align: center;">Proposed Texas Rule of Civil Procedure 236 Juror’s oath</p> <p>The judge, or someone acting under the judge’s direction, must swear in the jurors in substance as follows:</p> <p style="padding-left: 40px;">Do you swear or affirm that you will render a true verdict, according to the law and the evidence, so help you God?</p>
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Proposed TRCP Regarding Automatic Substitution of Current State Officers As Successors in Suits

Texas Rule of Civil Procedure 159. Suit for Injuries Resulting in Death

In cases arising under the provisions of the title relating to injuries resulting in death, the suit shall not abate by the death of either party pending the suit, but in such case, if the plaintiff dies, where there is only one plaintiff, some one or more of the parties entitled to the money recovered may be substituted and the suit prosecuted to judgment in the name of such party or parties, for the benefit of the person entitled; if the defendant dies, his executor, administrator or heir may be made a party, and the suit prosecuted to judgment.

Texas Rule of Appellate Procedure 7.2. Public Officers

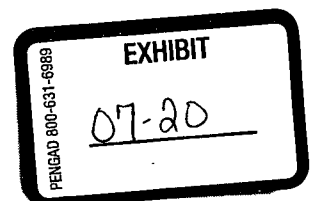
(a) Automatic Substitution of Officer. When a public officer is a party in an official capacity to an appeal or original proceeding, and if that person ceases to hold office before the appeal or original proceeding is finally disposed of, the public officer's successor is automatically substituted as a party if appropriate. Proceedings following substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. Substitution may be ordered at any time, but failure to order substitution of the successor does not affect the substitution.

(b) Abatement. If the case is an original proceeding under Rule 52, the court must abate the proceeding to allow the successor to reconsider the original party's decision. In all other cases, the suit will not abate, and the successor will be bound by the appellate court's judgment or order as if the successor were the original party.

Federal Rule of Civil Procedure 25. Substitution of Parties

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is



suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public Officers; Death or Separation from Office.

(1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.

Federal Rule of Appellate Procedure 43. Substitution of Parties

(a) Death of a Party.

(1) After Notice of Appeal Is Filed. If a party dies after a notice of appeal has been filed or while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct appropriate proceedings.

(2) Before Notice of Appeal Is Filed--Potential Appellant. If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative--or, if there is no personal representative, the decedent's attorney of record--may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(3) Before Notice of Appeal Is Filed--Potential Appellee. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(b) Substitution for a Reason Other Than Death. If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.

(c) Public Officer: Identification; Substitution.

(1) Identification of Party. A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the court may require the public officer's name to be added.

(2) Automatic Substitution of Officeholder. When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.