SCAC MEETING AGENDA (AMENDED)
Friday, June 19, 2020 [9:00 a.m. – 5:00 p.m.]
VIA ZOOM

1. WELCOME (C. BABCOCK)

2. STATUS REPORT FROM CHIEF JUSTICE HECHT

Chief Justice Hecht will report on Supreme Court actions and those of other courts related to the Supreme Court Advisory Committee since the February 28, 2020 meeting.

3. COMMENTS FROM JUSTICE BLAND

4. EXPEDITED ACTIONS

171-205 Sub-Committee Members:

Robert Meadows – Chair
Hon. Tracy Christopher – Vice Chair
Prof. Alexandra Albright
Hon. Harvey Brown
David Jackson
Hon. Ana Estevez
Kimberly Phillips
Evan Young

(a) Level 1A – REVISED
(b) February 28, 2020 Memo re New Rules for Civil Actions-$250,000

5. TEXAS RULE OF CIVIL PROCEDURE 199

171-205 Sub-Committee Members:

Robert E. Meadows - Chair
Hon. Tracy E. Christopher – Vice Chair
Prof. Alexandra W. Albright
Hon. Harvey Brown
David Jackson
Hon. Ana Estevez
Kimberly Phillips
Evan Young

(c) June 19, 2020 Memo re: Remote Depositions

6. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP & OUT OF TIME APPEALS IN PARENTAL RIGHTS TERMINATION CASES

Appellate Sub-Committee Members:

Pamela Baron – Chair
Hon. Bill Boyce – Vice Chair
Prof. William Dorsaneo
Prof. Elaine Carlson
Frank Gilstrap
Charles Watson
Evan Young
Scott Stolley

(d) June 15, 2020 Memo re: Parental Termination Appeals

7. PARENTAL LEAVE CONTINUANCE RULE

216-299a Sub-Committee Members:

Prof. Elaine Carlson – Chair
Thomas C. Riney – Vice Chair
Hon. David Peeples
Alistair B. Dawson
Robert Meadows
Hon. Kent Sullivan
Kennon Wooten

(e) June 3 2020 Parental Continuance Rule Proposal
(f) State Bar Texas CRC Proposal re Parental Leave Continuance
(g) Florida rule re: Continuance and Florida Supreme Court Opinion
(h) Harris County Vacation Letter Local Rule Civil Courts
(i) North Carolina Rule 26 Secure Leave Periods for Attorneys as amended 2019
(j) Family Medical Leave Act 2019 section 2612 Leave requirement

8. PROCEDURES TO COMPEL A RULING

Judicial Administration Sub-Committee Members:

Nina Cortell - Chair
Kennon Wooten – Vice Chair
Hon. David Peeples
Michael A. Hatchell
Prof. Lonny Hoffman
Hon. Tom Gray
Hon. Bill Boyce
Hon. David Newell

(k) June 15, 2020 Memo re: Compelling A Ruling

9. CIVIL RULES IN MUNICIPAL COURTS

500-510 Sub-Committee Members:

Hon. Levi Benton – Chair
Hon. Ana Estevez – Vice Chair
Prof. Elaine Carlson
Hon. Stephen Yelenosky

(l) June 15, 2020 Report on Civil Rules in Municipal Courts
(m) Exhibit A to June 15, 2020 Report

Tab A

190.2A. Discovery Control Plan—Cases where the Amount in Controversy is $250,000 or less (Level 1A)

(a) *Application*.
(1) This subdivision applies to any suit where the amount in controversy is $250,000 or less and is not in Level 1.
(2) This subdivision does not apply if the parties agree that Rule 190.3 should apply or the court orders a discovery control plan under Rule 190.4

(b) *Limitations*. Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:
(1) Discovery Period. Without leave of court, all discovery must be conducted during the discovery period, which begins when initial the suit is filed and continues until 180 days after the date the first request for discovery of any kind is served on a party.
(2) Total Time for Oral Depositions. Each party may have no more than 20 hours in total to examine and cross-examine all witnesses in oral depositions. The court may modify the deposition hours so that no party is given unfair advantage.
(3) Interrogatories. Any party may serve on any other party no more than 20 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.
(4) Requests for Production. Any party may serve on any other party no more than 20 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.
(5) Requests for Admissions. Any party may serve on any other party no more than 20 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.
(6) Requests for Disclosure. In addition to the content subject to disclosure under Rule 194.2, a party may request disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. A request for disclosure made pursuant to this paragraph is not considered a request for production.
(c) Reopening Discovery. If the filing of an amended pleading renders this subdivision no longer applicable, the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

Rule 47 also needs to be changed. Change (3) and (4) to reflect $250,000.00.

Tab B

Memorandum

To: Supreme Court Advisory Committee

From: Rule 171-205 Subcommittee

Date: February 26, 2020

Re: New Rules for Civil Actions —$250,000

Section 22.004 of the Government Code was amended in 2019 and requires the Supreme Court to adopt rules to promote the "prompt, efficient and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed $250,000." Our subcommittee was assigned this task. We sent a survey to various judges to serve as resources for the committee. Their answers are attached.

Given the overlap between county and district courts, the SCAC concluded at our June 2019 meeting that the rules should not just apply to county courts but should also apply in district courts.

Our committee has several ideas for preliminary discussion.

1. Create a new Rule 190.2, level 1A for these cases.
2. Put these cases in either level 1 or 2.
3. Put these cases in level 2 but lower the deposition limits for all level 2 cases.

In addition, we urge the adoption of our previous changes to the discovery rules that have been vetted by the SCAC. In particular, we would like to urge the court to adopt the following changes that we believe promote the "prompt, efficient and cost-effective resolution of cases".

1. Automatic disclosures instead of a request for disclosure.
2. No discovery with the petition.
3. Level 1 changes—increasing the amount to $100,000.
4. Level 2 changes—rewording the discovery period and adding a limit to the number of Requests For Production to 25
5. Changing the scope of discovery and limitations. (Rules 192.3 and 192.4)

Tab C

Memorandum

To: Supreme Court Advisory Committee

From: Discovery subcommittee

June 19, 2020

The Supreme Court referred the following matter to our subcommittee:

> **Texas Rule of Civil Procedure 199**. Rule 199 already permits remote depositions, but the Court asks the Committee to reexamine the remote deposition procedures in light of COVID-19. An email from Guy Choate and a news article are attached. The Committee should be prepared to discuss at its June 19, 2020, meeting.

Lawyers have taken many remote depositions during the Covid-19 crisis. Anecdotally this process has been largely successful. The major issues with remote depositions are; the handling of exhibits, the quality of the sound/video, and court reporters' records that might not be as accurate.

No changes recommended.

Rule 199.1 allows remote depositions with prior written notice. Rule 199.5(a)(2) provides the details for the remote deposition and allows in person attendance at the discretion of the party. The rule, as written, provides flexibility. Some parties can attend remotely, and some parties can attend in person. Our subcommittee believes this flexible rule should remain.

The subcommittee does not support a rule that would mandate that all parties appear remotely at the discretion of the person noticing the deposition.

Administration of the oath.

Current rule 199.1 requires that the oath be administered where the witness is, rather than over the phone or computer. This changed during the Covid-19 shutdown. The subcommittee recommends changing this procedure so that the court reporter can remotely administer the oath where the reporter can actually see the witness, as in a zoom deposition.

Where should the court reporter be?

Once Covid-19 is over, we may want to consider whether the best practice would be for the court reporter to be in the presence of the witness during a remote deposition.

This might create better records and might prevent any potential remote coaching of the witness.

Tab D

MEMORANDUM

TO: **Supreme Court Advisory Committee**

FROM: **Appellate Rules Subcommittee**

RE: **Appeals in Parental Termination Cases**

DATE: **June 15, 2020**

I. Matter Referred to Subcommittee

The Court's May 31, 2019 letter and Chairman Babcock's June 3 letter refer the following matter to the Appellate Rules Subcommittee:

> **Out-of-Time Appeals in Parental Rights Termination Cases.** A parent whose appeal from a judgment terminating his rights in a child is untimely may contend that the delay is not his fault and may blame ineffective assistance of counsel. This can complicate and extend the appellate process. The Committee should consider rules to address this situation, including:
>
> - a narrow late-appeal procedure;
> - an abate-and-remand procedure like the one proposed in the Phase II Report;
> - a habeas- or bill-of-review-style procedure; and
> - prophylactic procedures not considered in the Phase I or Phase II Reports, such as a requirement that trial counsel stay on until the notice of appeal has been filed.
>
> **Suits Affecting the Parent-Child Relationship.** In response to HB 7, passed by the 85th Legislature, the Court appointed the HB 7 Task Force to draft the rules required by the statute and to make any other recommendations for expediting and improving the trial and appeal of cases governed by Family Code Chapter 264. On November 27, 2017, the HB 7 Task Force submitted a report and recommendations to the Court ("Phase I Report"). The Committee studied the Phase I Report and made recommendations to the Court. Subsequently, on December 31, 2018, the Task Force submitted a second report and recommendations to the Court ("Phase II Report"). The Phase II Report is attached to this letter. The Committee should review the Phase II Report and make recommendations.

The HB 7 Phase II Report recommends four changes that affect the appellate rules and also have some bearing on the out-of-time appeal assignment: (1) right to counsel, showing authority to appeal, and frivolous appeals; (2) a procedure in the court of appeals to consider ineffective-

assistance-of-counsel claims discovered by appellate counsel; (3) a rule standardizing the currently unwritten understanding on *Anders* briefs; and (4) opinion templates for use in parental termination cases.

II. Background

The subcommittee and SCAC previously have discussed and approved TRAP amendments relating to out-of-time petitions for review. The subcommittee has not considered or discussed a similar procedure in the courts of appeals, nor has the subcommittee addressed a procedure for bringing late claims of ineffective assistance of counsel, *Anders* briefs, or frivolous appeals.

The Texas Supreme Court has indicated that it will consider the July 2017 proposals regarding late-filed petitions for review in conjunction with any additional recommendations on parental-termination topics identified in the May 31, 2019 referral letter.

III. Issues for Discussion

The subcommittee has broken down the referral topics into two stages to be addressed in the following order.

1. Stage One: Out-of-time appeals and related issues
    a. HB7 Phase II recommendations: indigent parent's right to counsel on appeal; notice of right to appeal; showing authority to appeal
    b. Assessing proposals for addressing untimely appeals and ineffective claims
        i. HB7 Phase II recommendation: abate and remand for evidentiary hearing in support of IAC claim
        ii. "narrow late-appeal procedure"
        iii. "habeas- or bill-of-review-style procedure" for a collateral attack
        iv. other possible procedures such as a requirement that counsel continue the representation until a notice of appeal has been filed.
2. Stage Two: Briefing and Opinions
    a. Frivolous appeals; *Anders* procedures in the courts of appeals as discussed by the HB7 task force; "Parental Termination Brief Checklist"
    b. Opinion templates as created by the HB7 task force

This memo focuses on Stage One, topic 1(a) with respect to the right to counsel on appeal, notice of right to appeal, and showing authority to appeal. The subcommittee will address Stage One, topic 1(b) and Stage Two in later meetings.

IV. Discussion

A. Notice of Right to Appeal and Right to Representation by Counsel

In a suit filed by a governmental entity in which termination of the parent-child relationship or appointment of a conservator for the child is requested, an indigent parent is entitled by statute to representation by counsel until the case is dismissed; all appeals relating to any final order terminating parental rights are exhausted or waived; or the attorney is relieved or replaced. *See* Tex. Fam. Code §§ 107.013(a), 107.016(3). In termination cases, this right extends to the filing of a petition for review in the Texas Supreme Court. *In the interest of P.M.*, 520 S.W.3d 24 (Tex. 2016) (per curiam).[1]

The HB7 Task Force made the following recommendations regarding an indigent parent's notice of the right to appeal and the right to counsel on appeal.

> The HB7 Task Force proposes that a defendant in a parental-termination suit be notified in the citation about the right to counsel, including the right to counsel on appeal. This will provide an additional measure of notice in the event appointed counsel later declines to pursue an appeal due to abandonment of the case by the parent. The admonition could be added to the required notice and take the following form:
>
> > "You have the right to be represented by an attorney. If you are indigent and unable to afford an attorney, you have the right to request the appointment of an attorney by contacting the court at [address], [telephone number]. If you appear in opposition to the suit, claim indigence and request the appointment of an attorney, the court will require you to sign an affidavit of indigence and the court may hear evidence to determine if you are indigent. If the court determines you are indigent and eligible for appointment of an attorney, the court will appoint an attorney to represent you."
> >
> > "You are further notified that if a judgment is rendered against you, you have a right to appeal the judgment to the court of appeals and to the Supreme Court of Texas, and if you are indigent an attorney will be appointed to conduct the appeal at no cost to you."
>
> To the extent the Supreme Court is currently considering a revision of Rule 99 to include standard form citations, the Task Force proposes the creation of a customized form citation, in English and Spanish (and with an internet citation to translations in other languages), to be used in parental termination cases. Such a

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[1] The Supreme Court has not addressed whether there is a constitutional or statutory right to appointed counsel in private parental termination suits, or whether such a right extends to a non-indigent parent. The Court also has not addressed whether appointed counsel must be provided for an indigent parent at the petition for review stage in cases in which a governmental entity seeks the appointment of a conservator for a child.

> citation could have language customized to address the availability of default judgments in parental-termination cases.

The subcommittee reviewed and discussed these HB7 Task Force recommendations.

The subcommittee recommends the following revision to the HB7 Task Force's proposed citation language.

> "You have the right to be represented by an attorney. If you are indigent and unable to afford an attorney, you have the right to request the appointment of an attorney by contacting the court at [address], [telephone number]. If you appear in opposition to the suit, claim indigence and request the appointment of an attorney, the court will require you to sign an affidavit of indigence and the court may hear evidence to determine if you are indigent. If the court determines you are indigent and eligible for appointment of an attorney, the court will appoint an attorney to represent you~~."~~ at no cost to you."
>
> "You are further notified that if a judgment is rendered against you, you have a right to appeal the judgment to the court of appeals and to the Supreme Court of Texas, and if you are indigent an attorney will be appointed to conduct the appeal at no cost to you."

The proposed revision clarifies the practical consequence of being "eligible for appointment of an attorney" and conforms the first paragraph to the second paragraph so they both provide the same information in parallel fashion.

The HB7 Task Force proposal comports with an October 2017 report by the Rules 15-165a Subcommittee entitled, "Modernizing TRCP 99, Issuance and Form of Citation." The full advisory committee discussed this report at its October 2017 meeting, and the proposed revisions to TRCP 99 are pending before the Texas Supreme Court. Among other things, the October 2017 report recommends eliminating from TRCP 99 the description of a citation's mandatory contents and instead promulgating a form citation in plain language that clerks must follow. The Appellate Rules Subcommittee endorses the application of this approach to parental termination cases. The Appellate Rules Subcommittee solicits input from the full advisory committee about whether additional language addressing default judgments or other topics specific to parental termination cases should be considered for inclusion in a form citation for parental termination cases.

B. Showing Authority to Appeal

The HB7 Task Force made the following recommendations (footnotes omitted) with respect to requiring an attorney to show authority to pursue an appeal from a termination order.

> The filing of a notice of appeal starts the process of immediately preparing a record for which a court reporter might not be compensated. To avoid initiating the preparation of an appellate record in circumstances when a terminated parent may not actually be seeking to challenge a final order, the HB7 Task Force recommends an amendment to Rule 28.4(c) to require that a notice of appeal include an attorney certification that "the attorney consulted with the appellant and the appellant has directed the attorney to pursue to the appeal." *See Appendix C, Rule 28.4(c)*. The Task Force further proposes a similar certification in a petition for review filed in the Supreme Court. *See Appendix D, Rule 53.2(l)*. As an enforcement mechanism, the Task Force proposes borrowing from the procedure in Texas Rule of Civil Procedure 12 to challenge an attorney's authority but eliminating the requirement of a sworn motion.

The HB7 Task Force's proposed rule revisions read in part as follows.

> HB7 Task Force Proposed Texas Rule of Appellate Procedure 28.4(c):
>
> (c) *Certification by Appointed Counsel and Motion to Show Authority*. A notice of appeal filed by appointed counsel must state that the attorney consulted with the appellant and the appellant has directed the attorney to pursue the appeal. A party, the district clerk, or a court reporter may, by written motion stating a belief that the appeal is being prosecuted without authority, cause the attorney to be cited to appear before the court and show his authority to act. The notice of the motion shall be served upon the challenged attorney at least three days before the hearing on the motion. At the hearing on the motion, the burden of proof shall be upon the challenged attorney to show sufficient authority to file the notice of appeal. Upon failure to show such authority, the court shall strike the notice of appeal. The motion shall be heard and determined within ten days of service of the motion, and all appellate deadlines shall be suspended pending the court's ruling. The court must rule on the motion to show authority not later than the third day following the date of the hearing on the motion, and if the court does not timely rule, the motion is considered to have been denied by operation of law.
>
> HB7 Task Force Proposed Texas Rule of Appellate Procedure 53.2(l):
>
> (l) *Certification by Appointed Counsel*. In a case in which the petitioner has a statutory right to counsel for purposes of seeking review by the Supreme Court, a petition filed by appointed counsel must state that the attorney consulted with the petitioner and the petitioner has directed the attorney to file a petition for review.

The subcommittee reviewed and discussed these HB7 Task Force proposals.

The subcommittee recommends a different approach regarding an enforcement mechanism in proposed TRAP 28.4(c).

Questions arose among the subcommittee members regarding the necessity of creating a motion-to-show-authority procedure. If the full advisory committee concludes such a procedure is necessary, then the subcommittee recommends creating a simpler procedure. Grafting the procedure from TRCP 12 onto TRAP 28.4(c) makes for a lengthy and potentially cumbersome or redundant appellate rule. Instead of adding language to proposed TRAP 28.4(c) delineating the procedure for challenging authority to appeal, the subcommittee recommends (1) adding a second sentence to proposed TRAP 28.4(c) stating that a motion challenging an attorney's authority to pursue a parental-termination appeal will be handled in the trial court under TRCP 12, and (2) supplementing TRCP 12 as necessary to accommodate the accelerated timeframes applicable to parental-termination appeals.

The full committee discussed the questions of authority and intent to appeal at length during the November 1, 2019 meeting. Substantial consideration was given to the issue of "phantom" appeals pursued on behalf of absent parents whose intent to pursue an appeal from a termination order may be difficult for trial counsel or the trial court to confirm because they cannot be located. The full committee votes indicated a preference for a rule-based procedure under which the trial court would (1) conduct a hearing at the conclusion of trial, and then (2) sign an order based on the results of that hearing.

The subcommittee considered this procedure based on the vote and recommends a narrow rule to implement it as discussed further below. One possible location for such a rule is as part of current Texas Rule of Civil Procedure 306, which already contains a specific provision addressing the contents of a judgment in a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship.

The subcommittee discussed using Rule 306 as the vehicle for any procedure that may be implemented, and moving the first sentence of Rule 306 to Rule 301.

To obtain practical insights on how such a procedure might work and to identify potential pitfalls, the subcommittee reached out to those who have experience handling these cases. Two key pitfalls were identified.

- It is problematic to infer an intent to relinquish parental rights, or to relinquish the right to appeal from a termination order, solely from a terminated parent's absence at trial or periodic absences as a case progresses. Parents subject to termination may "disappear" from a case for periods of time and become unreachable by counsel because they are homeless, or incarcerated, or experiencing domestic violence, or experiencing untreated mental illness, or experiencing the effects of substance abuse. It is not uncommon for parents in these circumstances to re-establish contact with counsel after trial when their circumstances have stabilized and express a desire to challenge a termination order on appeal. For this reason, a rule permitting the trial court to determine an intent not to appeal based solely on the parent's absence from trial, or trial counsel's inability to communicate with a

parent who previously has been participating in the case but has become unreachable, potentially could operate to foreclose the appellate rights of parents who later will express a desire to appeal.

- Parents who are present for trial may be difficult to reach after trial, which counsels in favor of having any hearing and determination with respect to an intent to appeal occur at the close of trial instead of when the judgment is signed.

Based on this input, the subcommittee has reviewed a proposed revision to Rule 306.

Under this proposal, non-appearance at trial would give rise to a permissible inference that the terminated parent does not wish to appeal when a parent (1) is identified as an "alleged" or "presumed" parent; (2) has never been located or involved in the case; and (3) is represented at trial only because the trial court has appointed an attorney ad litem to represent the "alleged" or "presumed" parent at trial.

[Current] Rule 306 Recitation of Judgment

The entry of the judgment shall contain the full names of the parties, as stated in the pleadings, for and against whom the judgment is rendered. In a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, the judgment must state the specific grounds for termination or for appointment of the managing conservator.

[Draft] Rule 306 Judgment in Suit Affecting the Parent-Child Relationship

1. In a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, the judgment must state the specific grounds for termination or for appointment of the managing conservator. **[Same as the current rule.]**

2. The following provisions apply in a suit filed by a governmental entity that seeks the termination of the parent-child relationship or appointment of the entity as a child's conservator.

   a. The judgment may state that an attorney ad litem appointed for a parent or alleged father is relieved or replaced by another attorney after stating a finding of good cause.

   b. The parent's or alleged father's failure to appear in any manner after proper citation may constitute good cause for relieving the attorney ad litem appointed for that parent or alleged father.

c. If the attorney ad litem appointed for the alleged father submits a written summary of the attorney's effort to identify or locate the alleged father with a statement that the attorney was unable to identify or locate the father, the court shall discharge the attorney from the appointment.

Comments on draft:

1. The first sentence of TRCP 306 is moved to TRCP 301.

2. It is assumed that the proposed changes to citation are approved.

3. Under Family Code §107.013 the court must appoint an attorney ad litem for:

    i. An indigent parent who responds to oppose the termination or appointment;
    ii. A parent served by publication; or,
    iii. A putative father who failed to register his parenthood under Chap. 160 and who location is unknown; and,
    iv. A registered putative father who cannot be located for service.

    The attorney ad litem must investigate what the petitioner has done to locate an alleged father and do an independent investigation to find him. Tex. Fam. Code §107.0132(a). If the attorney locates him, he must report the address and locating information to the court and each party. Tex. Fam. Code §107.0132(b). If the attorney ad litem cannot locate him, he shall report his efforts to the court; on receipt of the report, the court must discharge the attorney. Tex. Fam. Code §107.0132(d). If the putative father is adjudicated the parent and is determined to be indigent, the court may continue the appointment on the same basis as an indigent parent. Tex. Fam. Code §107.0132(c). This suggests that after the putative father appears, he is entitled to continued representation only upon proof of indigency.

4. The attorney ad litem serves until the earliest of:

    i. The date the suit is dismissed;
    ii. The date appeals of a final order are exhausted or waived; or
    iii. The date the attorney is relieved of duties or replaced by another attorney after a finding of good caused rendered on the record.

Tex. Fam. Code §107.016(3). The Supreme Court has held that once appointed, counsel may withdraw only for good cause, which did not include client disagreement or belief the appeal was meritless. *In the Interest of P.M.*, 520 S.W.3d at 27. Courts have a duty to see that withdrawal not result in foreseeable prejudice to the client; it the court permits withdrawal, it must provide for new counsel. *Id.* However, this was a case where the parent had appeared and actively pursued an appeal. This leaves unresolved whether the court may relieve the attorney ad litem if the parent/putative father never appeared after personal service or service by publication.

Section 107.0132(d) mandates discharging counsel if the putative father cannot be located. Section 107.0132(c) suggests the putative father who is served is entitled to continued representation on the same basis as a parent who appears. Arguably the *P.M.* decision would permit discharging the attorney ad litem if:

i. The putative cannot be located;
ii. The putative father is served, responds, but fails to prove he is indigent;
iii. The parent is served, responds, but fails to prove indigency.

5. This draft avoids the difficulty of trying to determine whether a party who has never appeared (or has disappeared) wishes to waive the appeal. It focused on determining what is good cause under Texas Family Code section 107.016(3) to relieve the appointed attorney ad litem when the final judgment is signed. It does not address discharging or relieving appointment prior to a final judgment.

   The default position is proposed Rule 306(2)(a): The judgment must find 'good cause' to terminate the appointment or replace the attorney. This creates flexibility to find 'good cause' if the parent has intermittently appeared but now cannot be located. In those cases, 'good cause' will be case-specific and *P.M.* may prohibit discharge without replacing counsel.

   Under proposed Rule 306(2) (b), the court may find "good cause" for terminating the appointment altogether if the parent or alleged father failed to appear in any manner after proper service. However, the court has discretion not to terminate.

   If the parent or putative father was served and never responded at all, that party is not entitled to an attorney ad litem under sections 107.013(a)(1) and 107.0132(c). Due process is not offended because they did not appear and prove indigency.

> Under proposed Rule 306(2)(c), the Court must discharge the attorney ad litem if the attorney filed the report permitted by Texas Family Code section 107.0132(d). The attorney ad litem may be discharged with replacement or filing an appeal.

This proposal generated substantial discussion within the subcommittee. Additional areas for consideration include (1) is Rule 306 the best place to put such a rule; (2) are there other rules that could be more readily adapted for this purpose, such as Rule 308a; (3) should all rules of civil procedure governing the parent-child relationship be assembled in one place as part of "Rules Relating to Special Proceedings" in Part VII of the Texas Rules of Civil Procedure.

C. Motions for Extension of Time and Conformity With Revisions to TRAP 4.7

Later subcommittee reports will address issues concerning extensions of time by an indigent parent with a statutory right to appointed counsel if the indigent parent's appointed counsel fails to timely pursue an appeal. At this juncture, the subcommittee recommends that any standards or procedures adopted for earlier appellate proceedings be compatible with those ultimately adopted with respect to petitions for review in the Texas Supreme Court. As noted earlier, the subcommittee and SCAC previously have discussed and approved TRAP amendments relating to out-of-time petitions for review.

Tab E

To: Texas Supreme Court Advisory Committee

From: Subcommittee (TEX. R. CIV. P. 216-299a)
Professor Elaine Carlson, Chair
Tom Riney, Vice-Chair
Judge David Peeples
Alistair Dawson
Bobby Meadows
Kent Sullivan
Kennon Wooten

Re: Subcommittee Recommendation: Parental Continuance Rule

June 3, 2020

At the November 1, 2019 SCAC meeting, the full committee voted 20-5 in favor of proposing a rule addressing parental leave continuance. Based on discussion at that meeting and the February 28, 2020 meeting, the subcommittee recommends the following changes to the continuance rule for absence of counsel.

As a reminder, Florida and North Carolina have adopted rules providing for parental leave continuances. Copies of those rules are attached to this memo, along with the State Bar of Texas Court Rules Committee's proposed changes to T.R.C.P. 253 providing for parental leave continuances. Also attached is Harris County Local Rule 11 that entitles lead counsel to file a vacation letter that precludes a case from being set for trial and relieves counsel from engaging in any pretrial proceedings during that time frame. The Court has asked the subcommittee to consider broadening the proposed continuance rule to address not only the birth or adoption of a child, but also the grounds set forth in the Federal Family & Medical Leave Act (FMLA). 29 U.S.C. § 2612. A copy of that statute is also attached to this memo. As reflected in the proposal below, the subcommittee has addressed FMLA grounds in comments accompanying revised T.R.C.P. 253.

Exact wording of existing Rule 253:

RULE 253. ABSENCE OF COUNSEL AS GROUND FOR CONTINUANCE
Except as provided elsewhere in these rules, absence of counsel will not be good cause for a continuance or postponement of the cause when called for trial, except it be allowed in the discretion of the court, upon cause shown or upon matters within the knowledge or information of the judge to be stated on the record.

Subcommittee Recommendation:

RULE 253. CONTINUANCE DUE TO ABSENCE OF COUNSEL

(a) For purposes of this rule, "parental leave continuance"[1] means a continuance of a trial setting,[2] including the determination of a summary judgment motion, in connection with the birth or placement for adoption of a child by an attorney movant regardless of the movant's gender. Twelve weeks is the presumptive maximum length of a parental leave continuance that may be taken within the twenty-four weeks after the birth or placement of a child for adoption. Upon a showing of good cause, the trial court may allow a longer time for the parental leave period. This rule does not apply to cases arising under Chapters 54,[3] 83-85[4], or 262[5] of the Family Code, or involuntary civil commitment or guardianship proceedings. [Other exclusions?] [6]

(1) Any motion for a parental leave continuance must be filed at least ninety days before the date of commencement of the parental leave period as to existing trial settings and within seven days of notice of a trial setting made less than ninety days before commencement of the secured leave period. But because of potential medical complications and the uncertainty of a child's birth or adoption date, the trial court must make reasonable exception to this requirement.

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[1] Alternatively, this could be referred to as a "Secure Leave Period," following the North Carolina model.

[2] Florida has other rules for parental leave in Criminal, Juvenile, and Involuntary Civil Commitment of Sexually Violent Predators Cases. North Carolina has separate provisions for Criminal, Special Proceedings and Estate Proceedings, and Juvenile Proceedings

[3] Juvenile Proceedings. Check whether these proceedings involve other Family Code chapters.

[4] Protective Orders & Family Violence.

[5] Involuntary Parental Termination Proceedings.

[6] The subcommittee recommends presumptively mandatory parental leave apply to expedited trials but notes that TEX. R. CIV. P. 169(d)(2) will need amendment to reflect the application of this proposed rule.

(2) An attorney moving for a parental leave continuance must support the motion with an affidavit or an unsworn declaration compliant with Chapter 132 of the Texas Civil Practice & Remedies Code, confirming the following:

(A) the movant is the lead attorney, or setting forth facts demonstrating the movant has substantial responsibility for the preparation or presentation of the case;

(B) the movant was not retained or assigned to the case for the purpose of obtaining a continuance;

(C) the movant will be the lead attorney or have substantial responsibility for the preparation or presentation of the case for trial, including summary judgment, when reset;

(D) each of the movant's clients in the case has consented to the continuance; and

(E) the continuance is not sought merely for delay [but to care for the child].

(3) The trial court must grant the continuance absent extraordinary circumstances stated in the trial court's order. The trial court shall enter a written order resetting the date of trial or determination of the summary judgment and adjust pending pretrial deadlines in the scheduling order for the case, if any, to correspond with the new trial date. Absent extraordinary circumstances, the trial court shall not set a case for trial, including summary judgment, during the designated leave period.

(b) Except as provided elsewhere in these rules, the trial court has the discretion, upon good cause shown or upon matters within the knowledge or information of the judge to be stated on the record, to grant a motion for continuance or postponement of the cause when called for trial.

Comment

When considering a motion for continuance under subsection (b) of this rule, the trial court should take into account the length and degree of the movant's work on the case, how long the movant has known about the reason for the request, the role the movant will play in the rescheduled trial or hearing, and the harm that delay would cause the opposing party balanced against the needs of the movant or the movant's family. Although discretionary, the trial court should give serious consideration to granting a requested continuance when the attorney seeking the continuance (1) must care for a spouse, son, daughter, or parent of the attorney, if such spouse, son, daughter, or parent has a serious health condition; (2) has a serious health condition that makes the attorney unable to perform the functions of trial counsel; or (3) is seeking the continuance due to an exigency arising out of the fact that the spouse, or a son, daughter, or parent of the attorney is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.[7] When granting a continuance under subsection (b), the trial court should consider issuing interim orders to minimize the harm caused by delay. If a prompt reset date is difficult to fit into the trial court's schedule, the trial court should consider seeking the assistance of an assigned judge.

[7] These grounds correspond to the grounds for leave under the Federal Family & Medical Leave Act 29 U.S.C. § 2612.

Tab F

STATE BAR OF TEXAS COMMITTEE ON COURT RULES PROPOSAL TO CHANGE EXISTING RULE TEXAS RULES OF CIVIL PROCEDURE

. **Exact wording of existing Rule:**

RULE 253. ABSENCE OF COUNSEL AS GROUND FOR CONTINUANCE

Except as provided elsewhere in these rules, absence of counsel will not be good cause for a continuance or postponement of the cause when called for trial, except it be allowed in the discretion of the court, upon cause shown or upon matters within the knowledge or information of the judge to be stated on the record.

. **Proposed Rule:**

RULE 253. PARENTAL LEAVE OR ABSENCE OF COUNSEL AS GROUND FOR CONTINUANCE OF TRIAL

(a) For purposes of this rule, "parental leave continuance" means a continuance of a trial setting in connection with the birth or adoption of a child by an applicant, regardless of the applicant's gender. Three months is the presumptive maximum length of a parental leave continuance, absent a showing of good cause that a longer time is appropriate. This rule does not apply to cases arising under Chapters 54 or 262 of the Family Code.

(1) Any application made under this rule must be filed within a reasonable time after the later of:

(A) the applicant learning of the basis for the continuance; or

(b) the applicant learning the setting of the proceeding for which the continuance is sought.

(2) Application by Lead Attorney. Except where the attorney was employed within ten days of the date the suit is set for trial, an application for parental leave continuance based on the parental leave of a lead attorney in a case must be granted. In cases where an attorney was employed within ten days of the date the suit is set for trial, the right to continuance based on the parental leave of a lead attorney in a case shall be discretionary.

[Continued on Next]

(3) Application by Attorney Other than Lead Attorney. The court in its discretion may grant an application for parental leave continuance based on the parental leave of an attorney other than the lead attorney in a case if such application is made in accordance with this rule. If the application for parental leave continuance by an attorney other than the lead attorney is challenged by another party that makes a prima facie demonstration of substantial prejudice, the burden shifts to the applicant to demonstrate that the prejudice caused by denying the continuance exceeds the burden that would be caused to the objecting party if the continuance were to be granted. The court must enter a written order setting forth its ruling on the application for parental leave continuance and, if the court denies the requested continuance, the specific grounds for denial shall be set forth in the order.

(b) Except as provided elsewhere in these rules, absence of counsel will not be good cause for a continuance or postponement of the cause when called for trial, except it may be allowed in the discretion of the court, upon cause shown or upon matters within the knowledge or information of the judge to be stated on the record.

. **Brief statement of reasons for requested changes and advantages to be served by the proposed new Rule:**

The Committee is committed to the concept of parental leave for men and women alike and to minimizing dispute and uncertainty surrounding applications for continuance based on the birth or adoption of a child. Under this rule, an application for parental leave continuance of a trial date would be mandatory for lead attorneys on the case, so long as the attorney is employed more than ten days of the trial setting. Further, applications for continuance made by an attorney other than the lead attorney on a case would be discretionary, and may be denied in the sound discretion of the court when, for example, there would be substantial prejudice to another party, when an emergency or time-sensitive matter would be unreasonably delayed as a result of the continuance, when a significant number of continuances have already been granted, or when the substantial rights of the parties may otherwise be adversely affected.

Attorneys would continue to have the ability to request continuances of settings other than trial settings under the existing Rules.

Shortly after the Committee's unanimous approval of this proposed amendment, the ABA House of Delegates approved Resolution 101B, encouraging all states to promulgate a parental leave rule.

Tab G

Filing # 102478553 E-Filed 01/30/2020 11:02:06 AM

Supreme Court of Florida

No. SC18-1554

IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION—PARENTAL LEAVE.

December 19, 2019
CORRECTED OPINION

PER CURIAM.

The Florida Bar's Rules of Judicial Administration Committee (RJA Committee) has submitted, for the Court's consideration, new Florida Rule of Judicial Administration 2.570 (Parental-Leave Continuance). *See* Fla. R. Jud. Admin. 2.140(f)(1). We have jurisdiction[1] and adopt a modified version of the parental-leave continuance rule that was submitted.

BACKGROUND

At the Court's request, the RJA Committee submitted a draft parental-leave continuance rule for the Court's consideration. New rule 2.570, as drafted by the Committee, provided that a court must grant a motion for continuance based on the

1. Art. V, § 2(a), Fla. Const.

parental leave of a lead attorney, if the motion is made within a reasonable time of certain events, unless another party demonstrates substantial prejudice. The draft rule also provided three months as the presumptive maximum length of a continuance granted under the rule. A majority of the RJA Committee opposed the adoption of a parental-leave continuance rule, while a minority of the Committee supported the adoption of the draft rule. The Board of Governors of The Florida Bar also supported the adoption of the draft rule.

Before the RJA Committee submitted the draft rule to the Court, the Committee received one comment opposing the rule, two comments supporting the rule, and one comment from the Juvenile Court Rules Committee opposing application of the rule in juvenile proceedings. After the Committee submitted the draft new rule to the Court, the Court published the rule for comment. The majority of the comments received by the Court strongly support the adoption of the new rule. One attorney filed a comment opposing the adoption of a parental-leave continuance rule. The Department of Children and Families (DCF), the Statewide Guardian ad Litem Program (GAL), and the Florida Public Defender Association, Inc. (FPDA) filed comments opposing the application of the draft rule in criminal, juvenile, and dependency proceedings.

In its response to the comments, the RJA Committee offered a revised rule that exempts criminal, juvenile, and involuntary civil commitment of sexually

violent predator cases from the requirements of the rule and provides that a motion for a continuance based on parental leave in those types of cases is governed by rule 2.545(e) (Continuances) and by any applicable rule of procedure governing those proceedings. The revised rule further requires the court to use existing discretion to provide a reasonable accommodation when a parental-leave continuance is requested in an exempt proceeding. The Board of Governors approved the revised rule by a vote of 36-1. After the Court published the revised rule, FPDA filed a comment supporting the revised rule and DCF filed a comment stating it has no objection to the revised rule. The Juvenile Court Rules Committee filed a comment stating the revisions to the rule are acceptable, but it objects to the use of the term "lead attorney" in the revised rule. The attorney who opposed the original draft of the rule filed a comment opposing the revised rule. The GAL opposes the revised rule because of concerns that the added language about a court exercising discretion to reasonably accommodate a parental-leave request could result in unauthorized delays in dependency cases.

After considering the RJA Committee's revisions to the rule, the Committee's majority and minority positions, the Board of Governors' strong support of a parental-leave continuance rule, and the other comments filed with the Court, and having heard oral argument, we adopt new rule 2.570, with several modifications.

As adopted, subdivision (a) of new rule 2.570 requires that absent a finding of one or more of the reasons listed in the rule, a court must grant a timely motion for continuance based on the parental leave of the movant's lead attorney, due to the birth or adoption of a child, if the motion is made within a reasonable time after the later of the movant's lead attorney learning of the basis of the continuance, or the setting of the proceeding(s) or the scheduling of the matter(s) for which a continuance is sought. Subdivision (b) of the new rule sets forth the requirements for the motion. Subdivision (c) of the rule provides the presumptive three-month maximum length of a continuance granted under the rule. Subdivision (d) of the rule addresses the burden of proof. Subdivision (e) of the rule addresses the court's discretion to deny the motion or to grant a continuance different in scope or duration than requested. That subdivision also requires the court to enter a written order setting forth its ruling and the specific grounds for the ruling. Subdivision (f) of the rule exempts criminal, juvenile, and involuntary civil commitment of sexually violent predator cases from the requirements of the new rule and provides that a motion for a parental-leave continuance in those types of cases is governed by rule 2.545(e) (Continuances) and any applicable rule of procedure. That subdivision further provides that in juvenile dependency and termination of parental rights proceedings, a motion for a parental-leave continuance is governed by Florida Rule of Juvenile Procedure 8.240(d) (Continuances and Extensions of

Time). Finally, in light of the modifications to the RJA Committee's revised rule, we have omitted the suggested committee note.

Accordingly, we adopt new Florida Rule of Judicial Administration 2.570, as reflected in the appendix to this opinion. The new rule shall become effective January 1, 2020, at 12:01 a.m. The Court thanks the RJA Committee, the Board of Governors of The Florida Bar, and all those who submitted comments for assisting the Court in crafting the new parental-leave continuance rule.

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, and MUÑIZ, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – Florida Rules of Judicial Administration

Josephine Gagliardi, Chair, Rules of Judicial Administration, Fort Myers, Florida, and Eduardo I. Sánchez, Past Chair, Rules of Judicial Administration, Miami, Florida; and Joshua E. Doyle, Executive Director, Krys Godwin and Mikalla Davis, Bar Liaisons, The Florida Bar, Tallahassee, Florida,

for Petitioner

Catherine Cole of Katz & Doorakian Law Firm, West Palm Beach, Florida; Theodore F. Greene, III, of Law Office of Theodore F. Greene, LC, Orlando, Florida; Glen P. Gifford, Assistant Public Defender, on behalf of Florida Public Defender Association, Inc., Second Judicial Circuit, Tallahassee, Florida; Tara Scott Lynn of Law Offices of Tara J. Scott PA, Oldsmar, Florida; Jane West of Jane West Law, P.L., St. Augustine, Florida; Erin L. Deady of Erin L. Deady, P.A., Delray Beach, Florida; Stephanie C. Zimmerman, Deputy Director and Statewide Director of Appeals, on behalf of Department of Children and Families – Children's Legal Services, Bradenton, Florida; Kimberly Kanoff Berman of Marshall Dennehey Warner Coleman & Goggin, Fort Lauderdale, Florida; Abbe Sheila Rifkin, on behalf of the Board of Directors, Broward County Women Lawyers Association, Fort Lauderdale, Florida; John M. Stewart, President, Vero Beach, Florida, Michelle Renee Suskauer, Past President, West Palm Beach, Florida, Dori Foster-Morales, President-elect, Florida Board of Governors, Miami, Florida, and Santo DiGangi, President, West Palm Beach, Florida, Christian George, Past President, Jacksonville, Florida, and Lara Bueso Bach, on behalf of The Young Lawyers Division of The Florida Bar, Miami, Florida; Joshua E. Doyle, Executive Director, The Florida Bar, Tallahassee, Florida; Susan V. Warner, Member, Rules of Judicial Administration Committee, Miami, Florida; David R. Bear of Marshall Dennehey Warner Coleman & Goggin, Orlando, Florida; Amanda R. Jesteadt and Christa L. McCann, on behalf of Palm Beach County Chapter, Florida Association for Women Lawyers, West Palm Beach, Florida; Kyleen Hinkle, Ormond Beach, Florida, and Jennifer Shoaf Richardson, on behalf of Florida Association of Women Lawyers, Jacksonville, Florida; Alan F. Abramowitz, Executive Director, Dennis W. Moore, General Counsel, and Thomasina F. Moore, Director of Appeals, on behalf of Statewide Guardian ad Litem Program, Tallahassee, Florida; Michelle Browning Coughlin, on behalf of MothersEsquire, Inc., Louisville, Kentucky; and David Neal Silverstein, Chair, Juvenile Court Rules Committee, on behalf of Children's Legal Services, Bradenton, Florida,

Responding with comments

APPENDIX

RULE 2.570. PARENTAL-LEAVE CONTINUANCE

(a) Generally. Absent one or more of the findings listed in subdivision (e) of this rule, a court shall grant a timely motion for continuance based on the parental leave of the movant's lead attorney in the case, due to the birth or adoption of a child, if the motion is made within a reasonable time after the later of:

(1) the movant's lead attorney learning of the basis for the continuance; or

(2) the setting of the specific proceeding(s) or the scheduling of the matter(s) for which the continuance is sought.

(b) Contents of Motion. A motion filed under this rule shall be in writing and signed by the requesting party. The motion must state all of the following:

(1) The attorney who is the subject of the motion is the movant's lead attorney.

(2) The facts necessary to establish that the motion is timely.

(3) The scope and length of the continuance requested.

(4) Whether another party objects to the motion.

(5) Any other information that the movant considers relevant to the court's consideration of the motion.

(c) Presumptive Length. Three months is the presumptive maximum length of a parental-leave continuance absent a showing of good cause that a longer time is appropriate.

(d) Burden of Proof. If the motion is challenged by another party that makes a prima facie demonstration of substantial prejudice, the burden shall shift to the movant to demonstrate that the prejudice to the requesting party caused by

the denial of the motion exceeds the prejudice that would be caused to the objecting party if the requested continuance were granted.

(e) Court's Discretion; Order. It is within the court's sound discretion to deny the motion or to grant a continuance different in scope or duration than requested, if the court finds that:

(1) another party would be substantially prejudiced by the requested continuance; or

(2) the requested continuance would unreasonably delay an emergency or time-sensitive proceeding or matter.

The court shall enter a written order setting forth its ruling on the motion and the specific grounds for the ruling.

(**f**) **Criminal, Juvenile, and Involuntary Civil Commitment of Sexually Violent Predators Cases.** In a case governed by the Florida Rules of Criminal Procedure, by the Florida Rules of Juvenile Procedure, or by the Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, a motion for continuance based on the parental leave of the lead attorney is governed by rule 2.545(e) and by any applicable Florida Rule of Criminal Procedure, Florida Rule of Juvenile Procedure, or Florida Rule of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, rather than by this rule, except that in a case governed by Part III of the Florida Rules of Juvenile Procedure, a motion for continuance based on the parental leave of the lead attorney is governed by Florida Rule of Juvenile Procedure 8.240(d).

Tab H

Rule 11. VACATIONS OF COUNSEL.

11.1 DESIGNATION OF VACATION.

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

11.2 SUMMER VACATIONS.

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

11.3 NON-SUMMER VACATIONS.

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

Tab I

West's North Carolina General Statutes Annotated North Carolina Rules of Court General Rules of Practice for the Superior and District Courts Supplemental to the Rules of Civil Procedure

Superior and District Courts Rule 26

Rule 26. Secure-Leave Periods for Attorneys

Currentness

(a) Definition; Entitlement. A "secure-leave period" is one complete calendar week that is designated by an attorney during which the superior courts and the district courts may not hold a proceeding in any case in which that attorney is an attorney of record. An attorney is entitled to enjoy a secure-leave period that has been designated according to this rule.

(b) Allowance.

(1) Within a calendar year, an attorney may enjoy three different secure-leave periods for any purpose. A secure-leave period that spans across calendar years counts against the attorney's allowance for the first calendar year.

(2) Within the twenty-four weeks after the birth or adoption of an attorney's child, that attorney may enjoy twelve additional secure-leave periods for the purpose of caring for the child.

(c) Form of Designation. An attorney must designate his or her secure-leave periods in writing.

(d) Content of Designation. An attorney's designation of a secure-leave period must contain the following information:

(1) the attorney's name, address, e-mail, telephone number, and state bar number;

(2) the date of the Sunday on which the secure-leave period is to begin and the date of the Saturday on which it is to end;

(3) the allowance that the secure-leave period will count against, with reference to either subsection (b)(1) or (b)(2) of this

rule;

(4) the dates of any previously designated secure-leave periods that count against that allowance;

(5) a statement that the secure-leave period is not being designated for the purpose of interfering with the timely disposition of any proceeding;

(6) a statement that the attorney has taken adequate measures to protect the interests of the attorney's clients during the secure-leave period; and

(7) the attorney's signature and the date on which the attorney submits the designation.

(e) Where to Submit Designation.

(1) *In Criminal Actions.* The attorney must submit his or her designation of a secure-leave period to the office of the district attorney for each prosecutorial district in which the attorney's criminal actions are pending.

(2) *In Civil Actions.* The attorney must submit his or her designation of a secure-leave period to the office of the senior resident superior court judge for each superior court district and to the office of the chief district court judge for each district court district in which the attorney's civil actions are pending.

(3) *In Special Proceedings and Estate Proceedings.* The attorney must submit his or her designation of a secure-leave period to the office of the clerk of the superior court of the county in which the attorney's special proceedings or estate proceedings are pending.

(4) *In Juvenile Proceedings.* The attorney must submit his or her designation of a secure-leave period to the juvenile case calendaring clerk in the office of the clerk of the superior court of the county in which the attorney's juvenile proceedings are pending.

(f) When to Submit Designation. An attorney must submit his or her designation of a secure-leave period:

(1) at least ninety days before the secure-leave period begins; and

(2) before a proceeding in any of the attorney's cases is scheduled for a time that conflicts with the secure-leave period.

But because of the uncertainty of a child's birth or adoption date, the superior court or district court scheduling authority must make reasonable exception to these requirements so that an attorney may enjoy leave with the child.

(g) Depositions. A party may not notice a deposition for a time that conflicts with a secure-leave period that another party's attorney has designated according to this rule.

(h) Other Leave. Nothing in this rule limits the inherent power of the superior courts or the district courts to allow an attorney to enjoy leave that has not been designated according to this rule.

Credits

[Adopted May 6, 1999, effective January 1, 2000. Amended September 4, 2019, effective September 11, 2019.]

Superior and District Courts Rule 26, NC R SUPER AND DIST CTS Rule 26
Current with amendments received through September 15, 2019

End of Document

Tab J

United States Code Annotated Title 29. Labor Chapter 28. Family and Medical Leave (Refs & Annos)
Subchapter I. General Requirements for Leave (Refs & Annos)

29 U.S.C.A. § 2612

§ 2612. Leave requirement

Effective: December 21, 2009

Currentness

(a) In general

(1) Entitlement to leave

Subject to section 2613 of this title, an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:

(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

(D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

(E) Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

(2) Expiration of entitlement

The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(3) Servicemember family leave

Subject to section 2613 of this title, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall only be available during a single 12-month period.

(4) Combined leave total

During the single 12-month period described in paragraph (3), an eligible employee shall be entitled to a combined total of 26 workweeks of leave under paragraphs (1) and (3). Nothing in this paragraph shall be construed to limit the availability of leave under paragraph (1) during any other 12-month period.

(5) Calculation of leave for airline flight crews

The Secretary may provide, by regulation, a method for calculating the leave described in paragraph (1) with respect to employees described in section 2611(2)(D) of this title.

(b) Leave taken intermittently or on reduced leave schedule

(1) In general

Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and subsection (b)(5) or (f) (as appropriate) of section 2613 of this title, leave under subparagraph (C) or

(D) of subsection (a)(1) or under subsection (a)(3) may be taken intermittently or on a reduced leave schedule when medically necessary. Subject to subsection (e)(3) and section 2613(f) of this title, leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.

(2) Alternative position

If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3), that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that--

(A) has equivalent pay and benefits; and

(B) better accommodates recurring periods of leave than the regular employment position of the employee.

(c) Unpaid leave permitted

Except as provided in subsection (d), leave granted under subsection (a) may consist of unpaid leave. Where an employee is otherwise exempt under regulations issued by the Secretary pursuant to section 213(a)(1) of this title, the compliance of an employer with this subchapter by providing unpaid leave shall not affect the exempt status of the employee under such section.

(d) Relationship to paid leave

(1) Unpaid leave

If an employer provides paid leave for fewer than 12 workweeks (or 26 workweeks in the case of leave provided under subsection (a)(3)), the additional weeks of leave necessary to attain the 12 workweeks (or 26 workweeks, as appropriate) of leave required under this subchapter may be provided without compensation.

(2) Substitution of paid leave

(A) In general

An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under subparagraph (A), (B), (C), or (E) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection.

(B) Serious health condition

An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under subparagraph (C) or (D) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection, except that nothing in this subchapter shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave. An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, family leave, or medical or sick leave of the employee for leave provided under subsection (a)(3) for any part of the 26-week period of such leave under such subsection, except that nothing in this subchapter requires an employer to provide paid sick leave or paid medical leave in any situation in which the employer would not normally provide any such paid leave.

(e) Foreseeable leave

(1) Requirement of notice

In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(2) Duties of employee

In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3) is foreseeable based on planned medical treatment, the employee--

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, parent, or covered servicemember of the employee, as appropriate; and

(B) shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(3) Notice for leave due to covered active duty of family member

In any case in which the necessity for leave under subsection (a)(1)(E) is foreseeable, whether because the spouse, or a son, daughter, or parent, of the employee is on covered active duty, or because of notification of an impending call or order to covered active duty, the employee shall provide such notice to the employer as is reasonable and practicable.

(f) Spouses employed by same employer

(1) In general

In any case in which a husband and wife entitled to leave under subsection (a) are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken--

(A) under subparagraph (A) or (B) of subsection (a)(1); or

(B) to care for a sick parent under subparagraph (C) of such subsection.

(2) Servicemember family leave

(A) In general

The aggregate number of workweeks of leave to which both that husband and wife may be entitled under subsection (a) may be limited to 26 workweeks during the single 12-month period described in subsection (a)(3) if the leave is--

(i) leave under subsection (a)(3); or

(ii) a combination of leave under subsection (a)(3) and leave described in paragraph (1).

(B) Both limitations applicable

If the leave taken by the husband and wife includes leave described in paragraph (1), the limitation in paragraph (1) shall apply to the leave described in paragraph (1).

CREDIT(S)

(Pub.L. 103-3, Title I, § 102, Feb. 5, 1993, 107 Stat. 9; Pub.L. 110-181, Div. A, Title V, § 585(a)(2), (3)(A) to (D), Jan. 28, 2008, 122 Stat. 129; Pub.L. 111-84, Div. A, Title V, § 565(a)(1)(B), (4), Oct. 28, 2009, 123 Stat. 2309 to 2311; Pub.L. 111-119, § 2(b), Dec. 21, 2009, 123 Stat. 3477.)

VALIDITY

<The United States Supreme Court has held that Congress did not, under the Enforcement Clause of Fourteenth Amendment, validly abrogate states' sovereign immunity from suits for money damages in enacting FMLA's self-care provision (section 102(a)(1)(D) of the Family Medical Leave Act of 1993, Pub.L. 103-3; 29 U.S.C.A. § 2612(a)(1)(D)). Coleman v. Court of Appeals of Maryland, 566 U.S. 30, 132 S.Ct. 1327, 182 L.Ed. 2d 296 (2012).>

Notes of Decisions (224)

29 U.S.C.A. § 2612, 29 USCA § 2612
Current through P.L. 116-91.

FMLA allows eligible employees to take up to 12 work weeks of unpaid leave during any 12-month period to care for a new child (through birth, adoption, or foster care), to care for a family member's illness (a spouse, son, daughter, or parent), or to care for their own serious health condition.

Tab K

MEMORANDUM

TO: **Supreme Court Advisory Committee**

FROM: **Judicial Administration Subcommittee**

RE: **Mechanisms for Obtaining a Trial Court Ruling**

DATE: **June 15, 2020**

I. Matter Referred

Chief Justice Hecht's September 4, 2019 referral letter and Chairman Babcock's September 6, 2019 letter to the Judicial Administration Subcommittee address the following matter:

> **Procedures to Compel a Ruling.** In the attached letter, Chief Justice Gray points out that litigants, particularly self-represented inmates, are often unable to get trial courts to timely rule on pending motions and proposes rule changes to address the issue. The Committee should consider Chief Justice Gray's proposals and other potential solutions.

II. Background

As requested in the referral, the Judicial Administration Subcommittee has discussed issues related to the difficulty that incarcerated pro se litigants encounter in obtaining rulings on motions. Procedural issues surrounding difficulty in obtaining rulings are not limited to criminal cases.

III. Discussion

The subcommittee identified two threshold questions on which the full committee's input was solicited at the November 2019 meeting to provide direction for the subcommittee's further deliberations.

The first question was whether the discussion should focus solely on specific circumstances involving pro se inmate litigants, or instead should encompass the full range of situations in which a failure to rule may prompt mandamus proceedings.

The second question focused on the optimal approach to use in addressing failures to rule. Multiple potential approaches were identified based on discussions within the subcommittee and informal polling of the chief justices of the intermediate appellate courts.

- Create a universal request-for-a-ruling form, which would start the clock running for purposes of a deemed ruling denying the motion by operation of law occurring a certain number of days after the request is submitted.

- Require the trial court clerk to present a report of all ruling requests to the judge at least once monthly to create a presumption that the trial court had been informed of the motion and request. A litigant could rely upon this presumption in mandamus proceedings to establish that the trial judge had been made aware of the motion or request at issue.

- Reliance on a default rule under which a motion is denied by operation of law a certain number of days after filing. This approach already is used in a number of specific circumstances. *See, e.g.,* Tex. R. Civ. P. 329b(c) (motion for new trial overruled by operation of law 75 days after filing in absence of an express order); Tex. R. App. P. 21.8(c) (motion for new trial in a criminal case is deemed denied 75 days after imposing or suspending sentence in open court); Tex. Civ. Prac. & Rem. Code § 27.008(a) (TCPA motion to dismiss overruled by operation of law if trial court does not rule by 30th day following the date on which the hearing on the motion concludes).

- All Texas judges are under a duty to analyze their dockets and take action to bring overdue or pending matters to a conclusion pursuant to the Rules of Judicial Administration and the Code of Judicial Conduct. In conjunction with these existing duties, judges could be required to provide quarterly reports to the presiding judge of their administrative judicial region (or to the Office of Court Administration) identifying matters submitted for more than a threshold number of days and still awaiting a decision. Presiding judges would bear responsibility to determine the reasons for a failure to rule and appropriate follow up steps, perhaps including appointment of visiting judges to address a backlog.

These approaches were discussed at the November 2019 meeting. Additional approaches also were discussed including requiring trial judges to create a mechanism for reviewing motions without an oral hearing; educating trial judges and clerks regarding continuing jurisdiction to rule on motions after a final judgment is signed; creating a reminder mechanism that parties can send to judges; requiring judges to file a response to a failure-to-rule mandamus; and reporting mechanisms to the judicial conduct commission for repeated failures to rule. An additional consideration is that litigants may be reluctant to "remind" judges about long-pending but unresolved motions out of concern for provoking an adverse response.

Discussion at the November 2019 meeting considered whether this issue should be approached solely in a criminal context, or in a civil context as well. After the meeting, the subcommittee received additional guidance from the Court of Criminal Appeals and the Texas Supreme Court about the scope of this inquiry. This guidance indicated that the subcommittee should focus its efforts on circumstances in civil cases rather than criminal cases.

The Texas Supreme Court's guidance asked the subcommittee to consider a civil rule that (1) applies generally, not just to self-represented litigants; (2) focuses on a request-for-a-ruling mechanism to trigger an operation-of-law event; and (3) encompasses a result other than a deemed ruling, such as a presumption that the trial court has been informed of the motion and request.

The subcommittee conferred again after receiving this guidance and reached a consensus that, if used, a request-for-a-ruling mechanism in the civil context should: (1) create a presumption that the trial court is aware of the motion and requested relief, which would establish a basis for seeking mandamus relief to compel a ruling; and (2) exclude any circumstance in which a deadline to rule or a deemed ruling already is provided for under existing rules or statutes, such as motions for new trial and anti-SLAPP motions to dismiss under the TCPA. If a request-for-a-ruling mechanism is used, the subcommittee believes the better course is to create a narrower mechanism limited to creating a presumption of trial court awareness that will allow a mandamus to be filed seeking to compel a ruling, as opposed to creating a deemed denial situation that could result in unintended consequences such as (1) loss of substantive rights from a deemed denial/overruling on the merits; (2) missed appellate deadlines triggered by a request to rule resulting in a deemed denial; and (3) anomalies such as rulings being deemed to have occurred after the trial court has lost plenary power.

IV. Draft Rules

After further discussion this spring, the subcommittee has developed two alternative draft rules for consideration and discussion. The first reflects an administrative reporting approach; the second reflects a request-for-a-ruling mechanism.

The subcommittee did not reach consensus on the approach to be used; therefore, both are set out below for consideration.

Alternative No. 1: Administrative Reporting

Proposed Addition to Texas Rule of Judicial Administration 6.1

(e) Reporting of matters awaiting decision 90 days after submission in civil and family cases.

(1) When a judge has not issued a decision on a matter **[motion]** within 90 days after it was submitted, the judge must send the Office of Court Administration **[and also the Regional Presiding Judge and the Local Administrative Judge?]** a description of the matter and a brief explanation of why it remains pending. The description and explanation may be sent by email, and must be signed by the judge and filed with the papers in the case.

(2) A matter has been submitted when the parties have presented their position and the judge has not asked for additional argument or information.

Comment

Trial judges are expected to make timely rulings after trials on the merits and after pretrial matters have been submitted to them for decision. Section (f) implements longstanding rules that remind judges to dispose of judicial business promptly and efficiently. *See* Administrative Rule 3e (Regional Presiding Judges "shall . . . (1) determine the existence of . . . (f) cases tried

and awaiting entry of judgment"); Administrative Rule 7a (2) (Trial judges "shall . . . rule on a case within three months after the case is taken under advisement"); and Administrative Rule 9a (Local Administrative Judge is responsible for "the expeditious dispatch of business" in the trial courts). *See also* Code of Judicial Conduct Canon 3-B-(9) ("A judge should dispose of all judicial matters promptly, efficiently and fairly") and 3-C-(3) (A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities").

Section (e) does not apply to matters *filed* but not yet submitted. Nor does it require reports from *all* trial judges. It requires reports (and is a duty under Canon 3 of the Code of Judicial Conduct) only for judges who have one or more trials or pretrial matters still awaiting decision 90 days or more after submission.

When a matter was heard by a colleague or by an assigned judge instead of the active judge of the court, the requirement applies to the judge who heard the matter.

Alternative No. 2: Request for a Ruling

Tex. R. Civ. P. ___ Notice of Ruling Needed

A party who has filed a motion that has not been ruled on may trigger a time period for the trial court to rule on the motion by filing a Notice Of Ruling Needed, unless the motion has a timeline determined by statute or another rule. A notice under this rule must identify the specific pending motion that has not been ruled upon (and the **[approximate]** date that the motion was filed) and cannot be filed as part of any other document. If the motion identified in the notice has not been ruled upon within **[21/35/60/90]** days after the notice is filed, then the party may file a petition for a writ of mandamus to compel a ruling. If a petition for a writ of mandamus is filed to compel a ruling on the motion the appellate court will presume the trial court is aware of the motion and that sufficient time has passed to rule on the motion unless the record or a response to the mandamus petition evidences why the trial court has not yet ruled or why additional time is needed before a ruling is rendered by the trial court **[alternative phrasing: unless the record or a response to the mandamus rebuts the presumption]**.

Tab L

June 15, 2020

To: Charles L. Babcock

Re: Civil Rules in Municipal Courts – Report of the 500-510 Sub-Committee of the SCAC

In your letter dated June 3, 2019, you asked the sub-committee to report our views on the "Civil Rules in Municipal Courts issue outlined in Chief Justice Hecht's letter of May 31, 2019. Chief Justice Hecht directed the SCAC to set up a process for considering the proposal submitted by Municipal Court Judge Ryan Henry. Judge Henry proposed that procedural rules be adopted for civil cases in municipal courts.

Judge Henry correctly observed that the Texas Legislature has granted municipal courts (all municipal courts) a certain level of civil jurisdiction. It has also granted municipal courts of record even greater civil and administrative jurisdiction under Texas Government Code § 30.00005. Essentially, municipal courts of record have concurrent jurisdiction with district courts for certain code enforcement/subject matters. This includes injunctive and declaratory relief along with civil penalties. It is when municipal courts utilize these jurisdictions that judges, and parties have difficulty knowing the proper protocol.

Judge Henry pointed out that Texas Rule of Civil Procedure 2 excludes municipal courts from its application and made the suggestions listed below:

1. Add "municipal courts" to the application of Rule 2.
2. Create some specialized rules, similar to Rule 500 for JP courts, applicable to municipal courts.
3. Create a rule stating, essentially, "When a municipal court of record exercises its concurrent civil jurisdiction pursuant to Texas Government Code § 30.00005, the Texas Rules of Civil Procedure apply in municipal court to the same extent they would apply in district court."
4. Areas where the general application will still have problems and need tweaking include: Truancy, dangerous dog cases, dangerous structures under chapter 214 of the Texas Local Government Code, zoning under chapter 211 of the Texas Local Government Code, junked vehicles and sanitation.

The sub-committee conferred with Judge Henry and a few other municipal court judges around the state. The sub-committee considered analysis and commentary they offered and reviewed existing legislation regarding such courts. (All of the writings of Judge Ryan and other judges is attached as Exhibit "A".)

Mindful that Chief Justice Hecht requested that the SCAC set up a process for considering the proposals above, the sub-committee concluded such a process would not efficiently serve Texans if it were not driven by municipal court judges from across the state. The current primary legislation, Texas Government Code § 30, has over 40 subparts devoted to the jurisdiction and/or operation of specific municipal courts across state. At least one municipal court, El Paso, Texas, has its own unique municipal appellate process. For these reasons, the sub-committee supports proposal 2 above but rejects the proposals 1, 3 & 4.

Regarding proposal 2, the sub-committee has not drafted the specialized rules, similar to Rule 500 for JP courts, applicable to municipal courts. The sub-committee is reminded of the journey to amend and/or develop rules for the Justice Courts in recent years. The Justice Court project succeeded after it was referred out to a committee made up of justices of the peace from across the state.

Levi J. Benton
Sub-Committee Chair

Tab M

RSH
Law Offices of Ryan Henry, PLLC

1019 Central Parkway North, Ste. 108
San Antonio, TX 78232
(210) 257-6357
FAX (210) 569-6494
ryan.henry@rshlawfirm.com

October 14, 2019

Re: Memorandum Regarding Texas Rules of Civil Procedure in Municipal Courts

Your participation is appreciated. The issue, unfortunately, is one which can become complex. However, the solution may be relatively simple. The Supreme Court Rules Advisory Committee requested that I prepare a memorandum explaining my request that the Court analyze whether the Texas Rules of Civil Procedure need to be implemented in municipal courts when exercising municipal civil jurisdiction. They currently do not apply.

The lack of directly applicable procedural rules for handling the court's civil jurisdiction has caused problems in the past. As a current municipal court judge presiding over civil matters, I've encountered numerous problems where the lack of applicable procedural rules is the root of the confusion. Such wastes the time and effort of the parties. While many municipal courts do not realize they have civil jurisdiction, others utilize it dependent upon the enabling ordinances adopted by their City Councils.

However, a single perspective, such as my own, on the problem is not sufficient to warrant adoption of rule changes. So, your perspectives would be greatly appreciated in analyzing and developing possible solutions to the problem. While the Texas Supreme Court Advisory Committee is made of excellent judges and attorneys, none are currently municipal court judges. As a result, they would appreciate your input in helping them understand the problem for municipal court judges and what options are available.

I. Initial Confusion

The Texas Legislature has granted municipal courts (all municipal courts) a certain level of civil jurisdiction. It has also granted municipal courts of record even greater civil and administrative jurisdiction under Texas Government Code § 30.00005. Essentially, municipal courts of record have concurrent jurisdiction with district courts for certain code enforcement/subject matters. This includes injunctive and declaratory relief along with civil penalties. It is when municipal courts utilize these jurisdictions that judges, and parties have difficulty knowing the proper protocol. Municipal courts also have additional civil jurisdiction separate from that possessed by district courts, including dangerous dog determinations, truancy, etc.

II. Summary of Non-Application

Texas Rule of Civil Procedure 2 excludes municipal courts from its application. And while a Frankenstein piecemeal of interconnections can provide support for a minimal of procedures, numerous gaps exist causing enforcement and control of the docket to be sacrificed. This means the municipal court does not have the same ability to:

- Require civil pleadings
- Allow service (or hold a party to non-compliance)
- Allow discovery
- Acknowledge attorney agreements
- Sanction under the standards applicable to civil contempt
- Properly render civil judgements with a compliant form
- Assert the proper computation of time
- Require signatures of attorneys
- Follow a defined process for issuing injunction
- Issue citations of process (not the criminal complaint process of accepting citations in lieu of arrest)
- And a host of other procedures which are taken for granted when practicing in district or county court.

III. Suggestions

- Add "municipal courts" to the application of Rule 2 to the extent the municipal courts utilize their civil jurisdiction.
- Create some specialized rules, similar to Rule 500 for JP courts, applicable to municipal courts.
- Create a rule stating, essentially, "When a municipal court of record exercises its concurrent civil jurisdiction pursuant to Texas Government Code § 30.00005, the Texas Rules of Civil Procedure apply in municipal court absent an express statutory deadline or procedural rule to the contrary ."
- Areas where the general application will still have problems and need tweaking include: Truancy, dangerous dog cases, dangerous structures under chapter 214 of the Texas Local Government Code, zoning under chapter 211 of the Texas Local Government Code, junked vehicles and sanitation.

IV. Not Simply a Traffic Court

Most practitioners and many judges think of municipal court as a "traffic" court and, to be fair, traffic violations and Class C misdemeanors make up most of what occurs in municipal court. However, the Texas Legislature has granted all municipal courts a certain level of civil jurisdiction without the accompanying procedural rules for execution. The criminal jurisdiction of the municipal court is also not absolute, but it is more than simply traffic tickets.[1]

[1] While probably not necessary to list for most municipal judges, please see Exhibit A for a list of municipal court's criminal jurisdiction.

V. Municipal Court Civil Jurisdiction

All municipal courts have specific minor civil jurisdiction – examples:

i. Dangerous dog determinations under Tex. Health & Safety Code Ann. § 822.047 (West 2017);
ii. Civil truancy under Tex. Fam. Code § 65.001 *et. seq*,
iii. Bond forfeitures under Tex. Gov't Code §29.003(e) [not civil by default, but must be conducted the same as a civil process],
iv. Appeals from red light camera determinations under Chapter 707 of the Texas Transportation Code.
v. Civil enforcement of criminal fines. Tex. Crim. Proc. Code Ann. §45.047 and § 45.203.
vi. Administrative support. Municipalities may elect to provide for quasi-judicial proceedings in enforcement of health and safety ordinances. Tex. Loc. Gov't Code Ann. § 54.031.

Further, a municipality court of record has concurrent jurisdiction with a district court or a county court at law under Subchapter B of Chapter 54. Tex. Gov't Code Ann. § 30.00005 (West 2017). Many municipalities have situations when a property or person who, despite being given numerous criminal citations, fails to come into compliance with the municipality's ordinances. Since criminal penalties only allow fines the city may be left with little choice but to force compliance through injunctive relief.

The default option for the municipality is to seek enforcement through Tex. Loc. Gov't Code Ann. § 54.001, *et. seq.* If the City has adopted the proper ordinances, it can seek injunctive relief and civil penalties. Tex. Loc. Gov't Code Ann. §§ 54.017, 54.018. Penalties can be assessed against the real property as well, depending on the type of ordinance violation existing on the property. Tex. Loc. Gov't Code Ann. § 54.018(b). Jurisdiction is permitted in district court or the county court at law of the county in which the municipality bringing the action is located. Tex. Loc. Gov't Code Ann. § 54.013.

Texas Government Code § 30.00005 grants municipal courts of record concurrent jurisdiction over the exact same enforcement actions. This includes injunctive relief, declaratory relief, and civil penalties. However, the Texas Rules of Civil Procedure which aide district and county-courts-at-law are not available to municipal courts in the same context.

Utilizing the plain meaning of a similar statute and the cannons of statutory construction, the Texarkana Court of Appeals, in *Miller v. Gregg County*, 546 S.W.3d 410 (Tex. App.—Texarkana 2018, no pet.), held that the term "concurrent jurisdiction" found in Tex. Gov't Code §25.0003 meant the county court at law could hear claims brought under the Texas Public Information Act since it has concurrent jurisdiction with district court for all claims under a certain dollar threshold. The same analysis applied to the statutory language in §30.00005 equates to the municipal court of record having full jurisdiction over Chapter 54 suits, including all relief.[2]

[2] For a list of the types of claims which can be brought under a Chapter 54 suit, please see Exhibit B.

Additionally, municipal courts of record have express jurisdiction for certain civil subject matters including:

1. Civil power over junked vehicles. Tex. Gov't Code Ann. § 30.00005; Tex. Transp. Code Chapter 683.
2. Power over dangerous structures. Tex. Gov't Code Ann. § 30.00005; Tex. Loc. Gov't Code Chapter 214.
3. Civil penalties for violations of a city's red-light camera program. Tex. Gov't Code Ann. § 29.003(g); Tex. Transp. Code Chapter 707.
4. Certain Dangerous Dog orders under Tex. Health & Safety Code Ann. § 822.0421(d) or §822.0423 (West 2017).

While not as clearly delineated, the way Chapter 30 of the Government Code works with other statutory authority, the language equates to various additional authorities being conferred upon a municipal court of record.

A. **Nuisance:** A municipality, by ordinance, may adopt regulations to control nuisances, but must, by either separate ordinance or incorporated within the nuisance ordinance, vest its municipal court with the jurisdiction over enforcement. Tex. Gov't Code Ann. § 30.00005; *In re Pixler*, 2018 WL 3580637, at *5, reh'g denied (Aug. 23, 2018), reh'g denied (Aug. 23, 2018). Generalized nuisance authority can be found in Chapter 217 of the Texas Local Government Code.

B. **Zoning:** Section 54.012 does not interconnect the specific statutory references but does expressly list "zoning" as a regulation subject to enforcement under Chapter 54. *City of Dallas v. TCI W. End, Inc.*, 463 S.W.3d 53, 56 (Tex. 2015)(statutes authorizing municipalities to bring civil actions for violations of ordinances provided City authority to bring action against developer for demolishing a historic building in violation of city zoning ordinances).

   Tex. Loc. Gov't Code Chapter 211 controls municipal zoning issues. Specifically, §211.012 authorizes a city to "institute appropriate action" to enforce its zoning ordinances including prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; restrain, correct, or abate a violation; prevent the occupancy of the building, structure, or land; or prevent an authorized use.

C. **Subdivision Regulations**: Subdivision regulations are primarily controlled by Tex. Loc. Gov't Code Chapter 212. Chapter 54, specifically §54.012(4) authorizes suit to enforce subdivision ordinances. Under §212.018, a municipal attorney may bring a civil action in a "court of competent jurisdiction" to enjoin and enforce the municipalities subdivision ordinances. Tex. Loc. Gov't Code §212.018 (a). Further, §212.003 then provides that the "governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002." § 212.003(a). This expressly gives all municipalities authority to enforce rules and ordinances within their ETJs. See Tex. Loc. Gov't Code Ann. §§ 212.002 and 212.003(a).

D. **Sanitation:** A municipality can regulate the sanitation conditions of the city, including refuse, vegetation, and other unsanitary conditions of both commercial and non-commercial properties. The governing body of a municipality may require the inspection of all premises and the regulation of filling, draining, and preventing unwholesome accumulations of stagnant water. Tex. Health & Safety Code Ann. § 342.001 (West 2017). It can impose fines and fees in order to enforce its regulations. *Id.*

The governing body can regulate sewers and privies (Tex. Health & Safety Code Ann. § 342.002); trash, rubbish, filth, carrion, or other impure or unwholesome matter (Tex. Health & Safety Code Ann. § 342.003); weeds, brush, and nuisance level vegetation (Tex. Health & Safety Code Ann. § 342.004). It can adopt criminal (Tex. Health & Safety Code Ann. § 342.005) penalties and can bring a civil suit (potentially in municipal court) to enforce such ordinances. Tex. Loc. Gov't Code §§54.012 & 54.017.

A municipality may adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal as long as such rules are not inconsistent with the Solid Waste Disposal Act found in Chapter 361 of the Health and Safety Code. Tex. Health & Safety Code Ann. § 363.111 (West 2017).

If the owner of property in the municipality does not comply with a municipal ordinance on sanitation, the municipality may abate any sanitation issues and charge the cost of the abatement to the property and the property owner. Tex. Health & Safety Code Ann. § 342.006 (West 2017). The city must follow the procedures set forth in Chapter 342 in order to secure a lien against the property for such costs. Tex. Health & Safety Code Ann. § 342.007.

E. **Animals:** Animal control is not limited to simply dangerous dogs under Tex. Health & Safety Code Ann. § 822.047. A municipality may regulate any aspects regarding animals which is necessary for the health and safety of the community. Tex. Loc. Gov't Code Ann. § 54.001. It can impose a Class C misdemeanor penalty. Tex. Loc. Gov't Code Ann. § 54.001(b). A city may also bring a civil suit to enforce its general animal care and control ordinances. Tex. Loc. Gov't Code Ann. § 54.012.

VI. What Rules Do Not Apply

Texas Rule of Civil Procedure 2 states "[t]hese rules shall govern the procedure in the justice, county, and district courts of the State of Texas in all actions of a civil nature, with such exceptions as may be hereinafter stated." Tex. R. Civ. P. 2. This means the basic rules which procedurally assist lawyers in district and county court are not expressly authorized for use when a municipality is bringing a Chapter 54 suit to enforce an ordinance.

This means Rule 11, Rule 13, the rules on service of process, the rules on discovery (somewhat) and the rules designed to assist protecting the due process rights of all parties cannot be enforced

by a municipal court judge. I believe to the extent the rules of procedure overlap with a jurisdictional element, the court can utilize the rules for establishing jurisdictional questions. But mere procedural questions are not addressed at all.

The Code of Criminal Procedure governs all criminal proceedings. Tex. Code Crim. Proc. Ann. art. 1.02. As a result, its procedures are not applicable to civil matters. The Texas Rules of Appellate Procedure govern procedure in appellate courts and before appellate judges and post-trial procedure in trial courts in criminal cases. Tex. R. App. P. 1.1. Again, such rules, by their express scope, do not apply to civil enforcement matters at the trial court level.

The initial answer may be to add the term "municipal court" to the list under Rule 2. And I believe that is the first place to start. However, municipal courts also have specialized areas of practice, similar to JP courts, which require some tweaks for individual subject matters. Different civil subject matters have different statutory deadlines ranging from five days, to seven days, to ten days, to twenty days, etc.

VII. What Rules Do Apply

Pursuant to Texas Government Code § 30.00023, except as modified by Chapter 30, the Code of Criminal Procedure and the Texas Rules of Appellate Procedure govern the trial of cases before the municipal courts of record. The courts may make and enforce all rules of practice and procedure necessary to expedite the trial of cases before the courts that are not inconsistent with law.

For the criminal matters, this direction is all that is required to assist with criminal trials. However, for civil jurisdiction, it becomes problematic. I've previously interpreted the second sentence stating that courts "may make and enforce all rules of practice and procedure necessary" to include the fact the municipal court can impose the Texas Rules of Civil Procedure when needed. However, unless a municipal judge signs a local standing order or specific municipal ordinances is passed by the city council to impose the rules for administrative or civil claims, parties do not know if the rules apply or not.

The Texas Code of Criminal Procedure actually incorporates certain civil rules by default. So, the municipal court is not without any direction.

1. The Code of Criminal Procedure requires that "all process" from a municipal court be served by a "policeman or marshal" of the city under the same rules applicable to sheriffs and constables serving JP court. Tex. Crim. Proc. Code art. 45.04 and 45.202. Since JP courts are covered by the TRCP, the rules regarding "process" are also applicable;
2. The Code of Criminal Procedure art. 39.04 states the civil rules applicable to "how" a deposition occurs apply to a criminal case as long as the court has granted permission for the depositions.
3. The Code of Criminal Procedure Chapter 45 specifically articles 45.025 through 45.039 have portions which apply to the set-up of all types of jury trials.
4. The Code of Criminal Procedure Chapter art. 45.047 states that collections on judgments incorporate the TRCP.

5. However, the Code of Criminal Procedure, by its own terms, only applies to criminal matters, not civil matters. So, an argument exists these incorporation provisions do not apply either.

Various gaps exist which can cause blind spots or loopholes. For example, the Texas Code of Criminal Procedure Chapter 27 applies to pleadings initiating a case, but expressly apply only to criminal matters. Pursuant to art. 39.02, depositions can only be taken by filing an application with the court to take such depositions. While that may work for criminal matters, the application of art. 39.02 to a civil case can result in the inability for the parties to conduct discovery the same way had the city-initiated suit in county court at law or district court. Now, art. 39.04 does help some by stating "the rules prescribed in civil cases for issuance of commissions, subpoenaing witnesses, taking the depositions of witnesses and all other formalities governing depositions shall, as to the manner and form of taking and returning the same and other formalities to the taking of the same, govern in criminal actions, when not in conflict with this Code." However, the language seems to indicate it is contingent upon art. 39.02 permission to conduct the depositions. Article 39.14 controls criminal discovery but is inapplicable when trying to conduct civil discovery.

Article 42.01 states a "judgement" is a written declaration of a record showing a conviction or acquittal. Article 45.041 states a judgment and sentence apply in the case of conviction. However, recently, the intermediary courts of appeal have had difficulty explaining the authority to appeal civil matters from a municipal court. In *Wrencher v. State*, 03-15-00438-CV, 2017 WL 2628068, at *1 (Tex. App.—Austin June 16, 2017, no pet.) and *In re Pool*, 03-18-00299-CV, 2019 WL 287940, at *3 (Tex. App.—Austin Jan. 23, 2019, no pet. h.) the courts attempted to make sense of the statutory language apply a civil judgment under the dangerous dog jurisdiction and noting references to the word "judgment" applies only to civil judgments, while appeals of "convictions" apply to criminal appeals.

The Code of Criminal Procedure art. 45.011 states the rules of evidence that govern trial so criminal actions in the district court apply to criminal proceedings in justice or municipal court. However, the rules of evidence are not referenced in relation to any civil or administrative matters.

VIII. Type of Corrections

In the case of *In re Loban*, 243 S.W.3d 827, 829 (Tex. App.—Fort Worth 2008, no pet.), the court struggled with the ability to appeal a dangerous dog determination (under the prior statutory language) when no county court at law with civil jurisdiction existed within the county controlled by the animal control authority. The Fort Worth Court of Appeals ultimately held the right to appeal a dangerous dog determination did not exist in Tarrant County. The court, in dicta, noted :

> This gap in the statutory right of appeal is apparently attributable to the fact that municipal courts previously had only criminal jurisdiction. See *City of Lubbock v. Green*, 312 S.W.2d 279, 282 (Tex.Civ.App.-Amarillo 1958, no writ) (stating that an appeal from municipal court "would lie only if the proceedings constituted a criminal case"); see also 23 David Brooks, Texas Practice: Municipal Law and Practice § 15.19 (1999) (same). When municipal courts became capable of exercising limited civil jurisdiction, the statutes

> authorizing appeals from a municipal court's decision were not correspondingly amended to address appeals generated via this exercise of limited civil jurisdiction. Tex. Gov't Code Ann. § 30.00005(d) (Vernon 2004) (stating that governing body of municipality may provide that municipal court of record may have specified civil jurisdiction); see generally Tex. Att'y Gen. Op. No. GA–0316 (2005) (espousing this conclusion).
>
> *In re Loban*, 243 S.W.3d 827, 831 (Tex. App.—Fort Worth 2008, no pet.).

While the statutory problem in *In re Loban* has been corrected by the Texas Legislature, the underlying premise remains that certain jurisdictional gaps (which can only be corrected by legislative decree) and certain procedural gaps (which can only be corrected by adoption of civil procedures) remain. To the extent the Texas Supreme Court can help alleviate confusion on the procedures and provide municipal judges with the abilities to support their rulings on procedural grounds, I humbly request it attempt to do so.

Corrections can be as simply as adding the term "municipal court" to the application of Rule 2. It can or could also be corrected by adopting some specialized rules, such as those found in Rule 500 relating to justice courts. However, those specialized rules would simply need to address the extent of any application to the individual areas of subject matter jurisdiction. A specialized rule which simply stated, "When a municipal court of record exercises its civil jurisdiction pursuant to Texas Government Code § 30.00005, the Texas Rules of Civil Procedure apply in municipal court to the extent they do not conflict with statutory deadlines or procedural rules."

IX. Request for Assistance

In order to examine these issues fully, the Texas Supreme Court Rules Advisory Committee requested names of several municipal court judges and other judges familiar with the potential issues and is asking for comments and assistance. Your name was one of the names suggested to elicit comments. Please let us know if you are willing to help by providing feedback and comments on the issues and possible solutions. You can contact:

- Ryan Henry, ryan.henry@rshlawfirm.com
- Levi Benton, lbenton@levibenton.com

We look forward to hearing from you. If you are unable to assist or participate, please let us know and we will remove your name from the list.

Very Truly Yours,

Ryan S. Henry

Exhibit A

Criminal Jurisdiction

A. All municipal courts have specific criminal jurisdiction. With a few exceptions, the criminal jurisdiction is for Class C misdemeanors created by state statute. Tex. Crim. Proc. Code Ann. Art. 4.14 (West 2017); Tex. Gov't Code §29.003(a) (West 2017).

B. Municipal courts also have criminal jurisdiction over ordinance violations which are punishable by fine only. So, new criminal cases can be created by the city council through the use of ordinances.

C. Municipal courts may have shared criminal jurisdiction within another city's geographic boundaries, depending on whether the cities have passed ordinances adopting shared jurisdiction.

D. Municipal courts may have concurrent jurisdiction within the entire precinct of a JP, as long as the city passes an ordinance adopting the precinct. Tex. Gov't Code Ann. § 30.00005(c) (West 2017).

E. Municipal courts of record have additional criminal jurisdiction as set out in Tex. Gov't Code Ann. § 30.00005(b) (West 2017):

vii. Tex. Loc. Gov't Code § 215.072 (i.e. dairies and slaughterhouses),
viii. Tex. Loc. Gov't Code § 217.042 (nuisances in home-rule),
ix. Tex. Loc. Gov't Code § 341.903 (municipal parks and speedways outside city limits), and
x. Tex. Loc. Gov't Code § 551.002 (Protection of Streams and Watersheds by Home-Rule Municipality)

Exhibit B

Chapter 54, Subchapter B Claims

A municipality may bring a Chapter 54 civil action:

- for the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;
- for the preservation of public health or to the fire safety of a building or other structure or improvement;
- for zoning violations.
- subdivision regulations including street width and design, lot size, building width or elevation, setback requirements, or utility regulations;
- implementing civil penalties under its general authority for conduct classified by statute as a Class C misdemeanor;
- relating to dangerously damaged or deteriorated structures or improvements;
- relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;
- relating to the interior configuration, design, illumination, or visibility of certain sexually oriented businesses;
- relating to point source effluent regulations;
- relating to animal care and control;
- relating to floodplain control; and
- relating to water conservation measures.

Tex. Loc. Gov't Code Ann. § 54.012 (West 2017)

From: Ryan Henry
To: Levi Benton
Cc: Ashley Tello; Marla Dial
Subject: FW: Municipal Court - Texas Supreme Court Rules Advisory Sub-committee on municipal court civil rules
Date: Thursday, October 24, 2019 2:57:13 PM

Here is Judge Escalante's response and agreement to provide comments. I also already received confirmations from Judge Spelean and Judge Goldstein. I'll keep you posted on the rest.

I'm not sure what your thoughts were on what to do next. I was thinking about starting an collective email with some questions to pick their brains about the exact nature/root of the problem and examples they've encountered due to the lack of application. Then I was going to propose a change or two and see what they say about it. But I'm not sure if you have a different idea about the way to proceed. Whatever you feel we need to do next, just let me know. I'll keep you posted as I hear back from the others.

Very Truly Yours,
Ryan Henry
Law Offices of Ryan Henry, PLLC.
1019 Central Parkway North, Suite 108
San Antonio, Texas 78232
210-257-6357 (phone)
210-569-6494 (fax)
Ryan.henry@rshlawfirm.com
www.rshlawfirm.com

From: Ryan Henry <ryan.henry@rshlawfirm.com>
Sent: Thursday, October 24, 2019 1:50 PM
To: Julie.Escalante <Julie.Escalante@baytown.org>; Ashley Tello <Ashley.Tello@rshlawfirm.com>; Marla Dial <marla.dial@rshlawfirm.com>
Subject: RE: Municipal Court - Texas Supreme Court Rules Advisory Sub-committee on municipal court civil rules

Judge Escalante,

Thank you for the response and your willingness to participate. I will mark you down and should start a conversation email in the next week which will have some initial inquiries for the municipal judges. Again, thank you for agreeing the help and we will be in touch soon.

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Ryan.henry@rshlawfirm.com
www.rshlawfirm.com

From: Julie.Escalante
Sent: Thursday, October 24, 2019 1:15:47 PM
To: Ryan Henry
Subject: RE: Municipal Court - Texas Supreme Court Rules Advisory Sub-committee on municipal court civil rules

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Thank you,

BAYTOWN

Together We Enrich Lives & Build Community

Julie K. Escalante
Presiding Judge
Baytown Municipal Court of Record
City of Baytown, Texas

(281) 425-1015

From: Ryan Henry [mailto:ryan.henry@rshlawfirm.com]
Sent: Tuesday, October 22, 2019 6:39 PM
To: Ryan Henry
Subject: Municipal Court - Texas Supreme Court Rules Advisory Sub-committee on municipal court civil rules

Dear Judge,

Your name was given to the Texas Supreme Court's Rules Advisory sub-committee on whether to extend the Texas Rules of Civil Procedure to encompass municipal courts when they are exercising civil/administrative jurisdiction. It was my understanding you had agreed to assist the sub-committee with any questions regarding the topic and to provide comments. The time commitments are not expected to be large as the sub-committee simply does not know some of the trials and tribulations that municipal judge's face when exercising civil/administrative jurisdiction and wanted to hear from several of you. They asked me to prepare the following memorandum trying to get the ball rolling on the discussion.

First, if you would not mind reading the memo and deciding if you could agree to provide comments to the sub-committee on the issue. Then let myself of Judge Benton know you are willing to provide comments. If you believe the memo has missed anything please feel free to add any issues you believe are relevant. This is being sent to several other municipal judges and subject matter experts. Once we hear back from those willing to provide comments, we will forward to sub-committee and create an email exchange with everyone in order to share ideas and comments. I plan on provide several comments and suggestions and would be grateful for any input on stuff. If you have any questions on the issue or the scope of the sub-committee please feel free to give me a call or send me an email. I look forward to hearing from you.

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210-569-6494 (fax)
Ryan.henry@rshlawfirm.com
www.rshlawfirm.com

From:	Ryan Henry
To:	elainecarlson@comcast.net; syelenosky@gmail.com; estevezA@pottercsd.org; Elaine.Marshall@houstontx.gov; bonnie.golstein@dallascourts.org; julie.escalante@baytown.org; espillane@cstx.gov; Michael.Acuna@dallascityhall.com; Levi Benton
Cc:	Jessica Johnson; Marissa Cardenas
Subject:	Civil Rules in Municipal Court
Date:	Tuesday, November 5, 2019 4:21:25 PM
Attachments:	Supreme Court Rules Judge Help Memo 10.14.19.pdf

Dear Judges,

Thank you for agreeing to assist the Texas Supreme Court's Advisory Committee, and specifically the sub-committee on exploring the application of the Texas Rules of Civil Procedure to municipal courts in Texas. In order to assist with the analysis, I would like to ask the municipal court judges to provide a few responses to the following questions.

1. Did the memo (attached again for review) accurately reflect a problem faced with municipal courts in Texas?
2. Do you have any real world examples you have experienced which further explain the problem or expand on a facet which is not covered by the memo? If so, can you share? It does not have to be long, but enough so the rest of us know if we are on the right track with any discussion.
3. Where do you suggest we begin with solutions? This is just a starting point, not the end result.

Any comments you can provide to assist with this discussion would be appreciated.

As a way of starting off the discussion, I'm going to try and answer my own three questions as well.

1. Without sounding self-centered about it, I believe the memo identifies probably too many things which could probably be examined as well as probably missed several which other courts may have encountered.
2. A few examples of additional problems as well as situations I've directly encountered include:
    a. A question on the amount of time to comply with an order was questioned as Rule 4 (regarding computation of time) did not apply so the question became what days to include, whether they were city holidays or weekends, and whether you include the day of the order or not. Rule 4 would have answered all of those questions.
    b. Two attorneys disputed an agreement, but even though it was in a written letter, since Rule 11 does not apply, one later argued it was unenforceable. The judge was confused and eventually issued her own order in place of an agreement between the parties.
    c. When a dispute arouse which included not only the property owner, but actions performed by a tenant, the case got more complex when there was a dispute over the application of Rules 37-39 (third parties and joinder).
    d. Claims under chapter 54 get more complex when a defendant property owner does not appear or does appear but does not file an answer. If they provide an oral pronouncement in court, does that constitute and answer if Rule 46 does not apply.

e. The “notice” pleading requirement technically does not apply if TRCP doe not apply to the civil cases presented.
f. There is often times confusion by the clerks regarding issuing citation for service as a “citation” on the criminal side is the charging instrument. But some form of citation and notice to the defendant is required else you run into a due process problem. How to issue citation and summons on the civil side are sometimes alien to the clerks since the TRCP don’t apply.
g. Execution of judgements are more complex, especially if civil monetary penalties are assessed, when Rules 621-656 don’t apply. Actually, there are no rules for executions if these don’t apply. When someone does not want to pay a judgment they try whatever they can to avoid paying and throwing in a lack of procedural rules for execution is certainly one of them.
h. Suits against non-residents who own property within a city (company owner in Nevada and property in Texas suburb) can run into problems since the non-resident pleading requirements under Rule 810-813 don’t apply.

3. I suggest one of the first solutions (which is not a complete fix but is a place to start) would be to amend Rule 2 by adding the following sentence: “These rules apply to municipal courts when exercising civil jurisdiction to the extent these rules do not conflict with federal or state statutes.” However, since numerous cities are bracketed by the Legislature, with different powers, including what their court’s do, I believe a more thorough set of amendments would be better as long as they are adaptable to municipal courts. I’m working on a bit of a more detailed listing of rule adoptions and would like to forward to everyone for comment. But right now, I believe it’s appropriate to start with the above discussion points to make sure we are all going down the same path. I don’t want to wastes anyone’s time if the path I’m thinking about is different from my fellow municipal judges.
4.

I look forward to everyone’s responses.

Very Truly Yours,
Ryan Henry
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www.rshlawfirm.com

From:	Ryan Henry
To:	Acuna, Michael
Cc:	elainecarlson@comcast.net; syelenosky@gmail.com; estevezA@pottercsd.org; Elaine.Marshall@houstontx.gov; bonnie.golstein@dallascourts.org; julie.escalante@baytown.org; espillane@cstx.gov; Levi Benton; Jessica Johnson; Marissa Cardenas
Subject:	Re: Civil Rules in Municipal Court
Date:	Wednesday, November 13, 2019 12:30:23 PM

Judge Acuna,

Thank you for the response. And YES we should be mindful of the impact. I compl agree. For example I doubt many courts have the ability to do electronic filing and many of the other district and CCAL requirements on an admin level. My personal opinion is we need a separate section for municipal courts similar to the one for JPS With specific deadlines which are actually shorter than those for districts and counties. But I also didn't want the subcommittee to bite off too much during the initial discussion.

Thank you for participating. We look forward to your comments and input . I am also working on a more detailed response for rules and hope to circulate soon.

Judge Ryan Henry.

Sent from my iPhone

> On Nov 13, 2019, at 10:39 AM, Acuna, Michael <Michael.Acuna@dallascityhall.com> wrote:
>
> Dear Judge Henry,
>
> I appreciate your invitation to participate in addressing the issues you presented and am interested in doing so.
>
> I am working on a lengthier response dealing with certain specifics you mentioned in your memo and email, but I wanted to send this email to confirm my interest and to raise a concern regarding these issues.
>
> Whether we discuss courts of record or not and different exercises of civil jurisdiction, I believe that the Legislature intended that civil matters in municipal court be handled in an expeditious matter. Serving in a large city municipal court of record, I can unequivocally state that my court does not have the infrastructure and support to apply the Civil Rules of Procedure in the same manner as a district or county court. I do not think we can have lengthy discovery deadlines/depositions, etc. and have cases take up to a year to get to trial or contested hearing. I suspect that other courts may be in the same situation.
>
> For example, I preside over the City of Dallas' Urban Rehabilitation docket. These cases

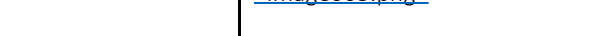
are commenced by petition and the docket is held 2 days a month. During the last docket which was held this last Monday and Tuesday, I handled 120 cases. You can imagine the enormous strain on the court if every case allowed for depositions and lengthy discovery periods. I offer the additional observation that many city prosecution offices would not be prepared to properly handle cases with full application of the Civil Rules of Procedure. My purpose in raising this concern is not to deprive any party of due process rights but an attempt to protect the municipal courts.

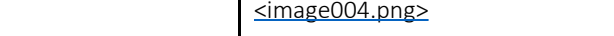
I respectfully request that whatever course our discussion takes, that we be mindful of the limitations we have as municipal courts.

Thank you for your time and consideration,

Michael Acuna

Municipal Judge
City of Dallas
Municipal Court Judiciary
2014 Main Street, Suite 331
Dallas, TX 75201
O: (214) 671-9901
michael.acuna@dallascityhall.com





From: Ryan Henry <ryan.henry@rshlawfirm.com>
Sent: Tuesday, November 05, 2019 4:21 PM
To: elainecarlson@comcast.net; syelenosky@gmail.com; estevezA@pottercsd.org; Elaine.Marshall@houstontx.gov; bonnie.golstein@dallascourts.org; julie.escalante@baytown.org; espillane@cstx.gov; Acuna, Michael <Michael.Acuna@dallascityhall.com>; lbenton@levibenton.com
Cc: Jessica Johnson <jessica.johnson@rshlawfirm.com>; Marissa Cardenas <marissa.cardenas@rshlawfirm.com>
Subject: Civil Rules in Municipal Court

External Email!

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www.rshlawfirm.com

From: Ryan Henry
To: Levi Benton; Judge Ana Estevez
Cc: Elaine Carlson (elainecarlson@comcast.net); ecarlson@stcl.edu; Stephen Yelenosky
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]
Date: Monday, June 1, 2020 1:31:14 PM

Judge Benton,

Thank you for the information. I would love to call/zoom into the meeting. However, I'm speaking at the Texas City Attorney Association seminar (which is virtual) at 10:00 a.m. until 10:45. So, I don't know what the time period is but will need to look it up. If the meeting is going on during any other times I'd love to attend, even if the item I'm tied to is already passed.

And I do apologize for not having more information to the committee before now. I have some proposed rules, but before I finished working on them life got in the way and I have not gotten back to them. I was also waiting on some proposed language from Judge Spillane from College Station.

The more I worked on this, the more I believe a quick fix is probably not going to help as much. Municipal courts do not electronically file documents or handle many of the things the county court at law or district courts do. They are a strange creature because there courts of record (which fall under chapter 30 and some from 29) and courts of non-record (which fall only under chapter 29). But even the court's of record are not set up to handle many of the procedural aspects such as electronic filing or case designations. The Chapter 29 courts of non-records have very little civil jurisdiction and the code of criminal procedure handles pretty much most of what they do. Court's of record are the one's with expanded civil jurisdiction that face the problem of dealing with discovery and deadlines, etc. But also, because they handle different civil matters than the JP courts, a straight adoption of the JP rules will probably cause more confusion and many will be inapplicable. I don't want to make the situation worse.

So, what I've been working on is a hybrid. Basically, it says "the following rules apply in municipal courts of record" and then cite which JP rules in the 500s apply. That way, the overall problem of non-application is addressed, without messing up the distinctly different aspects of each court. I would then add a few rules which apply specifically to municipal courts of record. But because I have not finished the list, I have not gotten a lot of comments from my fellow municipal judges (although I have gotten some).

I can provide what I've got so far for consideration and could have that to you probably by tomorrow, if that helps. Also, if I could be copied on the zoom link to attend I would greatly appreciate it.

Very Truly Yours,
Ryan Henry

From: Levi Benton <lbenton@levibenton.com>
Sent: Monday, June 1, 2020 12:39 PM

To: Judge Ana Estevez <EstevezA@pottercscd.org>
Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>; Ryan Henry <ryan.henry@rshlawfirm.com>
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Ana – thanks for offering to host a meeting. If you and others feel a Zoom meeting is necessary, I am fine with that. But let's see first. The entire committee and Ryan Henry are copied above. (Ryan, we are on the agenda for the June 19, 2020 meeting. Hope you might be able to attend or call in.)

Ryan Henry's original memo points out the issue - TRCP 2 does not include an express statement that the Rules of Civil Procedure apply to civil actions in municipal courts. So a practitioner and a party would have to search a municipalities ordinances to determine whether the TRCPs apply. I think we can recommend a quick fix for this and that proposed fix is attached as the redline of current TRCP 2. I have also attached the current version of Texas Government Code 39.00005 with notes taken from Ryan's memo.

I don't yet understand why we need the rule suggested to read as follows: "When a municipal court of record exercises its concurrent civil jurisdiction pursuant to Texas Government Code 39.00005, The Texas Rules of Civil Procedure apply in municipal court absent an express statutory deadline or procedural rule to the contrary." I don't think this is necessary because the TRCPs are enforceable as a statute.

Finally, Ryan suggests that maybe we need specialized rules similar to Rule 500 for JP courts applicable to municipal courts. My query, why can't we just amend Part V. of the TRCP and change the title to "Rules of Practice in ***Municipal*** and Justice Courts"?

Thoughts???

LJB

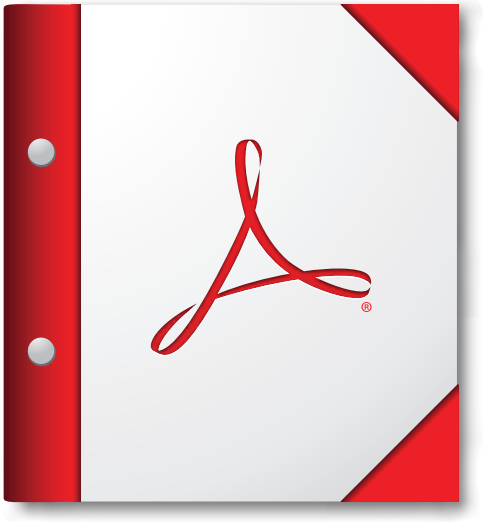
From: Judge Ana Estevez <EstevezA@pottercscd.org>
Sent: Friday, May 29, 2020 12:14 PM
To: Levi Benton <lbenton@levibenton.com>
Subject: FW: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Let me know if you want to meet between now and then. I have a good zoom account and would be happy to set it up if that would be helpful.

From: Walker, Marti <mawalker@jw.com>
Sent: Friday, May 29, 2020 12:08 PM
To: aalbright@adjtlaw.com; 'adawson@beckredden.com'; Babcock, Chip <cbabcock@jw.com>; 'd.b.jackson@att.net'; 'ecarlson@stcl.edu'; 'errodriguez@atlashall.com'; 'esteveza@pottercscd.org'; 'evan.young@bakerbotts.com'; 'evansdavidl@msn.com'; 'fgilstrap@hillgilstrap.com'; 'fuller@namanhowell.com'; 'jperduejr@perdueandkidd.com'; 'kvoth@obt.com'; 'LJefferson@JeffersonCano.com'; 'lbenton@levibenton.com'; 'lhoffman@central.uh.edu'; 'Linda Riley' <lriley@rustyhardin.com>; 'lisa@kuhnhobbs.com'; 'martha.newton@txcourts.gov'; 'mgreer@adjtlaw.com'; 'nathan.hecht@txcourts.gov'; 'nina.cortell@haynesboone.com'; 'peter.kelly@txcourts.gov'; 'psbaron@baroncounsel.com'; 'pschenkkan@gdhm.com'; 'rhardin@rustyhardin.com'; 'rhughes@adamsgraham.com'; 'richard@ondafamilylaw.com'; 'rmeadows@kslaw.com'; 'rmun@scotthulse.com'; 'robert.l.levy@exxonmobil.com'; 'stephen.yelenosky@co.travis.tx.us'; 'tom.gray@txcourts.gov'; 'tracy.christopher@txcourts.gov'; 'triney@rineymayfield.com'; 'wdorsane@mail.smu.edu'; 'Elaine Carlson <elainecarlson@comcast.net>; peguesg@gtlaw.com; watsons@gtlaw.com; 'Viator, Mary <MViator@kslaw.com>; Sharon Tabbert (Assistant to B. Dorsaneo <smagill@mail.smu.edu>; judgebillboyce@gmail.com; Dee Dee Jones <dee2jones@ranchwireless.com>; Lisa Verm <lverm@beckredden.com>; kwooten@scottdoug.com; arodriguez@hillgilstrap.com; scott@appellatehub.com; david.newell@txcourts.gov; Mike.Hatchell@haynesboone.com; Shirley@namanhowell.com; kent.sullivan@outlook.com; kimberly.phillips@shell.com; jaclyn.daumerie@txcourts.gov; dpeeples36@yahoo.com; LJefferson@jeffersoncano.com; bob@bobpemberton.com; Pauline.Easley@txcourts.gov; Harvey.Brown@LanierLawFirm.com; Jane.Bland@txcourts.gov; bboyce@adjtlaw.com; Isabel.Carrillo@shell.com; syelenosky@gmail.com; nrister@wilco.org; Sharena.Gilliland@Parkercountytx.com; rhwallace1009@yahoo.com
Subject: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

To SCAC:
Please see attached the discussion items scheduled for the June 19, 2020 meeting. I have also included the handouts that I currently have for each. Please provide any replacement, additional or new materials no later than Monday, June 15 so that the agenda can be finalized, distributed and posted. Thanks to everyone!

Marti Walker | Legal Administrative Assistant to:
Charles L. Babcock
Harris Huguenard
1401 McKinney Street, Suite 1900 | Houston, TX | 77010
V: (713) 752-4375 | F: (713) 754-6725 | mawalker@jw.com



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Proposed - Rules for Municipal Courts Exercising Civil Jurisdiction

Rule 2. Scope of Rules

These rules shall govern the procedure in the municipal, justice, county, and district courts of the State of Texas in all actions of a civil nature, with such exceptions as may be hereinafter stated. Where any statute in effect immediately prior to September 1, 1941, prescribed a rule of procedure in lunacy, guardianship, or estates of decedents, or any other probate proceedings in the county court differing from these Rules, and not included in the "List of Repealed Statutes," such statute shall apply; and where any statute in effect immediately prior to September 1, 1941, and not included in the "List of Repealed Statutes," prescribed a rule of procedure in any special statutory proceeding differing from these rules, such statute shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in bond or recognizance forfeitures in criminal cases are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in tax suits are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply; provided, however, that Rule 117a shall control with respect to citation in tax suits.

Part V. Rules of Practice in Justice and Municipal Courts

Rule 500.2 Definitions

(f) "County court" is the county court, statutory county court, or district court in a particular county with jurisdiction over appeals of civil cases from justice or municipal court.

(n) "Judge" is a justice of the peace or a municipal court judge.

Rule 500.3

(d-1) *Civil Municipal Case.* Any case brought in a municipal court of record exercising its civil jurisdiction under Texas Government Code §30.00005. Civil municipal cases are governed by Rule 11, 13, 500.2(a)-(m), 500.2(o)-(y), 500.4-500.9, 501.1- 501.4, 502.1, 502.2(a), 502.5, 502.7, 503.1- 503.3, 503.4(a)(1-11), 503.5, 503.6, 504.1-505.2, 507.2-507.4, and 592-609, 621-693.

[Some special rules would need to be adopted as the parties under the provisions allowed in §30.00005 envision the municipality or the state being the only plaintiffs. No other initiating party is permitted in municipal court, so minor adjustments would need to be made to parties and counter-claim issues. Because the initiating party is usually the municipality or state, no filing fees or costs of suit are usually attached anywhere.

Some form of special rules would be required to address the plenary power of the court, which then ties into a motion for new trial and right to appeal. Appeals for courts of record are dictated by Texas Government Code 30.00014-00022. This area is where I have run into the most difficulty as a judge and was subject to a mandamus arguing about the time period to grant a motion for new trial.

There are special proceedings which apply in all types of municipal courts (record and non-record courts) which are not addressed but those proceedings tend to be addressed (not perfectly, but at least addressed) in the statutory language, such as truancy.]

Proposed additional Rules (I have no idea about the numbering)

Rule * Statutory Deadlines Control.** No provision of these rules is meant to be interpreted or to alter any statutory deadline created by the Texas Legislature. All rules must be read consistent with legislative language.

Rule *–** Certificate of Appellate Proceedings. If the municipal court of record judgment is affirmed, to enforce the judgment the court may:

(1) forfeit the bond of the defendant;

(2) issue a writ of capias for the defendant;

(3) issue an execution against the defendant's property;

(4) order a refund for the defendant's costs; or

(5) conduct an indigency hearing at the court's discretion.

Reasons for the proposed change:

Currently, it is unclear if the municipal courts have the authority to do the following when exercising civil jurisdiction:

Require civil pleadings
• Allow service (or hold a party to non-compliance)
• Allow discovery
• Acknowledge attorney agreements
• Sanction under the standards applicable to civil contempt
• Properly render civil judgements with a compliant form
• Assert the proper computation of time
• Require signatures of attorneys
• Follow a defined process for issuing injunction
• Issue citations of process (not the criminal complaint process of accepting citations in lieu of arrest)

• And a host of other procedures which are taken for granted when practicing in district or county court.

From: Ryan Henry
To: Levi Benton; Judge Ana Estevez
Cc: Elaine Carlson (elainecarlson@comcast.net); ecarlson@stcl.edu; Stephen Yelenosky
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]
Date: Tuesday, June 2, 2020 3:51:35 PM

Judge Benton,

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1. Courts of record are the courts with expanded civil jurisdiction, so limiting the rules to apply only to them is fine by me. However, just so the committee is aware, there are a few minor points where a court of non-record has civil jurisdiction and could benefit by some guidance, but I'm not sure now is the time to incorporate those as they are also a different animal.

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3. Sec. 30.00005 list Chapter 54 lawsuits (which allows a city to bring a suit to enforce its own ordinances), chapter 214 (which allows a city to enforce specific building standards), and junked vehicles under chapter 683 (which can only be brought by the City in which the junked vehicle is located or by the state). Those causes of action are allowed to be brought only by the city for civil and the state for criminal. However, there are other types of cases which also allow civil jurisdiction, such as dangerous dog determinations under Tex. Health & Safety Code Ann. § 822.047 (which are brought by the city or the county but also could be a differently designated animal control authority) as well as truancy (which would be either the city attorney, county attorney, or district attorney). That's why I said "usually". However, if the application of these amended rules applies only to the expanded jurisdiction of Ch. 54, Ch 214, and Ch. 683 in a court of record then only the City would be the plaintiff.

Part of the challenge with creating standards applicable for all municipal courts, or even municipal courts of record only, is that not all municipal courts are created equally or have been created equally for all types of civil cases. To avoid creating more confusion than we

are solving, I believe it would be advisable to limit application to Ch. 54, 214 and 683 for courts of record and then only to the extent those statutes don't adopt a statutory procedure.

Very Truly Yours,
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210-569-6494 (fax)
Ryan.henry@rshlawfirm.com
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From: Levi Benton <lbenton@levibenton.com>
Sent: Tuesday, June 2, 2020 10:11 AM
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Ryan --

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Date: Tuesday, June 2, 2020 4:00:27 PM

Also, certain municipal courts were created for different cities, such as El Paso, which also created their own municipal court of appeals, and have their own appeal procedures in chapter 30. So, any amendment to the rules should apply only to courts of record controlled by Subchapter A (general courts of record) and not by any other subchapter.

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please notify us immediately by e-mail, and delete the original message. THIS IS NOT A PUBLIC RECORD

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Sent: Friday, May 29, 2020 12:14 PM
To: Levi Benton <lbenton@levibenton.com>
Subject: FW: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Let me know if you want to meet between now and then. I have a good zoom account and would be happy to set it up if that would be helpful.

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To:	Judge Ana Estevez; Levi Benton
Cc:	Elaine Carlson (elainecarlson@comcast.net); ecarlson@stcl.edu; Stephen Yelenosky
Subject:	RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]
Date:	Wednesday, June 3, 2020 5:36:29 PM
Attachments:	Civil Jurisdiction of Municipal Courts.docx Proposed Definitions for Muni Court Civil Jurisdiction Rules RSH 6.1.2020a.docx

Judge Benton and Judge Estevez,

Attached is something I tried to put together to show why certain JP rules should be adopted and why certain ones should not be adopted. Basically, the statutes create too many different types of municipal courts and the power provided for the different types of civil statutes they can enforce make a "one size fits all" approach impractical. Luckily, many of the JP rules give flexibility to the courts to adjust based on the region, which would allow municipal courts to adjust based on the region and type of court they are. But JP and muni-courts have different specific case subject matter jurisdiction, so adoption of all rules is also not practical. So, the incorporation was selective. As I explained in my last email, the statutes (including Chapter 30 as well as the subject matter specific statutes) have their own rules regarding appeals and extensions of power, so I did not incorporate those rules into the proposal.

There are still various other areas which could use more study and provide more assistance to municipal courts, but I would request those be addressed, perhaps next year. For example, civil truancy applies to all courts and the Legislature declined to give any procedural guidelines, instead expressly stating the Supreme Court can adopt procedures. I'm unaware of any procedures which have been adopted. However, since I have less experience with civil truancy matters and believe it is a specialized area unto itself, I would not want to adopt anything without getting input specifically from courts with a good amount of truancy dockets. But, like I said, I would only want to address those issues perhaps next year, if the Court is so inclined.

Very Truly Yours,
Ryan Henry
Law Offices of Ryan Henry, PLLC.
1019 Central Parkway North, Suite 108
San Antonio, Texas 78232
210-257-6357 (phone)
210-569-6494 (fax)
Ryan.henry@rshlawfirm.com
www.rshlawfirm.com

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From: Ryan Henry
Sent: Wednesday, June 3, 2020 2:58 PM
To: Judge Ana Estevez <EstevezA@pottercscd.org>; Levi Benton <lbenton@levibenton.com>
Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

My only conflict is Tuesday from 9 to 10, but otherwise I'm fully available on Monday or Tuesday

Very Truly Yours,
Ryan Henry
Law Offices of Ryan Henry, PLLC.
1019 Central Parkway North, Suite 108
San Antonio, Texas 78232
210-257-6357 (phone)
210-569-6494 (fax)
Ryan.henry@rshlawfirm.com
www.rshlawfirm.com

From: Judge Ana Estevez <EstevezA@pottercscd.org>
Sent: Wednesday, June 3, 2020 2:32 PM
To: Levi Benton <lbenton@levibenton.com>
Cc: Ryan Henry <ryan.henry@rshlawfirm.com>; Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>
Subject: Re: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Houston, Tx. 77002
(713) 521-1717

From: Levi Benton
Sent: Tuesday, June 2, 2020 10:11 AM
To: Ryan Henry <ryan.henry@rshlawfirm.com>; Judge Ana Estevez <EstevezA@pottercscd.org>
Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Ryan --

Am I correct in understanding that you wish to only address municipal courts that are courts of record?

What is the problem with Rule 505 and 506 that these could not just be made to apply to municipal courts of record? How does Govt. Code 30.00014-00022 conflict with Rule 505 and/or Rule 506?

And is your statement – "…Sec. 30.00005 envision the municipality or the state being the only plaintiffs. No other initiating party is permitted in municipal court…" – is this correct? But then you say "usually"?

LJB

Levi J. Benton
Levi Benton & Associates PLLC
3417Milam
Houston, Tx. 77002
(713) 521-1717

From: Ryan Henry <ryan.henry@rshlawfirm.com>
Sent: Monday, June 1, 2020 4:48 PM
To: Levi Benton <lbenton@levibenton.com>; Judge Ana Estevez <EstevezA@pottercscd.org>
Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Judge Benton,

Attached is a cleaned up version of my last set of notes and proposed rules. This actually addresses a lot of the issues I've seen. However, I have not finished the proposed rules for parties and for plenary power.

The plenary power issue (and therefore appeal and timetables) is more complex. I may

be too close to that particular issue as I was mandamused due to granting a motion for new trial without plenary power in a municipal court civil enforcement matter. Pretty much everyone agreed there are no clear rules on the issue (Plaintiff, defendant, me, the district court judge). I have a proposed set of rules for that, but they intertwine the statutory language. Part of me would like to share the briefs (the mandamus is over so the case is closed) but it's a lot of reading for the committee. So, I can share one version of the plenary power rules, but it has a specific policy behind it and I believe multiple options are actually available. Actually, the proposed rules are meant to incorporate what the district court judge told me she believed was the closest we can get with the current language of the statutes. Please let me know if the committee would prefer simply those extra rules or the briefs and a discussion.

Very Truly Yours,
Ryan Henry
Law Offices of Ryan Henry, PLLC.
1019 Central Parkway North, Suite 108
San Antonio, Texas 78232
210-257-6357 (phone)
210-569-6494 (fax)
Ryan.henry@rshlawfirm.com
www.rshlawfirm.com

From: Levi Benton <lbenton@levibenton.com>
Sent: Monday, June 1, 2020 12:39 PM
To: Judge Ana Estevez <EstevezA@pottercscd.org>
Cc: Elaine Carlson (elainecarlson@comcast.net) <elainecarlson@comcast.net>; ecarlson@stcl.edu; Stephen Yelenosky <syelenosky@gmail.com>; Ryan Henry <ryan.henry@rshlawfirm.com>
Subject: RE: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Ana – thanks for offering to host a meeting. If you and others feel a

Zoom meeting is necessary, I am fine with that. But let's see first. The entire committee and Ryan Henry are copied above. (Ryan, we are on the agenda for the June 19, 2020 meeting. Hope you might be able to attend or call in.)

Ryan Henry's original memo points out the issue - TRCP 2 does not include an express statement that the Rules of Civil Procedure apply to civil actions in municipal courts. So a practitioner and a party would have to search a municipalities ordinances to determine whether the TRCPs apply. I think we can recommend a quick fix for this and that proposed fix is attached as the redline of current TRCP 2. I have also attached the current version of Texas Government Code 39.00005 with notes taken from Ryan's memo.

I don't yet understand why we need the rule suggested to read as follows: "When a municipal court of record exercises its concurrent civil jurisdiction pursuant to Texas Government Code 39.00005, The Texas Rules of Civil Procedure apply in municipal court absent an express statutory deadline or procedural rule to the contrary." I don't think this is necessary because the TRCPs are enforceable as a statute.

Finally, Ryan suggests that maybe we need specialized rules similar to Rule 500 for JP courts applicable to municipal courts. My query, why can't we just amend Part V. of the TRCP and change the title to "Rules of Practice in ***Municipal*** and Justice Courts"?

Thoughts???

LJB

From: Judge Ana Estevez <EstevezA@pottercscd.org>
Sent: Friday, May 29, 2020 12:14 PM
To: Levi Benton <lbenton@levibenton.com>
Subject: FW: SCAC-June 19 Agenda Discussion Items [IMAN-JWDOCS.FID961666]

Let me know if you want to meet between now and then. I have a good zoom account and would be happy to set it up if that would be helpful.

From: Walker, Marti <mawalker@jw.com>
Sent: Friday, May 29, 2020 12:08 PM