

MINUTES SUPREME COURT ADVISORY COMMITTEE

May 31, 1985

AND SUBCOMMITTEE ASSIGNMENTS

The Advisory Committee of the Supreme Court of Texas met on May 31, 1985, at 10:00 a.m. pursuant to call of the Chairman.

Members of the committee in attendance were Luther H. Soules III, Chairman, Gilbert T. Adams Jr., Pat Beard, Newell Blakely, Frank L. Branson, Solomon Casseb, Jr., William V. Dorsaneo III, Justice Clarence Guittard, Judge David Hittner, Vester T. Hughes, Jr., Franklin Jones, Jr., W. James Kronzer, Steve McConnico, Russell McMains, Charles Morris, Harold W. Nix, John M. O'Quinn, Honorable Jack Pope, Tom L. Ragland, Harry M. Reasoner, Garland F. Smith, Sam Sparks, Judge Linda B. Thomas, Harry L. Tindall, Honorable Bert H. Tunks, Orville C. Walker, Justice James P. Wallace, and L. N. D. Wells, Jr. Absent were David J. Beck, J. Hadley Edgar, Gilbert I. Lowe, Sam D. Sparks, Broadus A. Spivey, and Honorable Allen Wood.

Welcoming remarks were received from Chief Justice John L. Hill and from Justice James P. Wallace.

The Committee proceeded into discussions concerning the proposed harmonized civil and appellate rules of procedure. Honorable Frank Evans, Chief Justice, 14th Court of Appeals, and Honorable Clarence Guittard, Chief Justice, 5th Court of Appeals, addressed the Committee giving their concerns and requesting the opportunity to continue to have input into the final product of the Committee until it is forwarded with recommendation to the Supreme Court of Texas. This consideration was readily given and the input of the Chief Justices and Justices of the Courts of Civil Appeals was deemed both welcomed and important by the members of the Committee. Professor William V. Dorsaneo, who, with Judge Carl Dally, served as reporter for the interim committee that drafted the harmonized appellate rules, gave a full report to the committee concerning the practices and focuses of the committee effort and where the rules were modified in comparison to the existing civil appellate rules. The committee noted that in large measure the Code of Criminal Procedure was not as modern in language as the existing civil rules and had not been updated as often and as responsively as the civil rules and, primarily for those reasons, differences serving no requirement for divergent treatment between the civil and criminal practice were for the most part harmonized to conform the criminal practice to the civil practice; this met with little lingering or substantial resistance from the criminal lawyers and judges on the interim committee. The Court of Criminal Appeals has

received its rule making authority from the Legislature together with a repealer that will permit repealing of specific statutes dealing with appellate criminal practice so that when the harmonized rules are promulgated jointly between the Supreme Court and the Court of Criminal Appeals the proposed rules will govern all appellate practice and will supersede the pertinent existing statutes in the Code of Criminal Procedure, the existing appellate rules of the Court of Criminal Appeals, the existing appellate rules of the Supreme Court of Texas, and the existing appellate rules of the Courts of Appeals. In some measure, the Courts of Appeals may still have certain matters governed by "local rules" but those will not be large in number. One of the principal points made by Chief Justice Frank Evans was that the Courts of Appeals are now in the process of generating uniform "local rules" and that these will perhaps be matters that can be adopted into the general rules as they may ultimately be proposed by the committee to the Supreme Court. Justice James P. Wallace indicated that the Supreme Court would be receptive also to a rewrite of certain of the rules governing the Supreme Court and rules governing perfection of appeal in the trial court that apply actually to appellate practices, so that the ultimate format of the product generated by the committee with the full input of the Courts of Appeals and Court of Criminal Appeals could be entitled "Texas Rules of Appellate Procedure" and be separated and renumbered from the existing Texas Rules of Civil Procedure. All members of the committee who desire to speak to the proposed rules, both in concept, and to the specifics, directed their questions to Mr. Dorsaneo and to the Chair until discussion was fully concluded.

Motion was made to refer the matter of the Texas Rules of Appellate Procedure project to a Subcommittee charged by the Committee to cooperate actively with the Court of Criminal Appeals, and the Courts of Appeals, and to produce a final product for recommendation to the Supreme Court of Texas. Whereupon the Chair names to the Joint Appellate Rules Subcommittee Professor William V. Dorsaneo III as Chairman of the committee and further named as members of the committee Gilbert T. Adams Jr., David J. Beck, Justice Clarence Guittard, Vester T. Hughes, W. James Kronzer, Russell McMains, Harold W. Nix, Honorable Jack Pope, Harry M. Reasoner, Harry L. Tindall, Sam Sparks, Bert H. Tunks, Orville C. Walker. The subcommittee was charged to make contact promptly with Honorable John F. Onion, Chief Judge, Court of Criminal Appeals, and with each of the Chief Justices of the Courts of Appeals to request and welcome active input. The committee was further charged to make prompt contact with Judge Carl Dally and to receive and welcome active input from him.

The Chair requests that the Subcommittee report with fully drafted rules no later than September 30, 1985, to include circulating the rules to all members of the Supreme Court of Texas, the Supreme Court Advisory Committee, the Court of Criminal Appeals, the Court of Criminal Appeals Advisory

Committee, the interim committee, and all Chief Justices and Justices of the Courts of Appeals with requests that all their comments be submitted to the Subcommittee by October 15, 1985, pursuant to final revision for action by the Supreme Court Advisory Committee at its next regular meeting on November 1, 1985.

Gaye Curry also welcomed by the Committee and spoke briefly extending the greetings of Senator Bob Glasgow and explained that although Senator Glasgow's Bill, S.B. 354, made it through all House Committees it was never calendared on the floor; nonetheless, the Senator was able to see the Bill through to passage by appending its content to another Bill thereby placing for the signature of the Governor the Bill to cause the Court of Criminal Appeals to be able to repeal the appellate provisions of the Code of Criminal Procedure and to promulgate these harmonized rules.

The Committee welcomed Ray Judice, Administrative Director of the Office of Court Administration of the Texas Judicial Council to attendance at the meeting.

The Committee discussed an appropriate date for the next meeting considering the amount of time that would be necessary to put the harmonized appellate rules in order for final recommendation to the Supreme Court as well as to complete other committee assignments on the "miscellaneous rules agenda" to be addressed later in the meeting but containing extensive recommendations from lawyers, judges, the State Bar Committee on Administration of Justice, and all other sources of submission of suggestions to this committee. The Chair determined that the next meeting should be held from 10:00 a.m. to 12:30 p.m. and from 2:00 p.m. to 6:00 p.m. on Friday, November 1, 1985, and from 9:00 a.m. to noon, and from 1:30 p.m. to 4:30 p.m. on Saturday, November 2, 1985

The Committee then considered the need to seek some funding for expenses for the conduct of business of the Committee including the travel of members, the lodging of members during Committee sessions, and the reporting of the Committee proceedings. The Chair was charged with seeking a grant of financial support from the Texas Bar Foundation to cover the expenses of the conduct of the Committee's business. The Chair, together with Franklin Jones, Jr. and Harry M. Reasoner will undertake the responsibility address this matter to the Texas Bar Foundation, for resolution prior to the next meeting, there being no funding provided in the budget of the Supreme Court of Texas by the Legislature of the State of Texas for said activities.

The Committee next considered the recommendations for changes in the Texas Rules of Evidence recommended to the Supreme Court by the State Bar of Texas Committee on the Administration of Rules of Evidence in civil cases. Professor Newell Blakely, a member of the Committee, and Chairman of that State Bar Committee

on Administration of Rules of Evidence in Civil Cases, made the report pursuant to which discussion of the Committee transpired on each suggestion. In the course of the report and pursuant to the discussion the following motions were made, seconded, and acted upon by the Committee:

Motion was made to amend Texas Rule of Evidence 509 (d) (4) and 510 (d) (5). The motion was seconded, discussion was held, and the amendment was approved for recommendation to the Supreme Court for adoption by a vote of 17 to 1 on show of hands.

Motion was made to amend Texas Rule of Evidence 509 (d) (5), the motion was seconded, and unanimously approved by voice vote for recommendation of the Supreme Court for adoption.

Motion was made to amend Texas Rule of Evidence 601 (a) (2), the motion was seconded, and unanimously approved by voice vote for recommendation of the Supreme Court for adoption.

Motion was made to amend Texas Rule of Evidence 610, 611, 612, 613, and 614, the motion was seconded, and unanimously approved by voice vote for recommendation of the Supreme Court for adoption.

Motion was made to amend Texas Rule of Evidence 610 (c) [611 (c)], the motion was seconded, and approved by voice vote with one dissent from Sam Sparks, for recommendation of the Supreme Court for adoption.

Motion was made to amend Tex. R. Civ. P. 611 [612] the motion was seconded, and following discussion was defeated by a vote of 12 to 5 to recommend that the Supreme Court of Texas not adopt the proposed amendment.

Motion was made to amend Texas Rule of Evidence 801 (e) (1) (A), the motion was seconded, and following discussion was unanimously defeated by voice vote thereby recommending to the Supreme Court that the proposed amendment not be adopted.

Motion was made to amend Texas Rules of Evidence 801 (e) (3) and 804 (b) (1), the motion was seconded, and carried unanimously by voice vote thereby recommending to the Supreme Court that the proposed amendment be adopted.

Motion was made to amend Texas Rule of Evidence 803 (b), the motion was seconded, and carried unanimously by voice vote thereby recommending to the Supreme Court that the proposed amendment be adopted.

Motion was made to amend Texas Rule of Evidence 902 (10) (b), the motion was seconded, and carried unanimously by voice vote thereby recommending to the Supreme Court that the proposed amendment be adopted.

Motion was made to amend Texas Rule of Evidence 1007, the motion was seconded, and carried unanimously by voice vote thereby recommending to the Supreme Court that the proposed amendment be adopted.

Chief Justice John Hill then addressed the committee concerning the mandate of enrolled House Bill No. 1658 setting forth various specific requirements for action from the Supreme Court of Texas, and particularly from its Chief Justice, as well as requirements governing many other aspects of the Administration of Justice in the State of Texas and the need for extensive effort from this Committee in support of the Supreme Court of Texas and the Chief Justice in responding to the mandates of the Bill in conjunction with Mr. Ray Judice, Mr. Mike Gallagher, Chairman of the State Bar of Texas Committee on Administration of Justice, Judge Grant, Chairman of the Texas Judicial Counsel, and the Presiding Judges of the several Administrative Judicial Districts of the State of Texas, and Judge George Thurman, Subcommittee Chairman for Local Rules and Trial Standards. For that purpose the committee determined that a subcommittee should be established. The Chair established the subcommittee as follows: Solomon Casseb, Jr., Chairman. Members: W. James Kronzer, Sam Sparks, Judge Linda Thomas, Tom Ragland, Judge David Hittner, Pat Beard, Franklin Jones, Jr., Hadley Edgar, Harold Nix, and Charles Morris. The subcommittee is to convene as soon as possible to reach accord for formatting its duties and to establish contact with all of the mentioned bodies and individuals for liaison and input into the project and to thereafter conduct its affairs in such a manner as to be prepared to place before the Committee by mail, no later than September 30, 1985, its proposals in initial draft form for discussion (or for action if the work product is in sufficiently refined condition) at the November 1, 1985, meeting. The Chair of the subcommittee is to circulate its work product directly to all other members of the Committee and to all members of the Supreme Court of Texas no later than September 30, 1985.

The Committee then considered the task of dealing with the miscellaneous rules agenda before the committee and determined that the approach most likely to succeed in dealing with these matters with an acceptable high degree of thoroughness would be to establish certain Standing Subcommittees to which all of the pending miscellaneous rules will be referred for study and report in writing to each of the members of the Committee and to each of the members of the Supreme Court of Texas no later than September 30, 1985. The Chair accordingly appoints the following subcommittees and makes the following work assignments.

Standing Subcommittee on General Rules 1-14.

Judge Linda Thomas, Chairman. Members: Gilbert T. Adams, Jr., Frank L. Branson, David Hittner, Vester T. Hughes, Jr. and Jack Pope.

Assignments: (a) Suggestions submitted by the Committee on Local Rules of the Council of Administrative Judges dated January 11, 1985 to amend Rules 3a, 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a; (b) Suggestions submitted by Ray Hardy dated February, 1984 to amend Rules 8, 10, 14b; (c) Suggestions submitted by W. J. Kronzer dated February 3, 1983 to amend Rules 14c; and (d) Suggestion by Reese Harrison dated April 17, 1985 to amend Rules 10, 165a, and 306a.

Standing Subcommittee on Pre-Trial and Discovery Rules 15-215A.

Sam Sparks, Chairman. Members: David J. Beck, William V. Dorsaneo III, Judge David Hittner, Charles Morris, Tom L. Ragland, and Harry M. Reasoner.

Assignments: (a) Suggestions by Jordan & Hagen dated June 26, 1984 to amend Rule 21c, 456, 457, 458; (b) Suggestions submitted by W. J. Kronzer dated August 31, 1982 to amend Rule 47; (b) Suggestion by Hubert Green dated December 1, 1983 to amend Rule 47; (c) Suggestions by Robert Davis dated September 20, 1984 to amend Rule 47; (d) Suggestion by Jim Weber to amend Rule 47; (e) Suggestion by Judge Wallace dated January 9, 1984 to amend Rules 86, 87, 88, 89; (f) Suggestion by Hubert Green dated February 10, 1984 to amend Rules 87(2)(b); (g) Suggestion by Bill Dorsaneo dated February 16, 1984 to amend Rule 87; (h) Suggestion by Bob Martin dated August 29, 1983 to amend Rule 87(2)(b); (i) Suggestion by Don Baker dated August 6, 1984 to amend Rule 103 and 106; (j) Suggestion by Ellen Grimes dated March 10, 1983 to amend Rule 106; (k) Suggestion by Don Baker dated January 25, 1984 to amend Rule 161; (l) Suggestion by Jeremy Wicker dated August 21, 1984 to amend Rules 165 and 306(a)(1); (m) Suggestion by Richard Kelsey dated March 7, 1984 to amend Rules 200 and 324(b); (n) Suggestion by Don Baker dated January 25, 1984 to amend Rule 201; (o) Suggestion by Harris Morgan dated January 9, 1984 to amend Rule 204; (p) Suggestion by David Hyde dated June 20, 1984 to amend Rule 204; (q) Suggestion by Judge Barrow dated March 6, 1984 to amend Rules 204(4), 206(3), 207(2), and 208(a); (r) Suggestion by Luther H. Soules dated February 21, 1985 to amend Rule 204(4); (s) Suggestion by Jeffrey Jones dated February 27, 1985 to amend Rules 106 and 107; and (t) Suggestion by Charles Haworth dated April 9, 1985 to amend Rules 204 and 216.

Standing Subcommittee on Trial Rules 216-314.

Franklin Jones, Jr., Chairman. Members: David J. Beck, Frank L. Branson, J. Hadley Edgar, Steve McConnico, and Harold W. Nix.

Assignments: (a) Suggestion by Bradford Moore dated September 22, 1983 to amend Rule 216; (b) Unknown suggestion to amend Rule 264; (c) Suggestion by Judge Onion dated June 14, 1983 to amend Rule 265(a); (d) Suggestion by Judge Wallace dated December 13, 1983 to amend Rules 272, 297, 373, 749; (e) Suggestion by D. Bickel dated June 14, 1983 to amend Rule 296; (f) Suggestion by Jeremy Wicker dated August 6, 1984 to amend Rules 296 and 306(c); (g) Suggestion by Jordan and Haggen dated June 26, 1984 to amend Rules 306(a)(4), 456, 457, and 458; and (h) Suggestion by R. Doak Bishop dated April 8, 1985 to amend Rules 296, 306a, and 306c.

Standing Subcommittee on Post-Trial Rules 315-331.

Harry L. Tindall, Chairman. Members: Sam D. Sparks, Bert H. Tunks, Orville C. Walker, L. N. D. Wells, Jr., and Allen Wood.

Assignments: (a) Suggestion by Charles Childress dated March 9, 1984 to amend Rule 329.

Standing Subcommittee on Courts of Civil Appeals Rules 342-472.

William V. Dorsaneo III, Chairman. Members: All members above named for the Joint Appellate Rules Subcommittee.

Assignments: (a) Suggestion by Jim Milam dated April 6, 1984 to amend Rules 354, 355, and 380; (b) Suggestion by Guy Hopkins dated May 2, 1984 to amend Rule 364(a); (c) Suggestion by Michael Remme dated July 17, 1984 to amend Rule 438; (d) Suggestion by John Feather dated March 23, 1984 to amend Rule 452.

Standing Subcommittee on Supreme Court Rules 474-515

Rusty McMains, Chairman. Members: Gilbert I. Low, Harold W. Nix, Jack Pope, Harry M. Reasoner, and Garland F. Smith.

Assignments: Confer with William Dorsaneo and draft conforming rules to the Court of Appeals Joint Appellate Rules.

Standing Subcommittee on Justice Court Rules 523-591

Broadus Spivey, Chairman (unless we have another desperate volunteer). Members: Anyone who will help.

Assignments: Review rules for indicated changes.

Standing Subcommittee on Ancillary Proceedings Rules
592-734.

Pat Beard, Chairman. Members: Gilbert T. Adams, Jr., J.
Hadley Edgar, Charles Morris, John M. O'Quinn, and Orville
C. Walker.

Assignments: (a) Suggestion by John Pace dated June 29,
1984 to amend Rules 621A, and 627; (b) Suggestion by W. C.
Martin dated July 6, 1983 to amend Rule 680; (c) Suggestion
by W. C. Martin dated July 27, 1983 to amend Rule 680; (d)
Suggestion by W. C. Martin dated January 27, 1984 to amend
Rule 680; (e) Suggestion by Kenneth Fuller dated February
10, 1984 to amend Rules 680 and 683.

Standing Subcommittee on Special Procedures Rules 737-813.

W. James Kronzer, Chairman. Members: Gilbert I. Low, Steve
McConnico, John M. O'Quinn, Sam D. Sparks, and Allen Wood.

Assignments: (a) Suggestion by Jefferson Irving and Robert
Ray dated January 16, 1985 to amend Rules 735-755; (b)
Suggestion by John Williamson dated August 25, 1983 to amend
Rule 792; (c) Suggestion by John Williamson dated June 2,
1983 to amend Rule 792; (d) Suggestion by Carl Hoppess dated
January 27, 1983 to amend Rule 792.

Standing Subcommittee on Rules of Evidence including their
relationship to Rules of Civil Procedure.

Newell Blakely, Chairman. Members: Vester T. Hughes, Jr.,
Tom Ragland, Garland F. Smith, Bert H. Tunks, and L.N.D.
Wells, Jr.

Assignments: Suggestions by Newell Blakely dated May 8,
1985.

The Committee in general then determined the date for the
next meeting to be, as indicated above, on November 1st and
November 2nd in sessions from 10:00 a.m. to 6:00 p.m. on
November 1, and from 9:00 a.m. to 4:30 p.m. on November 2.