

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 93-0015

**APPROVAL OF LOCAL RULES OF TRAVIS COUNTY
REGARDING ADMINISTRATIVE APPEALS**

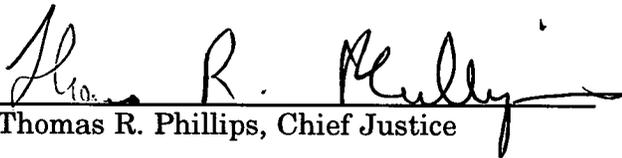
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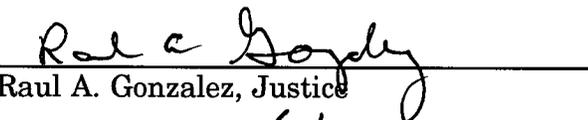
Pursuant to Rule 3a of the Texas Rules of Civil Procedure, the Supreme Court approves the following local rules, which have been previously approved by the presiding judge of the appropriate administrative judicial region and submitted to this Court:

Chapter 13 of the Local Rules of Travis County concerning Review of Actions of Administrative Agencies

The approval of these rules is temporary, pending further orders of the Court.

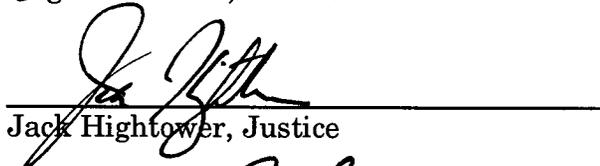
SIGNED AND ENTERED this 27th day of October, 1992.

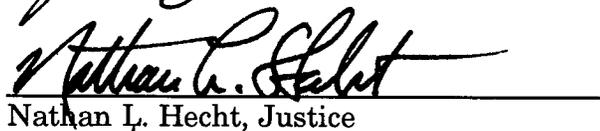

Thomas R. Phillips, Chief Justice

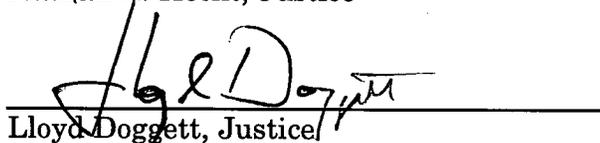

Raul A. Gonzalez, Justice

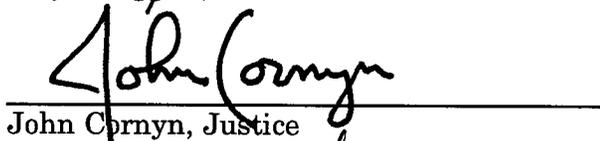

Oscar H. Mauzy, Justice

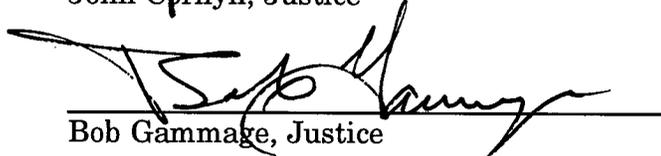

Eugene A. Cook, Justice


Jack Hightower, Justice


Nathan L. Hecht, Justice


Lloyd Doggett, Justice


John Cornyn, Justice


Bob Gammage, Justice

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CERTIFICATE OF APPROVAL

The attached local rule of Travis County is hereby approved and transmitted to the Supreme Court of Texas for final action this 15th day of September, 1992.

A handwritten signature in black ink, appearing to read "B.B. Schraub", written over a horizontal line.

**B.B. Schraub, Presiding Judge
Third Administrative Judicial Region**

CHAPTER 13

REVIEW OF ACTIONS OF ADMINISTRATIVE AGENCIES

13.1 **Applicability.** This Chapter shall apply to proceedings for judicial review of a final decision of a state agency brought pursuant to section 19(a) of the Administrative Procedure and Texas Register Act ("APTRA"), Tex. Rev. Civ. Stat. Ann. art. 6252-13a, except cases requiring a trial de novo. Such proceedings are referred to as "substantial evidence appeals." This Chapter shall also apply to all actions challenging pending contested case or rulemaking proceedings, including injunction, mandamus, and declaratory judgment actions, and to all declaratory judgment proceedings brought pursuant to Section 12 of APTRA. This Chapter shall not apply to proceedings brought by the state to enforce agency orders, commissions, or subpoenas, except in appropriate circumstances upon order of the court.

13.2 **Assignment of Cases.** All proceedings subject to this Chapter shall be assigned to a judge. Cases shall be assigned upon written request by any party to the Local Administrative Judge. The letter requesting assignment

shall contain a list of all parties to the case, their attorneys of record, and the attorneys' addresses, telephone numbers, and telephonic document transfer numbers. The letter shall note any case arising from the same or a related agency docket, whether it has been assigned, and, if so, to whom. Cases generally shall be assigned on a rotating basis; provided, however, that the Local Administrative Judge may assign a case out of rotation, in the interest of judicial economy or justice, on either the Local Administrative Judge's own motion, a written request signed by all the parties, or, if all parties do not agree to such a request, upon a written motion that sets forth reasons why in the interest of judicial economy or justice a particular judge should be assigned. The Local Administrative Judge shall inform the parties by letter when a case has been assigned.

13.3 Hearings. The judge to whom a case is assigned shall hear all matters relating to the case. As far as practicable, hearings shall be scheduled on Friday afternoons. Hearings on the merits in substantial evidence appeals are generally expected to take not more than two hours and shall not exceed three hours except with leave of court. Failure to brief an issue for the

merits hearing waives the issue, but failure to argue an issue at the merits hearing does not waive the issue. Parties to a substantial evidence appeal shall attempt to reach agreement on a date for the merits hearing, the amount of total time for argument, the division of time among them, and the order of presentation of argument. All hearings set for Friday afternoon or any other time not on the central docket shall be scheduled by contacting the assigned judge's office, not the court administrator's office. Matters preferentially set on the central docket must be scheduled through the assigned judge's office and the court administrator's office.

13.3.1 Applications for Temporary Restraining Orders.

An application for temporary restraining order in a case not yet assigned may be heard by any available judge, but the applicant shall thereafter request in writing that the case be assigned pursuant to Section 13.2 of this Chapter. In the hearing on the application for a temporary restraining order, the applicant must state what efforts were taken to reasonably attempt under the circumstances to provide advance notice of the hearing (including by telephone) to counsel for the party or parties to the agency proceeding, and if efforts to

provide such advance notice were not undertaken, the reasons why. The applicant shall also comply with any specific notice requirements imposed by law or rule. Prior notice must be given to the Attorney General of Texas of any hearing to restrain agency action.

13.4 Briefs. Substantial evidence appeals shall be briefed by the parties in advance of the hearing on the merits. The parties shall attempt to establish a briefing schedule by agreement and shall notify the judge to whom the case is assigned of the agreed dates. In the event the parties are unable to agree upon a briefing schedule, any party may request a hearing for the purpose of establishing a schedule.

13.4.1 Initial Briefs. Except with leave of court, the initial brief of each named or intervening party challenging an agency action ("Plaintiff") or defending an agency action ("Defendant") in a substantial evidence appeal shall be no more than fifty (50) pages in length, exclusive of table of contents, index of authorities, glossary of technical words and terms, and appendices, and shall contain the following:

- (a) List of Parties. In the case of Plaintiff's initial brief, a complete list of the names of

all parties and their attorneys.

- (b) **Statement of the Nature of the Case.** A short general statement by Plaintiff of the nature of the case, including its jurisdictional basis, without argument of any error asserted, and a short statement by Defendant of any disagreement with Plaintiff's statement of the nature of the case, without argument pertaining to the points of error.
- (c) **Statement of Facts.** A statement of pertinent facts, with any disagreements with the Plaintiff's statement noted by the Defendant;
- (d) **Points of Error and Argument.** A statement by the Plaintiff of each point of error, separately numbered, with a reference to the pertinent paragraph or portion of the motion for rehearing filed with the agency, followed immediately by the argument pertinent to such point or related group of points, and a statement by Defendant of each reply point, separately numbered and specifying the point or points it addresses, followed immediately by the argument pertinent to such point or a related group of points.
- (e) **Prayer for Relief.** A prayer for relief that

specifically states the action sought by the party submitting the brief.

The initial brief of each party may contain a table of contents, an index of authorities, appendices and a glossary of technical words and terms. It is useful to include in any appendix short record excerpts that are relied upon in the brief or will be discussed in the hearing.

13.4.2 Reply Brief. A reply brief is not required in a substantial evidence appeal, but if one is submitted, it shall be no more than twenty-five (25) pages in length, except with leave of court, exclusive of table of contents, index of authorities, glossary of technical words and terms, and appendices, which may be filed with the reply brief. A reply brief shall contain only argument in reply to another brief and shall not repeat previous argument.

13.4.3 Filing and Service. Briefs in substantial evidence appeals shall be filed with the District Clerk and served on all parties. Each party shall deliver to the judge to whom the case is assigned a copy of its brief, marked on the cover as "Judge's Copy." The judge's copy of the Plaintiff's Brief shall have attached to it or separately bound and clearly labeled

as an appendix:

- (a) a copy of the agency's final order, including any report or recommendation incorporated or adopted by reference in the order; and
- (b) a copy of the Plaintiff's motion for rehearing filed with the agency, or that portion of the motion necessary to show that the points of error briefed were included in the motion.

The judge's copy of the brief of any party may have attached to it or separately bound and clearly labeled as an appendix:

- (a) copies of selected parts of the record pertinent to the points briefed;
- (b) copies of statutes, rules, regulations, and other law sources that may not be readily accessible; and
- (c) copies of authorities that the party's attorney considers to be particularly important.

13.4.4 Non-Substantial Evidence Appeals. Upon agreement of the parties or order of the Court, other actions subject to this Chapter may be briefed in accordance with this section.

13.5 Administrative Record. In substantial evidence appeals,

the party or parties challenging the agency action shall be responsible for having the administrative record in the courtroom at the time and date designated for the hearing on the merits. The Attorney General shall cooperate with and provide reasonable assistance to the party or parties challenging the agency action in having the administrative record in the courtroom at the time and date designated for the hearing on the merits. This section does not affect the agency's duty under Section 19(d)(1) of the Administrative Procedure and Texas Register Act to file the administrative record with the District Clerk. If the record has not been filed in advance of the designated hearing date, counsel for the agency shall be responsible for having the record in the courtroom at the time of the hearing.

13.6 **Dismissal for Want of Prosecution.** Upon notice and hearing on a motion of any party or the Court's own motion, a case may be dismissed for failure of the party or parties bringing the suit to prosecute the suit with reasonable diligence.

13.7 **Alternative Dispute Resolution.** A case subject to this Chapter will not be referred for alternative dispute resolution pursuant to Chapter 11 of these rules.