

MINUTES OF THE
SUPREME COURT ADVISORY COMMITTEE MEETING

November 7-8, 1986

The Advisory Committee of the Supreme Court of Texas convened at 8:50 a.m. on November 7, 1986, pursuant to call of the Chairman.

Members of the Committee in attendance were Luther H. Soules III, Chairman, Pat Beard, David Beck, Frank Branson, Professor William V. Dorsaneo III, Professor J.H. Edgar, Russell H. McMains, Charles Morris, Tom L. Ragland, Sam Sparks (El Paso), Sam D. Sparks (San Angelo), Broadus Spivey, Harry Tindall, Honorable Bert H. Tunks, Honorable James P. Wallace, and Professor Orville Walker.

The minutes of the last meeting were unanimously approved.

Professor Dorsaneo reported on Rules of Appellate Procedure 74, 80(a), 90(a), 131 and 136(a). The Committee decided to add the language "Except as specified by local rule of the Court of Appeals, appellate briefs of Appellants and Appellees in civil cases" to Appellate Rule 74(h) and add the sentence "The Court may, upon motion, permit a longer brief." It was unanimously voted that there be a 50-page limit set for the length of all appellate briefs, excluding table of contents, index of authorities, and points of error. The Committee voted unanimously to change "shall" to "may" in Appellate Rule 74(f).

The Committee voted unanimously to approve the amendments to Appellate Rule 131(i), as well as Appellate Rule 136.

By a show of hands, 5-2, the proposed amendment to Appellate Rule 90(a) failed.

Mr. Tindall moved that the proposed amendment to Appellate Rule 80(c) be tabled, Judge Tunks seconded, and the motion was unanimously approved.

The suggestion by Professor Dorsaneo that Appellate Rule 136(a) have a sentence included to the effect that a brief in response is due within 15 days after filing of the application in the Supreme Court was unanimously approved.

Mr. McMains moved that the suggested new Rule 170 be tabled and by show of hands, the Committee voted unanimously to do so.

The proposed revision to Rule 329 was disposed of in a prior meeting.

The Committee favored a remittitur being acknowledged by a show of hands, 6-4. By a show of hands, 9-2, it was agreed that both the party and his attorney be permitted to sign the remittitur. With those changes, the proposed amendment to Rule 315 was approved, 5-1.

Mr. Soules requested that Mr. Tindall consider combining Rule 315 with 328 or moving it adjacent to 328 so that the concept of remittitur is in one section of the Rules.

The Committee unanimously agreed that the caption of Rule 316 will be changed to "Correction of Clerical Mistakes in the Record."

It was unanimously agreed that Rule 316 be amended to read "Clerical mistakes in the record of any judgment may be corrected by the Judge in open court according to the truth of justice" and that Rules 317, 318, and 319 be recommended for repeal.

References to Rule 317 will be deleted from Rules 329(b), 306a, 324, and Appellate Rule 5.

Professor Edgar moved that discussion regarding the repeal of Rule 330 be tabled, Mr. Tindall seconded, and the Committee agreed.

Mr. Tindall reported on Rule 103-107, then opened the discussion of same. The Committee unanimously approved the amendments to Rule 103 and the recommendation to repeal Rules 102 and 104.

Chairman Soules requested that Mr. Tindall's subcommittee study the 100 Rule series and their placement in the Rules sequence as a whole.

The suggested changes to Rules 105, 106 and 107 were unanimously approved by show of hands.

Oliver Heard addressed the Committee with regard to the Administrative Rules and aspects of debt collection as his law firm drafted them. He requested that he be allowed to speak further on the matter if the Committee takes up the discussion of the Administrative Rules again.

After discussion, the suggestion to combine Rules 99, 100, and 101 was tabled. Mr. Tindall will rewrite the amendment for the next meeting.

Pat Hazel, the chairman of the committee on Administration of Justice, was introduced and he attended the balance of the day's meeting.

After considerable discussion, it was unanimously voted that reference to delivery of mail restricted to addressee only be stricken from Rules 103 and 106.

Professor Dorsaneo reported on Rule 182. The Committee voted to recommend the rule for appeal by a show of hands, 9-1.

Professor Edgar then reported on Rules 205-209. The Committee voted unanimously to approve the amendment to Rule 209 and its accompanying Supreme Court Order, as written, as well as the housekeeping changes to Rules 205-208.

It was unanimously agreed that the heading "Section 2." will be moved to above Rule 524, and that Rules 567 and 568 will be merged to form one rule by deleting the caption of Rule 568 and including it as a second paragraph in Rule 567.

Professor Edgar moved, Professor Dorsaneo seconded, and the Committee voted unanimously to approve the amendment to Rule 749.

The amendment to Rule 751, changing its timetable from 5 to 8 days, was unanimously approved.

Professor Dorsaneo moved for the repeal of the trespass to try title rules, top to bottom. Discussion of the motion was tabled until the next meeting of the Committee.

The amendment to Rule 792, as stated by Professor Edgar, was approved, house-1.

The Committee voted unanimously to approve the amendment to Rule 748, deleting the last clause as the COAJ has recommended, and the COAJ's amendment to Rule 755.

The housekeeping amendments submitted by Professor Wicker were unanimously approved with regard to Rules 696, 741, 746, 772, 806, 807, 808, 810 and 811.

Discussion concerning F.R.A.P. 10 and 11 was tabled until the next meeting of the Committee.

The Committee voted unanimously that the change to Rule 267 be recommended for adoption.

Professor Dorsaneo then gave a brief history of Rule 166(b). After extensive discussion, amendment by insertion of the phrase "excluding written statements made to their attorneys" was approved, 4-2. Addition of the word "solely" before the words "in anticipation of litigation" was opposed 3-2.

Discussion concerning amendments to Rules 167 and 168 were tabled until the next meeting of the Committee.

The Committee re-convened on November 8, 1986 at 8:30 a.m. Members of the Committee in attendance were Luther H. Soules III, Professor Newell H. Blakely, Frank Branson, Professor William V. Dorsaneo III, Professor J.H. Edgar, Russell McMains, Charles Morris, Tom Ragland, Anthony Sadberry, Broadus Spivey, Harry Tindall, Honorable Bert H. Tunks, and Honorable James P. Wallace.

The amendment to Rule 685 that was recommended for adoption by the COAJ was rejected by a vote of hands, 5-1, by the Committee.

The housekeeping amendment to Rule 621a was unanimously approved by the Committee.

The Committee discussed, at considerable length, an amendment to Rule 169. It was decided on a vote of 5-2, that a judge should have discretion to grant amendments or withdrawals of admissions when delay of trial may result. The amendment of paragraph 2 of Rule 169, as written by Tom Ragland, shall read "Subject to the provisions of Rule 166 governing amendment of a pretrial order, the Court may permit withdrawal or amendment upon a showing of good cause for such withdrawal or amendment and that the parties relying upon the admissions will not be unduly prejudiced. Such amendment was unanimously approved by the Committee. The addition of the word "deemed" before the word "admissions" in the above amendment was approved by the Committee by a vote of 5-2.

It was voted at a prior meeting that Rules 184 and 184(a) shall be left intact in the Rules, subject to their uniformity with the Rules of Evidence.

The Committee unanimously approved the suggestion that Rule 329 should contain a reference to Appellate Rule 47.

The proposal regarding an amendment to Rule 202 was rejected by the Committee, 6-1.

The proposal regarding an amendment to Rule 206 was unanimously rejected by the Committee.

Mr. Ragland moved and Mr. Branson seconded approval of the proposed change to Rule 216. It was unanimously approved by the Committee.

The Committee voted unanimously to reject the proposal that a uniform jury information card be adopted.

After discussion, the Committee voted to table further action on attempting to create a uniform set of local rules for the entire state. Mr. Branson suggested that a subcommittee be appointed for this purpose.

The Committee voted unanimously to repeal existing Rule 264 and recommend for adoption new Rule 264, "Videotape Trial."

Mr. McMains motioned and Mr. Branson seconded the rejection of a suggested amendment to Rule 265(a) submitted by Judge Onion.

The proposed amendments to Rules 296 and 297 were unanimously rejected by the Committee, as was the proposed amendment to Rule 306(c).

The Committee unanimously agreed that the proposal regarding an attorney abandoning his clients is not within the purview of the Committee and is addressed in the Code of Professional Responsibility. Professor Edgar moved that the Committee was without jurisdiction to discuss the proposal, Mr. Ragland seconded, and the motion carried.

It was unanimously voted by the Committee that the proposal regarding Rule 13 be tabled until the next meeting.

The proposal to amend Appellate Rule 121(a)(2)(h) to require that 12 copies of an application be filed with the Supreme Court was unanimously approved by the Committee.

Chairman Soules reported that Mr. L.N.D. Wells had resigned from the Committee, as had Mr. W. James Kronzer. Three new members have been appointed to the Committee. They are Elaine Carlson, Diana Marshall, and Ken Fuller.

New subcommittee chairman were appointed as follows: Frank Branson - Rules 1-14; Sam Sparks (El Paso) - Rules 15-165; Professor Dorsaneo - Rules 166b-215; Professor Edgar - Rules 216-314; Harry Tindall - Rules 315-331; Russell McMains - the Appellate Rules (old Rules 342-515); Anthony Sadberry - Rules 523-591; Elaine Carlson - Rules 737-813. A new subcommittee chairman for Rules 592-734 will be appointed at a later date.

The Committee then edited the first draft of the proposed rules and rule changes to be submitted by the Committee for promulgation by the Supreme Court.

The next meeting of the Committee will be June 26-27, 1987,
both full days.