

AUGUST 25, 1989

SUPREME COURT ADVISORY COMMITTEE
REPORT TO SUPREME COURT OF TEXAS

RULE:

TRCP 3a
TRCP 4
TRCP 5
TRCP 10
TRCP 18b
TRCP 21
TRCP 21a
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LHS Control
Copy for 2-9-90
Revisions

RECOMMENDED BY:

Unanimity
Unanimity
Unanimity
Unanimity
Unanimity
Unanimity
Unanimity
Unanimity
Unanimity

- ~~1. state or not a burden~~
2. Balancing test
- ~~3. Open government~~
4. Discovery - Trade Secret Fair Trial
5. Settlement agreements
NOT filed,
6. Destruction of Exhibits?

Unanimity

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[illegible]

TRCP 272	Unanimity
TRCP 273	Unanimity
TRCP 274	Unanimity
TRCP 275	Unanimity
TRCP 276	Unanimity
TRCP 277	Unanimity
TRCP 278	Unanimity
TRCP 279	Unanimity
TRCP 294	Unanimity
TRCP 296	Majority
TRCP 297	Unanimity
TRCP 298	Unanimity
TRCP 299	Majority
TRCP 299A	Majority
TRCP 305	Unanimity
TRCP 308a	Unanimity
TRCP 534	Unanimity
TRCP 536	Unanimity
TRCP 536a	Unanimity
TRCP 571	Unanimity
TRCP 687	Unanimity
TRCP 749c	Unanimity
TRCP 771	Unanimity
TRCP 781	Unanimity
TRAP 1	Unanimity
TRAP 4	Unanimity
TRAP 5	Unanimity
TRAP 9	Unanimity
TRAP 12	Unanimity
TRAP 15a	Unanimity
TRAP 17	Unanimity
TRAP 20	Unanimity
TRAP 40	Unanimity
TRAP 41	Unanimity
TRAP 43	Unanimity
TRAP 46	Unanimity
TRAP 47	Unanimity
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TRAP 59	Unanimity
TRAP 72	Unanimity
TRAP 74	Unanimity
TRAP 79	Unanimity
TRAP 90	Unanimity
TRAP 91	Unanimity
TRAP 100	Unanimity
TRAP 130	Unanimity
TRAP 131	Unanimity
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TRAP 133	Unanimity
TRAP 134	Unanimity
TRAP 135	Unanimity
TRAP 136	Unanimity
HEADING TO SECTION TEN	Unanimity
TRAP 160	Unanimity
TRAP 172	Unanimity
TRAP 181	Unanimity
TRAP 182	Unanimity
TRAP 190	Unanimity
HEADING TO SECTION TWELVE	Unanimity
HEADING TO SECTION THIRTEEN	Unanimity
HEADING TO SECTION FOURTEEN	Unanimity
HEADING TO SECTION SEVENTEEN	Unanimity
HEADING TO SECTION EIGHTEEN	Unanimity
APPENDIX FOR CRIMINAL CASES	Unanimity
TRCE 604	Unanimity
TRCE 614	Unanimity
TRCE 703	Unanimity

Minutes contained herein as an Appendix.

TRCP 3a. ~~Rules by which courts~~ [Local Rules]

Each ~~court of~~ administrative judicial region, district court, county court, county court at law, and probate court, may make and amend ~~the~~ [local] rules governing practice before such courts, provided;

(1) No change.

[(2) no time period provided by these rules may be altered by local rules; and]

~~(2)~~ (3) any proposed [local] rule or amendment shall not become effective until it is submitted and approved by the Supreme Court of Texas; and

~~(3)~~ (4) any proposed [local] rule or amendment shall not become effective until at least thirty (30) days after its publication in a manner reasonably calculated to bring it to the attention of attorneys practicing before the court or courts for which it is made; ~~and~~

~~(4)~~ (5) all [local] rules [or amendments] adopted and approved in accordance herewith are made available upon request to the members of the bar/[, and]

[(6) no local rule, order, or practice of any court, other than local rules and amendments which fully comply with all requirements of this Rule 3a shall ever be applied to determine the merits of any matter.

[COMMENT TO 1990 CHANGE: To make Texas Rules of Civil Procedure timetables mandatory and to preclude use of unpublished local rules or other "standing" orders or local practices from determining issues of substantive merit.]

TRCP 4. Computation [of Time]

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time beings to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. [Saturdays, Sundays, and legal holidays shall not be counted for any purpose in any time period of five days or less in these rules, except that Saturdays, Sundays, and legal holidays shall be counted for purpose of the three day period in Rule 21a, extending other periods by three days when service is made by registered or certified mail or by telephonic document transfer.]

[COMMENT TO 1990 CHANGE: Amended to omit counting Saturdays, Sundays, and legal holidays in all periods of less than five days except in the three day extension provision of Rule 21a.]

TRCP 5. Enlargement [of Time]

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a ~~required or allowed to be done at or~~ specified time, the court for cause shown may, at any time in its discretion (a) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or (b) upon motion permit the act to be done after the expiration of the specified period where good cause is shown for the failure to act. 1 ~~1~~ [The court] may not enlarge the period for taking any action under the rules relating to new trials except as stated in these rules. 2 ~~2~~ provided, however, if a motion for new trial

[If any document] is sent to the proper clerk by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail ~~one day or more~~ on or before the last day for filing same, the same, if received by the clerk not more than ten days tardily, shall be filed by the clerk and be deemed filed in time. ~~/ provided / however / that / a~~ [A] legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

[COMMENT TO 1990 CHANGE: To make the last date for mailing under Rule 5 coincide with the last date for filing.]

TRCP 10. Withdrawal of Counsel

Wilehdxaxal / of / an / axexoxney / may / be / effexced / (ay / upox / norexox
shoxwiox / oxox / caxx / axa / unox / sax / cnoxixiox / ioxox / by / xhe
cvox / of / (by / upox / xexxoxaxiox / by / sax / axexoxney / of / a / norex / of
saxsxiexiox / xxiiox / xhe / name / address / xexox / number / and
state / bar / of / Texas / ioxxiiox / number / of / xhe / saxsxiex /
axexoxney / wilex / xhe / xxiiox / of / xhe / axexoxney / to / be / saxsxiex /
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client / and / xhe / wilehdxaxal / is / norex / xox / fox / xelax / oxly / // If
xhe / axexoxney / in / cnox / wilehdxax / and / oxhe / cvox / xexox / of
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wilex / norex / to / all / oxhe / xxiiox / in / axoxox / wilex / xel / xel / as
axexoxney / in / cnox /

[An attorney may withdraw from representing a party only upon written motion for good cause shown. If another attorney is to be substituted as counsel for the party, the motion shall state: the name, address, telephone number, telecopier number, if any, and State Bar of Texas identification number of the substitute attorney; that the party approves the substitution; and that the withdrawal is not sought for delay only. If another attorney is not to be substituted as counsel for the party, the motion shall state: that a copy of the motion has been delivered to the party; that the party has been notified in writing of his right to object to the motion; whether the party consents to the motion; and all pending settings and deadlines. If the motion is granted, the withdrawing attorney shall immediately notify the party in writing of any additional settings or deadlines of which

the attorney has knowledge at the time of the withdrawal and has not already notified the party. The court may impose further conditions upon granting leave to withdraw. Notice or delivery to a party shall be either made to the party in person or mailed to the party's last known address by both certified and regular first class mail. If the attorney in charge withdraws and other counsel remains or becomes substituted, another attorney in charge must be designated of record with notice to all other parties in accordance with Rule 21a.]

[COMMENT TO 1990 CHANGE: The amendment repeals the present rule and clarifies the requirements for withdrawal.]

TRCP 18b. Grounds For Disqualification and Recusal of Judges

(1) Disqualification. (No change.)

(2) Recusal. ~~Judges shall recuse themselves in proceedings in which their impartiality might reasonably be questioned, including but not limited to, instances in which they have a personal bias or prejudice concerning the subject matter or a party, or for personal knowledge of or disputed evidentiary facts concerning the proceeding.~~ A judge shall recuse himself in any proceeding in which:

- (a) his impartiality might reasonably be questioned;
- (b) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (c) he or a lawyer with whom he previously practiced law has been a material witness concerning it;
- (d) he participated as counsel, adviser or material witness in the matter in controversy, or expressed an opinion concerning the merits of it, while acting as an attorney in government service;
- (e) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(f) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person;

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(3) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(4) In this rule:

(a) "proceeding" includes pretrial, trial, or other stages of litigation;

(b) the degree of relationship is calculated according to the civil law system;

(c) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(d) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;

(v) an interest as a taxpayer or utility ratepayer, or any similar interest, is not a "financial interest" unless the outcome of the proceeding could substantially affect the liability of the judge or a person related to him within the third degree more than other judges.

(5) The parties to a proceeding may waive any ground for recusal after it is fully disclosed on the record.

(6) If a judge does not discover that he is recused under subparagraphs (a)(5) or (a)(6)(iii) until after he has devoted substantial time to the matter, he is not required to recuse himself if he or the person related to him divests himself of the interest that would otherwise require recusal.]

[COMMENT TO 1990 CHANGE: The grounds for a judge's mandatory recusal have been expanded from those in prior Rule 18b(2).]

TRCP 21. [Filing and Serving Pleadings and] Motions

A ~~n~~ [pleading, plea, motion, or] application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be ~~made~~ [filed with the clerk of the court] in writing, shall state the grounds therefor, shall set forth the relief or order sought, [and a true copy shall be served on all other parties,] and shall be ~~filed and~~ noted on the docket.

An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall be served upon [all other] ~~the/advocate/party~~ [parties], not less than three days before the time specified for the hearing unless otherwise provided by these rules or shortened by the court.

[If there is more than one other party represented by different attorneys, one copy of such pleading shall be delivered or mailed to each attorney-in-charge.]

[The party or attorney of record, shall certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion or application.]

[After one copy is served on a party that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.]

[COMMENT TO 1990 CHANGE: To require filing and service of all pleadings and motions on all parties and to consolidate notice and service Rules 21, 72 and 73, into a single rule.]

TRCP 21a. Methods of Service

Every notice required by these rules, [and every pleading, plea, motion, or other form of request required to be served under Rule 21,] other than the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy [thereof] of the notice of the filing of the document to be served, or of the party's duly authorized agent or his attorney of record, either in person or by [agent or by courier receipted delivery or by certified or] registered mail, to [the party's] his last known address, [or by telephonic document transfer to the party's current telecopier number,] or it may be given in such other manner as the court in its discretion may direct. Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon by mail [or by telephonic document transfer], three days shall be added to the prescribed period. If [Notice] may be served by a party to the suit, or his [an] attorney of record, or by the sheriff or constable, or by any other person competent to testify. [The party or attorney

of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument.] A written statement certificate by [a party or] an attorney of record, or the return of an officer, or the affidavit of any person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the notice or document [instrument] was not received, or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules. When these rules provide for notice or service by registered mail, or by certified mail, or by air mail, or by any other method, the court may, in its discretion, require service by such method.

[COMMENT TO 1990 CHANGE: Delivery means and technologies have significantly changed since 1941 and this amendment brings approved service practices more current.]

TRCP 21b. Sanctions for Failure to Serve or Deliver Copy of
Pleadings and Motions

If any party fails to serve on or deliver to the other parties a copy of any pleading, plea, motion, or other application to the court for an order in accordance with Rules 21 and 21a, the court may in its discretion, on notice and hearing order all or any part of such document stricken, direct that such party shall not be permitted to present grounds for relief or defense contained therein, require such party to pay to the other parties the amount of reasonable costs and expenses including attorneys fees incurred as a result of the failure, or make such other order with respect to the failure as may be just pursuant to Rule 215.

[COMMENT TO 1990 CHANGE: Repealed provisions of Rule 73, to the extent same are to remain operative, are moved to this new Rule 21b to provide sanctions for the failure to serve any filed documents on all parties.]

TRCP 26. Clerk's Court Docket

Each clerk shall also keep a court docket in a ~~well/bound~~
~~book~~ [permanent record] ~~in~~ that ~~he~~ shall ~~enter~~ [include] the
number of the case and the names of parties, the names of the
attorneys, the nature of the action, the pleas, the motions, and
the ruling of the court as made.

[COMMENT TO 1990 CHANGE: To conform to modern technologies for
keeping of permanent records by clerks.]

TRCP 57 Signing of Pleadings

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, with his State Bar of Texas identification number, address, ~~and~~ telephone number[, and, if available, telecopier number]. A party not represented by an attorney shall sign his pleadings, state his address, ~~and~~ telephone number[, and, if available, telecopier number].

[COMMENT TO 1990 CHANGE: To supply attorney telecopier information with other identifying information on pleadings.]

TRCP 60. Of Intervenor

Any party may intervene, subject to being stricken out by the court for sufficient cause on the motion of the opposite party; and such intervenor shall, in accordance with Rule 72 [21 and 21a], notify the opposite party or his attorney of the filing of such pleadings within five days from the filing of same.

[COMMENT TO 1990 CHANGE: To revise rule reference to Rules 21 and 21a instead of repealed Rule 72.]

TRCP 63.

Amendments [and Responsive Pleadings]

Parties may amend their pleadings, [respond to pleadings on file of other parties,] file suggestions of death and make representative parties, and file such other pleas as they may desire by filing such pleas with the clerk at such time as not to operate as a surprise to the opposite party; provided, that any ~~amendment~~ [pleadings, responses, or pleas,] offered for filing within seven days of the date of trial or thereafter, or after such time as may be ordered by the judge under Rule 166, shall be filed only after leave of the judge is obtained, which leave shall be granted by the judge unless there is a showing that such ~~amendment~~ [filing] will operate as a surprise of the opposite party.

[COMMENT TO 1990 CHANGE: To require that all trial pleadings of all parties, except those permitted by Rule 66, be on file at least seven days before trial unless leave of court permits later filing.]

TRCP 67. Amendments to Conform to Issues Tried Without
Objection

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. In such case such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made by leave of court upon motion of any party at any time up to the submission of the case to the Court or jury, but failure so to amend shall not affect the result of the trial of these issues; provided that written pleadings, before the time of submission, shall be necessary to the submission of ~~special~~ ~~issues~~ [questions], as is provided in Rules ~~277~~ [271] and ~~279~~ [275].

[COMMENT TO 1990 CHANGE: References to Rules 277 and 279 are changed because the pertinent language of Rule 277 was rearranged to Rule 271 and of Rule 279 to Rule 275].

TRCP 72 Filing/Pleadings/for/Produced/for/All/Parties/for
[Repealed]

Whenever/any/party/files/for/asks/leave/for/file/any/plead-
ing/plea/for/motion/of/any/character/which/is/not/by/law/of/by
these/rules/required/for/be/served/upon/the/adversely/party/the
shall/at/the/same/time/either/deliver/for/mail/for/the/adversely
party/for/their/attorneys/of/record/a/copy/of/such/pleading/
plea/for/motion//The/attorney/for/avertized/representative/of
such/attorney/shall/certify/to/the/court/on/the/filed/pleading
in/writing/over/his/presonal/signature/the/his/his/complied/with
the/provisions/of/the/rules//If/the/re/is/more/than/one/adversely
party/and/the/adversely/parties/are/represented/by/differently
attorneys/of/one/copy/of/such/pleading/shall/be/delivered/for/mailed
to/each/attorney/representing/the/adversely/party/both/as/firm/of
attorneys/as/solely/and/the/case/shall/court/as/one//Not/more
than/for/copies/of/any/pleading/plea/for/motion/shall/be
required/to/be/furnished/to/adversely/parties/and/if/the/re/be/more
than/for/adversely/parties/for/copies/of/such/pleading/shall/be
deposited/with/the/clerk/of/court/and/the/party/filing/the/for
asking/leave/for/file/the/should/inform/all/adversely/parties/for
their/attorneys/of/record/the/such/copies/have/been/deposited
with/the/clerk//The/copies/shall/be/delivered/by/the/clerk/to
the/filer/for/applicants/entitled/the/re/and/in/such/case/no
copies/shall/be/required/to/be/mailed/for/delivered/to/the/adversely
parties/for/their/attorneys/by/the/attorney/theas/filing/the

attorney // he / cannot / require / another / copy / of / the / same / pleading / to
be / furnished / to / him /

[COMMENT TO 1990 CHANGE: Repealed and surviving provisions
consolidated to Rule 21.]

[Repealed]

[COMMENT TO 1990 CHANGE: Repealed and surviving provisions moved to new Rule 21b.]

TRCP 87. Determination of Motion to Transfer

1. Consideration of Motion. (No change.)

2. Burden of Establishing Venue

(a) (No change.)

(b) Cause of Action. It shall not be necessary for a claimant to prove the merit[s] of a cause of action, but the existence of a cause of action, when pleaded properly, shall be taken as established as alleged by the pleadings[.]. ~~// by //~~ When the [defendant specifically denies the] claimant's venue allegations are specifically denied, the pleader [claimant] is required, by prima facie proof as provided in paragraph 3 of this rule, to support his [such] pleading that the cause of action taken as established by the pleadings, or a part thereof of such cause of action, accrued in the county of suit. // by // prima facie proof as provided in paragraph 3 of this rule. If a defendant seeks transfer to a county where the cause of action or a part thereof accrued, it shall be sufficient for the defendant to plead that if a cause of action exists, then the cause of action or part thereof accrued in the specific county to which transfer is sought, and such allegation shall not constitute an admission that a cause of action in fact exists. ~~A~~ But the defendant ~~who seeks to transfer a case to a county where the cause of action or part thereof accrued shall be required to support his motion pleading, by prima facie proof as provided in paragraph 3 of this rule, that, if a cause of action exists, it or a part thereof accrued in the county to which transfer is sought.~~

(c) (No change.)

3. Proof

(a) Affidavit and Attachments. All venue facts, when properly pleaded, shall be taken as true unless specifically denied by the adverse party. When a venue fact is specifically denied, the party pleading the venue fact must make prima facie proof of that venue fact[; provided, however, that no party shall ever be required for venue purposes to support by prima facie proof the existence of a cause of action or part thereof, and at the hearing the pleadings of the parties shall be taken as conclusive on the issues of existence of a cause of action. Prima facie proof is made when the venue facts are properly pleaded and an affidavit, and any duly proved attachments to the affidavit, are filed fully and specifically setting forth the facts supporting such pleading. Affidavits shall be made on personal knowledge, shall set forth specific facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify.

(b) The Hearing. (No change.)

(c) (No change.)

4. No Jury. (No change.)

5. No Rehearing. (No change.)

6. (No change.)

[COMMENT TO 1990 CHANGE: To clarify that no proof of any kind is required of any party to establish any element of a cause of action or part thereof; proof is restricted to place, if any, and

the pleadings establish all other elements and may not be contro-
verted for venue purposes as to the existence of a cause of
action or part thereof.]

TRCP 106. Method of Service.

(a) (No change.)

(b) Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place ~~of~~ of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempting under either (a)(1) or (a)(2) at the location named in such affidavit but has not been successful, the court may authorize service

(1) (No change.)

(2) (No change.)

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRCP 107. Return of ~~Citation~~ [Service]

(No change.)

(No change.)

No default judgment shall be granted in any cause until the citation[, or process under Rule 108 or 108a,] with proof of service as provided by this rule [or by Rule 108 or 108a], or as ordered by the court in the event citation is executed under Rule 106, shall have been on file with the clerk of the court ten days, exclusive of the day of filing and the day of judgment.

[COMMENT TO 1990 CHANGE: To state more directly that a default judgment can be obtained when the defendant has been served with process in a foreign country pursuant to the provisions of Rule 108 or 108a.]

TRCP 120a. Special Appearance

1. (No change.)

2. (No change.)

[3. The court shall determine the special appearance on the basis of the pleadings, any stipulations made by and between the parties, such affidavits and attachments as may be filed by the parties, the results of discovery processes, and any oral testimony. The affidavits, if any, shall be served at least seven days before the hearing, shall be made on personal knowledge, shall set forth specific facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify.

Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.]

7/ [4.] If the court sustains the objection to jurisdiction, an appropriate order shall be entered. If the objection to jurisdiction is overruled, the objecting party may thereafter appear generally for any purpose. Any such special appearance or such general appearance shall not be deemed a waiver of the objection to jurisdiction when the objecting party or subject matter is not amenable to process issued by the courts of this State.

[COMMENT TO 1990 CHANGE: To provide for proof by affidavit at special appearance hearings, with safeguards to responding parties. These amendments preserve Texas prior practice to place the burden of proof on the party contesting jurisdiction.]

TRCP 166. Pre-Trial [Conference] ~~Procedure~~ // ~~Formulating~~
~~Issues~~

In any action, the court may in its discretion [,or on request of any party,] direct the attorneys for the parties and the parties or their duly authorized agents to appear before it for a conference to consider:

(a) All [pending] dilatory pleas[,] ~~and/all~~ motions[,] and exceptions ~~relating to a suit pending;~~

(c) The necessity or desirability of amendments to the pleadings;

[(c) Discovery schedule;]

[(d) Requiring written statements of the parties' conten-
tions;]

(b) [Contested issues of fact and] The simplification of the issues;

(df) The possibility of obtaining ~~admissions~~ [stipulations]
of fact ~~and/of/documents/which/will/avoid/unnecessary/proof;~~

(e) [g] The /limitation/of/the/number/of/expert/witnesses
[The identification of legal matters to be ruled on or decided by
the court];

[(h) The exchange of a list of direct fact witnesses, other than rebuttal or impeaching witnesses the necessity of whose testimony cannot reasonably be anticipated before the time of trial, who will be called to testify at trial, stating their address and telephone number, and the subject of the testimony of each such witness;

(i) The exchange of a list of expert witnesses who will be called to testify at trial, stating their address and telephone number, and the subject of the testimony and opinions that will be proffered by each expert witness;

(j) Agreed applicable propositions of law and contested issues of law;

(k) Proposed jury charge questions, instructions, and definitions for a jury case or proposed findings of fact and conclusions of law for a non-jury case;

(l) The marking and exchanging of all exhibits that any party may use at trial and stipulation to the authenticity and admissibility of exhibits to be used at trial;

(m) Written trial objections to the opposite party's exhibits, stating the basis for each objection;

~~(f)~~ [n] The advisability of a preliminary reference of issues to a master or auditor for findings to be used as evidence when the trial is to be by jury.

[(o) The Settlement of the case. To aid such consideration, the court may encourage settlement.]

~~(g)~~ (p) Such other matters as may aid in the disposition of the action. The court shall make an order that recites the action taken at the pre-trial conference, the amendments allowed to the pleadings, the time within which same may be filed, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions[,] ~~of~~ agreements of counsel[, or rulings of the court]; and such order when ~~affixed~~ rendered

shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or extend it to all actions.

[COMMENT TO 1990 CHANGE: To add new paragraphs to broaden the scope of the rule and to express the ability of the trial courts at pretrial hearings to encourage settlement.]

TRCP 166a. Summary Judgment

(a) (No change)

(b) (No change)

(c) (No change)

[(d) Appendixes], References and Other Use of Discovery
Not Otherwise on File.]

Discovery products not on file with the clerk may be used as for summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the specific discovery or specific references or other instruments, is served on all parties together with a statement of intent to use the specified discovery as summary judgment proofs: (i) at least twenty-one (21) days before the hearing if such proofs are to be used to support the summary judgment; or (ii) at least seven (7) days before the hearing if such proofs are to be used to oppose the summary judgment.

(d) (e) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including

the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted.

~~(f)~~ (f) Form of Affidavits; Further Testimony. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. Defects in the form of affidavits or attachments will not be grounds for reversal unless specifically pointed out by objection by an opposing party with opportunity, but refusal, to amend.

~~(f)~~ (g) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

~~(g)~~ (h) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith

or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

[COMMENT TO 1990 CHANGE: This amendment provides a mechanism for using previously non-filed discovery in summary judgment practice. Such proofs must all be filed in advance of the hearing in accordance with Rule 166a. Paragraphs (d) through (g) are renumbered (e) through (h).]

TRCP 166b. Forms and Scope of Discovery; Protective Orders;
Supplementation of Responses

1. Forms of Discovery. (No change.)
2. Scope of Discovery. Except as provided in paragraph 3 of this rule, unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- a. In General. (No change.)
- b. Documents and Tangible Things. (No change.)
- c. Land. (No change.)
- d. Potential Parties and Witnesses. (No change.)
- e. Experts and Reports of Experts. Discovery of the facts known, mental impressions and opinions of experts, otherwise discoverable because the information is relevant to the subject matter in the pending action but which was acquired or developed in anticipation of litigation and the discovery of the identity of experts from whom the information may be learned may be obtained only as follows:

(1) In General. A party may obtain discovery of the identity and location (name, address and telephone number) of an expert who may be called as a [n expert] witness, the subject matter on which the witness is expected to testify, the mental impressions and opinions held by the expert and the facts known to the expert (regardless of when the factual information was acquired) which relate to or form the basis of the

mental impressions and opinions held by the expert. The disclosure of the same information concerning an expert used for consultation and who is not expected to be called as a[n expert] witness at trial is required if the expert's work product/efforts/a basis/either in whole or in part of the opinion of an expert who is to be called as a witness/ [consulting expert's opinion or impressions have been reviewed by a testifying expert.]

(2) Reports. A party may also obtain discovery of documents and tangible things including all tangible reports, physical models, compilations of data and other material prepared by an expert or for an expert in anticipation of the expert's trial and deposition testimony. The disclosure of material prepared by an expert used for consultation is required even if it was prepared in anticipation of litigation or for trial whether it is the expert's/a basis/either in whole or in part of the opinion of an expert who is to be called as a witness/ [if the consulting expert's opinions or impressions have been reviewed by a testifying expert.]

(3) Determination of Status. (No change.)

(4) Reduction of Report to Tangible Form. If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert who will be called as a[n expert] witness have not been recorded and reduced to tangible form, the trial judge may order these matters reduced to tangible

form and produced within a reasonable time before the date of trial.

f. Indemnity, Insuring and Settlement Agreements.

(No change.)

g. Statements. (No change.)

h. Medical Records; Medical Authorization. (No change.)

3. Exemptions. The following matters are protected from disclosure by privilege:

a. Work Product. (No change.)

b. Experts. The identity, mental impressions and opinions of an expert who has been informally consulted or of an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial or any documents or tangible things containing such information if the expert will not be called as a [n expert] witness, except that the identity, mental impressions and opinions of an expert who will not be called to testify [as an expert] and any documents or tangible things containing such impressions and opinions are discoverable if the [consulting] expert's ~~work / product / files /~~ has been / been / in / whole / or / in / part / of / the / opinion / of / an / expert / who will / be / called / as / a / [n expert] / witness [opinion or impressions have been reviewed by a testifying expert].

c. Witness Statements. The written statements of potential witnesses and parties, ~~if / the / statements / was~~ [when] made subsequent to the occurrence or transaction upon which the suit is based and in connection with the prosecution, investigation, or defense of the particular suit, or in anticipation of the

prosecution or defense of the claims made ~~in~~ [a part of] the pending litigation, except that persons, whether parties or not, shall be entitled to obtain, upon request, copies of statements they have previously made concerning the action or its subject matter and which are in the possession, custody, or control of any party. The term "written statements" includes (i) a written statement signed or otherwise adopted or approved by the person making it, and (ii) a stenographic, mechanical, electrical or other type of recording, or any transcription thereof which is a substantially verbatim recital of a statement made by the person and contemporaneously recorded. [For purpose of this paragraph a photograph is not a statement.]

d. Party Communications. ~~With/in the exception of/discovery~~
~~able/communications/prepare/for/for/experts//and/or the/discovery~~
~~exable/c[C]ommunications between agents or representatives or the~~
~~employees of a party to the action or communications between a~~
~~party and that party's agents, representatives or employees, when~~
~~made/subsequent to the occurrence or transaction upon which the suit~~
~~is based/ and in connection with the prosecution, investigation~~
~~or defense of the particular suit, or in anticipation of the~~
~~prosecution or defense of the claims made in [a part of] the~~
~~pending litigation. This exemption does not include communica-~~
~~tions prepared by or for experts that are otherwise discover-~~

able.] For the purpose of this paragraph, a photograph is not a communication.

e. Other Privileged Information. Any matter protected from disclosure by any other privilege.

Upon a showing that the party seeking discovery has substantial need of the materials and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means, a party may obtain discovery of the materials otherwise exempt from discovery by subparagraphs c and d of this paragraph 3. Nothing in this paragraph 3 shall be construed to render non-discoverable the identity and location of any potential party, any person having knowledge or relevant facts, any expert who is expected to be called as a witness in the action, or of any consulting expert whose opinions or impressions have been reviewed by a testifying expert.

4. Presentation of Objections. [Either an objection or a motion for protective order made by a party to discovery shall preserve that objection without further support or action by the party unless the objection or motion is set for hearing and determined by the court. Any party may at any reasonable time request a hearing on any objection or motion for protective order. The failure of a party to obtain a ruling prior to trial on any objection to discovery or motion for protective order does not waive such objection or motion.] In ~~responding~~ [objecting] to an appropriate discovery request within the scope of paragraph 2, ~~directly addressed to the matter,~~ a party ~~who seeks~~ [seeking] to exclude any matter from discovery on the basis of an exemption

or immunity from discovery, must specifically plead the particular exemption or immunity from discovery relied upon and [at or prior to any hearing shall] produce [any] evidence [necessary to] supporting such claim [either] in the form of affidavits [served at least seven days before the hearing] or [by] live testimony. presented at / a / hearing / requested / by / either / the / requesting / or / objecting / party / / When / a / party / s / objection / concerns / the / discoverability / of / documents / and / is / based / on / a / specific / inapplicability / of / exemption / and / is / based / on / a / specific / inapplicability / of / exemption / / such / as / attorney / client / privilege / or / attorney / work / product / / the / party / s / objection / may / be / supported / by / an / affidavit / or / live / testimony / by / If the trial court determines that an IN/CAMERA/inspection [in camera inspection and review by the Court] of some or all of the documents [requested discovery] is necessary, the objecting party must segregate and produce the documents [discovery to the court in a sealed wrapper or by answers made in camera to deposition questions, to be transcribed and sealed in event the objection is sustained]. The / party / s / offer / concerning / the / need / for / an / inspection / shall / specify / a / reasonable / time / place / and / manner / for / making / the / inspection / When a party seeks to exclude documents from discovery and the basis for objection is undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights, rather than a specific immunity or exemption, it is not necessary for the court to conduct an / inspection / of / the / individually / documents [an inspection and review of the particular discovery] before ruling on the objection. [After the date on which answers are to be served, objections are waived unless an

extension of time has been obtained by agreement or order of the court or good cause is shown for the failure to object within such period.

5. Protective Orders. (No change.)

6. Duty to Supplement. A party who has responded to a request for discovery that was correct and complete when made is under no duty to supplement his response to include information thereafter acquired, except the following shall be supplemented not less than thirty days prior to the beginning of trial unless the court finds that a good cause exists for permitting or requiring later supplementation.

a. A party is under a duty ~~§[r]~~reasonably to supplement his response if he obtains information upon the basis of which:

(1) (No change.)

(2) (No change.)

b. (No change.)

c. (No change.)

[7. Discovery Motions. All discovery motions shall contain a certificate by the party filing same that efforts to resolve the discovery dispute without the necessity of court intervention have been attempted and failed.]

[COMMENT TO 1990 CHANGE: To eliminate the contradiction between Rule 166b 2(e)(1) and (2) and corresponding Rule 166b 3(e), Rule 166b 2(e)(1) and (2) have been modified. As modified, Rule 166b 2(e)(1) and (2) now make discoverable the impressions and opinions of a consulting expert if a testifying expert has reviewed those opinions and material, regardless of whether or not the

opinions and material form a basis for the opinion of the testifying expert. The revisions keep the intent of Rule 166b 2(e)(1) and (2) and Rule 166b 3(e) consistent with regard to consulting experts. The amendments to Section 3 standardize language for the same meaning. New Section 7 was added to ensure that court time will not be taken to resolve discovery disputes unless the parties cannot resolve them without court intervention and provide that matters exempt under paragraph 3(c) are not made discoverable solely because the consultant may or is to be a fact witness only. The amendments to Section 4 expressly dispense with the necessity of doing anything more than serving objections to preserve discovery complaints in order to avoid unnecessary time and expense to parties and time of the courts, particularly where no party ever requests a hearing on the objection. The failure of any party to do more than merely object fully shall never constitute a waiver of any objection. The last sentence added to Section 4 was previously the second sentence of Rule 168(6) and was moved because it applies to all discovery objections.]

TRCP 167a. Physical and Mental Examination of Persons

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical ~~or mental~~ examination by a physician[, or a mental examination by a physician or psychologist] or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examining Physician[or Psychologist].

(1) If requested by the party against whom an order is made under this rule or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician [or psychologist] setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain

it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician [or psychologist] fails or refuses to make a report the court may exclude his testimony if offered at the trial.

(2) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician [or psychologist] or the taking of a deposition of the physician [or psychologist] in accordance with the provisions of any other rule.

c. [No Comment.]

If no examination is sought either by agreement or under the provisions of this rule, the party whose mental or physical condition is in controversy shall not comment to the court or jury on his willingness to submit to an examination, on the right of any other party to request an examination or move for an order, or on the failure of such other party to do so.

[d. Definitions.]

For the purpose of this rule, a psychologist is a psychologist licensed by the State of Texas.]

[COMMENT TO 1990 CHANGE: To provide for court-ordered examination by certain psychologists.]

Any party may serve upon any other party written interrogatories to be answered by the party served, or, if the party served is a public or private corporation or a partnership or association, or governmental agency, by an officer or agent who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after the service of the citation and petition upon that party.

1. (No change.)

2. (No change.)

3. (No change.)

4. (No change.)

5. (No change.)

6. Objections. On or prior to the date on which answers are to be served, a party may serve written objections to specific interrogatories or portions thereof. *Objections served after the date on which answers are to be served are waived unless an extension of time has been obtained by agreement or order of the court or good cause is shown for the failure to object within such period.* Answers only to those interrogatories or portions thereof, to which objection is made, shall be deferred until the objections are ruled upon and for such additional time thereafter as the court may direct. Either party may request a hearing as to such objections at the earliest possible time.

[COMMENT TO 1990 CHANGE: The previous second sentence in Section 6, which read, "Objections served after the date on which answers are to be served are waived unless an extension of time has been obtained by agreement or order of the court or good cause is shown for the failure to object within such period," was and is applicable to all discovery objections and therefore has been moved to Rule 166b 4, last sentence.]

TRCP 169. Request for Admission

1. Request for Admission. At any time after [commencement of the action] ~~the defendant has made appearance in the cause/ or time therefor has elapsed~~, a party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 166b set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of the documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Whenever a party is represented by an attorney of record, service of a request for admissions shall be made on his attorney unless service on the party himself is ordered by the court. A true copy of a request for admission or of a written answer or objection, together with proof of the service thereof as provided in Rule 21a, shall be filed promptly in the clerk's office by the party making it.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted without necessity of a court order unless, within thirty (30) days after service of the request, or within such time as the court may allow, [or as otherwise agreed by the parties,] the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the

time, a defendant shall not be required to serve answers or objections before the expiration of ~~forty-five (45)~~ [fifty (50)] days after service of the citation and petition upon ~~him~~ that defendant. If objection is made, the reason therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons that the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or easily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission is requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of paragraph 3 of Rule 215, deny the matter or set forth reasons why he cannot admit or deny it.

2. Effect of Admission. (No change.)

[COMMENT TO 1990 CHANGE: The rule is amended to provide for an agreement of the parties for additional time for the recipient of the requests to file answers or objections. This change will allow the parties to agree to additional time within which to answer without the necessity of obtaining a court order.]

The rule is also amended to permit service of a Request for Admission at any time after commencement of the action but extends responses to no less than 50 days after service of the citation and petition on the responsive parties.]

TRCP 183. Interpreters

The court may ~~//when necessary/~~ appoint [an] interpreter ~~s~~ [of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.] ~~//who may be summoned in the same manner as witnesses/ and shall be subject to the same penalties for disobedience/~~

[COMMENT TO 1990 CHANGE: To adopt procedures for the appointment and compensation of interpreters. Source: Fed. R. Civ. P. 43(f).]

[Repealed.]

A / c o u n t y / u p o n / i t s / o w n / m o r e l i o n / m a y / / o f / u p o n / t h e / m o r e l i o n / o f / a
 p a r t y / s h a l l / / t a k e / j u d i c i a l / n o t i c e / o f / t h e / c o n s t i t u t i o n s / p u b l i c
 s t a t u t e s / r u l e s / r e g u l a t i o n s / o r d i n a n c e s / c o u n t y / d e c i s i o n s / a n d
 c o m m o n / l a w / o f / e v e r y / o t h e r / s t a t e / t e r r i t o r y / / o f / j u r i s d i c t i o n / o f
 t h e / u n i t e d / s t a t e s / / A / p a r t y / r e q u e s t i n g / t h a t / j u d i c i a l / n o t i c e / b e
 t a k e n / o f / s u c h / m a t t e r / s h a l l / f u r n i s h / t h e / c o u n t y / s u f f i c i e n t / i n f o r m a t
 i o n / t o / e n a b l e / i t / p r o p e r l y / t o / c o m p l y / w i t h / t h e / r e q u e s t / / a n d / s h a l l
 g i v e / a l l / p a r t i e s / s u c h / n o t i c e / / i f / a n y / / a s / t h e / c o u n t y / m a y / d e e m
 n e c e s s a r y / / t o / e n a b l e / a l l / p a r t i e s / f a i r l y / t o / p r e p a r e / t o / m e e t / t h e
 r e q u e s t / / A / p a r t y / i s / e n t i t l e d / u p o n / t i m e l y / r e q u e s t / t o / a n / o p p o r t u n
 i t y / t o / b e / h e a r d / a s / t o / t h e / p r o p r i e t y / o f / t a k i n g / j u d i c i a l / n o t i c e
 a n d / t h e / r e n o r / o f / t h e / m a t t e r / n o t i c e d / / I n / t h e / a b s e n c e / o f / p r i o r
 n o t i f i c a t i o n / / t h e / r e q u e s t / m a y / b e / m a d e / a f t e r / j u d i c i a l / n o t i c e / h a s
 b e e n / t a k e n / / J u d i c i a l / n o t i c e / o f / s u c h / m a t t e r s / m a y / b e / t a k e n / a t / a n y
 s t a g e / o f / t h e / p r o c e e d i n g / / T h e / c o u n t y / s / d e t e r m i n a t i o n / s h a l l / b e
 s u b j e c t / t o / r e v i e w / a s / a / r u l i n g / o n / a / q u e s t i o n / o f / l a w /

[COMMENT TO 1990 CHANGE: Rule 184 has been repealed because
it was added to Rule 202, Texas Rules of Civil Evidence, effec-
tive January 1, 1988.]

TRCP 184a. Determination of the Laws of Foreign Countries

[Repealed]

[illegible]

[COMMENT TO 1990 CHANGE: Rule 184 has been repealed because it was added to Rule 203, Texas Rules of Civil Evidence, effective January 1, 1988.]

TRCP 200. Depositions Upon Oral Examination

1. When Depositions May Be Taken. (No change.)

2. Notice of Examination: General Requirements; Notice of
Deposition of Organization

a. Reasonable notice must be served in writing by the party, or his attorney, proposing to take a deposition upon oral examination, to every other party or his attorney of record. The notice shall state the name of the deponent, the time and the place of the taking of his deposition and, if the production of documents or tangible things in accordance with Rule 201 is desired, a designation of the items to be produced by the deponent either by individual item or by category and which describes each item and category with reasonable particularity. [The notice shall also state the identity of other persons who will attend other than the witness, parties, spouses of parties, counsel, employees of counsel, and the officer taking the deposition. If any other party intends to have such other persons attend, that party must give reasonable notice of the identity of such other persons.]

b. (No change.)

[COMMENT TO 1990 CHANGE: Rule 200(2)(a) was amended to provide for persons who may attend deposition without notification and to provide for notice, to be given a reasonable number of days in advance of the deposition, of any party's intent to have any other persons attend.]

TRCP 201. Compelling Appearance; Production of Documents and
 Things; Deposition of Organization

Any person may be compelled to appear and give testimony by deposition in a civil action.

(1) (No change.)

(2) (No change.)

(3) (No change.)

(4) (No change.)

(5) Time and Place. The time and place designated shall be reasonable. The place of taking a deposition shall be in the county of the witness' residence or, where he is employed or regularly transacts business in person or at such other convenient place as may be directed by the court in which the cause is pending; provided, however, the deposition of a party or the person or persons designated by a party under paragraph 4 above may be taken in the court of suit subject to the provisions of paragraph 4 [5] of Rule 166b. A nonresident or transient person may be required to attend in the county where he is served with a subpoena, or within one hundred miles from the place of service, or at such other convenient place as the court may direct. The witness shall remain in attendance from day to day until such deposition is begun and completed.

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRCP 206. Certification by Officer; Exhibits; Copies; Notice
 of Delivery

1. Certification. The officer shall attach as part of the deposition transcript a certificate duly sworn by such officer which shall state the following:

- (i) (No change.)
- (ii) (No change.)
- (iii) (No change.)
- (iv) (No change.)
- (v) (No change.)
- (vi) (No change.)

(vii) that the original deposition transcript, or a copy thereof in event the original was not returned to the officer, together with copies of all exhibits, ~~was delivered or mailed in a postpaid properly addressed wrapper/checked with return receipt requested, to~~ [is in the possession and custody of] the attorney or party who asked the first question appearing in the transcript for safekeeping and use at trial;

- (viii) (No change.)
- 2. Delivery. (No change.)
- 3. Exhibits. (No change.)
- 4. (No change.)
- 5. Copies. (No change.)
- 6. Notice of Delivery. (No change.)

[COMMENT TO 1990 CHANGE: To permit court reporters to certify custody of the custodial attorney of the original deposition transcript and related exhibits based upon the court reporter's delivery or other confirmation from the custodial attorney obtained in writing or otherwise.]

Rule 208. Depositions Upon Written Questions

1. Serving Questions; Notice. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. [Leave of court, granted with or without notice, must be obtained only if a party seeks to take a deposition prior to the appearance day of any defendant.] Attendance of witnesses and the production of designated items may be compelled as provided in Rule 201.

A party proposing to take a deposition upon written questions shall serve them upon every other party or his attorney with a written notice ten days before the deposition is to be taken. The notice shall state the name and if known, the address of the deponent, the suit in which the deposition is to be used, the name or descriptive title and address of the officer before whom the deposition is to be taken, and, if the production of documents or tangible things in accordance with Rule 201 is desired, a designation of the items to be produced by the deponent either by individual item or by category and which describes each item and category with reasonable particularity. [The notice shall also state the identity of other persons who will attend other than the witness, parties, spouses of parties, counsel, employees of counsel, and the officer taking the deposition. If any other party intends to have such other persons attend, that party must give reasonable notice of the identity of such other persons.]

A party may in his notice name as the witness a public or private corporation or a partnership or association or

governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors or managing agents, or other persons to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The person so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in these rules.

2. Notice by Publication. (No change.)

3. Cross-Questions, Redirect Questions, Re-cross Questions and Formal Objections. (No change.)

4. Deposition Officer; Interpreter. (No change.)

5. Officer to take Responses and Prepare Record. (No change.)

[COMMENT TO 1990 CHANGE: Rule 208 was silent as to whether a deposition on written questions of a defendant could be taken prior to the appearance date. Rule 200 permits depositions upon oral examination of defendants prior to appearance date with permission of the court. As modified, Rule 208 conforms to Rule 200 and permits the deposition on written questions of a defendant prior to appearance date with permission of the court. Rule 208 was also amended to provide for persons who may attend deposition without notification and to provide for notice, to be

given a reasonable number of days in advance of the deposition,
of any party's intent to have any other persons attend.]

TRCP 216.

Request and Fee for Jury Trial

1/ [a.] (No change.)

2/ [b.] Jury Fee. [Unless otherwise provided by law, a] ~~£~~ fee of ten dollars if in the district court and five dollars if in the county court must be deposited with the clerk of the court within the time for making a written request for a jury trial. The clerk shall promptly enter a notation of the payment of such fee upon the court's docket sheet.

[COMMENT TO 1990 CHANGE: Additional fees for jury trials may be required by other law. E.g., Texas Government Code § 51.604.]

TRCP 223. Jury List in Certain Counties

In counties governed as to juries by the laws providing for interchangeable juries, the names of the jurors shall be placed upon the general panel in the order in which they are randomly selected drawn from the wheel, and jurors shall be assigned for service from the top thereof, in the order in which they shall be needed, and jurors returned to the general panel after service in any of such courts shall be enrolled at the bottom of the list in the order of their respective return; provided, however, that the trial judge of such court, upon the demand prior to voir dire examination by any party or attorney in the case reached for trial in such court, shall cause the names of all members of such assigned jury panel in such case to be placed in a receptacle, shuffled, and drawn, and such names shall be transcribed in the order drawn on the jury list from which the jury is to be selected to try such case. There shall be only one shuffle and drawing by the trial judge in each case.

[COMMENT TO 1990 CHANGE: To provide uniformity in jury shuffles.]

TRCP 237a. Cases Remanded From Federal Court

When any cause is removed to the Federal Court and is afterwards remanded to the state court, the plaintiff shall file a certified copy of the order of remand with the clerk of the state court and shall forthwith give written notice of such filing to the attorneys of record for all adverse parties. All such adverse parties shall have fifteen days from the receipt of such notice within which to file an answer. [No default judgment shall be rendered against a party in a removed action remanded from federal court if that party filed an answer in federal court during removal.]

[COMMENT TO 1990 CHANGE: To preclude a default judgment is a case remanded from federal court if an answer was filed in federal court during removal.]

TRCP 245. Assignment of Cases for Trial

The Court may set contested cases on ~~motion~~ [written request] of any party, or on the court's own motion, with reasonable notice of not less than forty five ~~[75]~~ days to the parties [of a first setting for trial], or by agreement of the parties/; provided, however, that when a case previously has been set for trial, the Court may reset said contested case to a later date on any reasonable notice to the parties or by agreement of the parties.] Noncontested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time.

[A request for trial setting constitutes a representation that the requesting party reasonably and in good faith expects to be ready for trial by the date requested, but no additional representation concerning the completion of pretrial proceedings or of current readiness for trial shall be required in order to obtain a trial setting in a contested case.]

[COMMENT TO 1990 CHANGE: First paragraph, to harmonize a first time non-jury setting with the time for jury demand. Second paragraph, to eliminate impediments to continuing case preparation and discovery after a trial setting is requested in a pending case.]

TRCP 248. Jury Cases

When a jury has been demanded, questions of law, motions, exceptions to pleadings, ~~etc/~~ [and other unresolved pending matters], shall, as far as practicable, be heard and determined by the court before ~~the day designated for~~ the trial [commences], and jurors shall be summoned to appear on the day so designated.

[COMMENT TO 1990 CHANGE: To provide a mechanism, in both bench trials prior to the start of evidence and jury trials prior to jury selection, and in both individual and central docket courts, to seek and obtain rulings on matters of law, evidence, and procedure affecting the trial.]

In Case of New Counties

[Repealed]

[illegible]

[COMMENT TO 1990 CHANGE: Repealed as no longer needed.]

(a) After the evidence is concluded and the charge is read, the parties may argue the case to the jury. The party having the burden of proof on the whole case, or on all matters which are submitted by the charge/~~whether upon special issues or otherwise~~ shall be entitled to open and conclude the argument; where there are several parties having separate claims or defenses, the court shall prescribe the order of argument between them.

(b) (No change.)

(c) (No change.)

(d) (No change.)

(e) (No change.)

(f) (No change.)

(g) The court will not be required to wait for objections to be made when the rules as to arguments are violated; ~~by~~ but should they not be noticed and corrected by the court, opposing counsel may ask leave of the court to rise and present his point of objection. But the court shall protect counsel from any unnecessary interruption made on frivolous and unimportant grounds.

(h) (No change.)

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRCP 271 Charge ~~to~~ [of] the ~~Jury~~ [Court]

[1. The court may order any party to submit proposed jury questions, instructions, and definitions, at any reasonable time for the convenience of the court.]

in writing and in substantially court form

[2. In all jury cases,] ~~U~~[u]nless expressly waived by the parties, [at the conclusion of the evidence,] the trial court shall prepare and ~~in/upon/court~~ deliver a written charge to the ~~jury~~ [parties, signed by the court, and filed with the clerk, and] the charge so filed shall be a part of the record of the case.]

[3. The court shall submit the questions and instructions and definitions raised by the written pleadings and the evidence. The court shall, whenever feasible, submit the cause upon broad-form questions. The court shall submit such instructions and definitions as shall be proper to enable the jury to render a verdict. The placing of the burden of proof may be accomplished by instruction rather than by inclusion in the question.]

4. Inferential rebuttal questions shall not be submitted in the charge.

5. The court may submit a question disjunctively when it is apparent from the evidence that one or the other of the conditions or facts inquired about necessarily exists.

6. The court shall not submit other and various phases or different shades of the same question.

7. In any cause in which the jury is required to apportion the loss among the parties, the court shall submit a question or questions inquiring what percentage, if any, of the negligence or

^{responsibility,}
~~causation,~~ as the case may be, that caused the occurrence or injury in question is attributable to each of the parties found to have been culpable. The court shall also instruct the jury to answer the damage question or questions without any reduction because of the percentage of negligence or ^{responsibility,} ~~causation,~~ if any, of the party injured. The court may predicate the damage question or questions upon affirmative findings of liability.

8. Except in trespass to try title, statutory partition proceedings, and other special proceedings in which the pleadings are specially defined by statutes or procedural rules, a party shall not be entitled to any submission of any question raised only by a general denial and not raised by affirmative written pleading by that party.

9. The court shall not in its charge comment directly on the weight of the evidence or advise the jury of the effect of their answers, but the court's charge shall not be objectionable on the ground that it incidentally constitutes a comment on the weight of the evidence or advises the jury of the effect of their answers when it is properly a part of an instruction or definition.

10. Nothing herein shall change the burden of proof from what it would have been under a general denial.]

[COMMENT TO 1990 CHANGE: The jury charge rules are entirely rearranged to follow better the order of proceedings in the trial court, to provide means for counsel to assist the court in preparing the charge, to place together the formal requisites of

the charge, and to provide that the charge prepared by the court
be signed and filed prior to objections. The court may modify
its prepared charge as provided by Rule 272(b).]

and Rule 286.

b six

TRCP 272 ~~Requisites~~ [Objections to the Charge of the Court]

[illegible]

[1. The charge, prepared by the court and filed pursuant to Rule 271, shall be submitted to the respective parties or their attorneys for their inspection and the court shall allow them reasonable time in which to examine and present objections to the charge and to assign error pursuant to Rule 273 outside the presence of the jury.]

The court shall ^{conduct} ~~have~~ a hearing for objections to the charge

2. Each party may object to the charge. A party objecting to the charge must point out distinctly the matter complained of and the grounds of the complaint by an objection that clearly points out the portion of the charge to which complaint is made and is specific enough to support the conclusion that the trial court was fully aware of the ground of complaint and chose to overrule the objection.

3. When the complaining party's objection to a question, definition, or instruction is obscured or concealed by voluminous unfounded objections, minute differentiations, or numerous unnecessary requests, such objection or request shall be a

nullity

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[COMMENT
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5. At the hearing, the court may ~~order a party relying on~~ ^{adopted} objection are presented, the court ^{nly.} may order a party relying on ^{at any} question, instruction, or definition ^{286.1} a part of that party's cause of action or defense, to submit in writing and in substantially correct wording a question, instruction, or definition to cure ~~the~~ ^{any} particular objection of that party or any other party. The court shall also

isites

150 ordered

a reasonable time for the party to comply with the order.

conduct
The court shall ~~have~~ a hearing *for* objections to the charge

2. Each party may object to the charge. A party objecting to the charge must point out distinctly the matter complained of and the grounds of the complaint by an objection that clearly points out the portion of the charge to which complaint is made and is specific enough to support the conclusion that the trial court was fully aware of the ground of complaint and chose to overrule the objection.

3. When the complaining party's objection to a question, definition, or instruction is obscured or concealed by voluminous unfounded objections, minute differentiations, or numerous unnecessary requests, such objection or request shall be a nullity.

4. No objection to one part of the charge may be adopted and applied to any other part of the charge by reference only.

5. The court may modify the charge of the court at any time before it is read to the jury ^{and} ~~or~~ as provided in Rule 286.]

[COMMENT TO 1990 CHANGE: To provide procedures and requisites for objecting to the charge of the court.]

*revised by
Julia 2736*

TRCP 273 Jury/Supplies/Preservation of Error In the Charge of the Court

EACH PARTY MAY PRESENT TO THE COURT AND REQUEST WRITTEN QUESTIONS/DEFINITIONS/AND INSTRUCTIONS TO BE GIVEN TO THE JURY AND THE COURT MAY GIVE THEM OR A PARTY REQUESTS TO BE GIVEN THEM. AS MAY BE PROPER. SUCH REQUESTS SHALL BE MADE SEPARATE AND APART FROM SUCH PARTY'S OBJECTIONS TO THE COURT'S CHARGE. *Rule 272 (5)*

To preserve error to either the omission of an entire ground of recovery or
[1. An objection made in compliance with Rule 272 shall define or to an objection when the trial court has asked a party to tender preserve error in the court's charge, and no party is required to a request under Rule 272, a written request is required to preserve submit in writing any question, instruction, or definition in error if it is a matter which upon by the complaining party's request, order to preserve error in the court's charge. No failure by the an objection made in compliance with Rule 272 or a request shall prevent court to submit a question, instruction, or definition, nor any error to the court's charge or defeat therein, shall be a ground for reversal of a judgment.

NOT Requests shall be in writing, presented to the court and submitted unless the party complaining on appeal made an objection in to opposing counsel for examination within reasonable time after the charge compliance with Rule 272. Failure of any party to submit a is given to the parties or their attorneys for examination. Objections shall be question, instruction, or definition in writing shall never be a waiver of any objection made in compliance with Rule 272.

requests given
The objections shall be presented to the court in writing or be dictated to the court reporter in the presence of the court and opposing counsel before the charge is read to the jury. All objections not so presented shall be considered waived. It shall be presumed, unless otherwise noted in the

to a part of that party's charge action or defense

before the charge is read to the jury

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The court shall endorse it 'refused,' and sign the same kept the charge is read to the jury. If a request is modified, the court shall state thereon the manner in which it is modified and sign the same in a like manner. Such a request to modify a request, upon being filed with the clerk, shall constitute a direct request to the court under Appellate Rule 52.

record that any objections made by a party were presented at the proper time. Requests and objections shall be made separate and apart from one another.

4. The court shall announce its rulings on the objections before reading the charge to the jury and shall endorse the rulings on the objections or dictate same to the court reporter on the record in the presence of counsel.

4.5. Objections to the charge and the court's rulings thereon may be included as a part of any transcript or statement of facts on appeal and, when so included in either, shall constitute a record for appeal of the rulings of the court on the objections.

5. ~~Compliance or noncompliance with Rule 271(1) shall never constitute waiver of any objection to the court's charge made in compliance with Rules 272 and 273.~~

6. For purposes of appeal, objections shall be deemed overruled if not ruled on by the court or cured by modification in the court's charge, and no waiver of any objection shall result solely from the absence of an express ruling in the record.

[COMMENT TO 1990 CHANGE: To place in a single rule all requisites and predicates for appellate review of error in the charge of the court and to eliminate any necessity to request questions, instructions, or definitions in writing for purposes of appeal.]

Harley's #1 w/ my
machine and his #2

[illegible]

party's objections to the charge, *Except as provided in Rule 273(1)*
 [1] an objection made in compliance with Rule 272 shall
 preserve error in the court's charge, and no party is *otherwise* required to
 submit in writing any question, instruction, or definition in
 order to preserve error in the court's charge. No failure by the
 court to submit a question, instruction, or definition, nor any
 defect therein, shall be a ground for reversal of a judgment
 unless the party complaining on appeal made *a request in compliance with Rule 273(1) or* an objection in
 compliance with Rule 272. *Except as provided in Rule 273(1)* Failure of any party to submit a
 question, instruction, or definition in writing shall never be a
 waiver of any objection made in compliance with Rule 272.

2. The objections shall be presented to the court in writing or be dictated to the court reporter in the presence of the court and opposing counsel before the charge is read to the jury. All objections not so presented shall be considered waived. It shall be presumed, unless otherwise noted in the

TRCP 273 Jury/Instructions [Preservation of Error In the Charge of the Court]

Each party may preserve by the time of the charge and request written questions/definitions/and instructions by the time of the charge and the charge may give the court or a party the right to give the court/ask may be proper//such requests shall be prepared and presented by the time of the charge and submitted by the time of the charge examination and objection within a reasonable time after the charge has been read to the jury/and the parties for any questions/definitions/ or instructions shall be made separate and apart from such party's objections by the time of the charge/

Except as provided in Rule 273(1),
[1] An objection made in compliance with Rule 272 shall preserve error in the court's charge, and no party is ^{otherwise} required to submit in writing any question, instruction, or definition in order to preserve error in the court's charge. No failure by the court to submit a question, instruction, or definition, nor any defect therein, shall be a ground for reversal of a judgment unless the party ^{a request in compliance with Rule 273(1) or} complaining on appeal made an objection in compliance with Rule 272. *Except as provided in Rule 273(1)*
[2] Failure of any party to submit a question, instruction, or definition in writing shall never be a waiver of any objection made in compliance with Rule 272.

2. The objections shall be presented to the court in writing or be dictated to the court reporter in the presence of the court and opposing counsel before the charge is read to the jury. All objections not so presented shall be considered waived. 3. It shall be presumed, unless otherwise noted in the

all requests and
record, that ~~any~~ objections made by a party were presented at the proper time.

and announce it ruling on the objections
The court ~~shall announce its ruling on the objections~~ *the requests and* before reading the charge to the jury ~~and shall endorse the rulings on the record~~ *requests*

3. before reading the charge to the jury, the court shall endorse the ruling on the request, and shall make a record with the court reports in the presence of counsel of the ruling on the objections.

and cause the ruling to be filed with the clerk
7. C never const

made in compliance with Rules 272 and 273.

8. For purposes of appeal, objections shall be deemed overruled if not ruled on by the court or cured by modification in the court's charge, and no waiver of any objection shall result solely from the absence of an express ruling in the record.]

[COMMENT TO 1990 CHANGE: To place in a single rule all requisites and predicates for appellate review of error in the charge of the court and to eliminate any necessity to request questions, instructions, or definitions in writing for purposes of appeal.]

all requests and
record, that ~~any~~ objections made by a party were presented at the proper time.

and announce it ruling on the objections
the requests and
requests
The court ~~shall announce its rulings on the objections~~ before reading the charge to the jury ~~and shall endorse the rulings on the objections or dictate same to the court reporter on the record in the presence of counsel.~~

4. Objections to the charge and the court's rulings thereon may be included as a part of any transcript or statement of facts on appeal and, when so included in either, shall constitute a record for appeal of the rulings of the court on the objections.

7. Compliance or noncompliance with Rule 271(1) shall never constitute waiver of any *request or* objection to the court's charge made in compliance with Rules 272 and 273.

8. For purposes of appeal, objections shall be deemed overruled if not ruled on by the court or cured by modification in the court's charge, and no waiver of any objection shall result solely from the absence of an express ruling in the record.]

[COMMENT TO 1990 CHANGE: To place in a single rule all requisites and predicates for appellate review of error in the charge of the court and to eliminate any necessity to request questions, instructions, or definitions in writing for purposes of appeal.]

[illegible]

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TRCP 273 [274] Charge [of the Court to be] Read [to the
Jury] Before Argument

requests and
[After ruling on all objections, and] B[e]fore the argument
is begun, the trial court shall [complete the charge and] read
the [entire] charge to the jury in the precise words in which it
was/written [is completed], including all questions, definitions,
and instructions/which the court may give.

[COMMENT TO 1990 CHANGE: Derived from former Rule 275]

TRCP/273//Charge/Read/Before/Argument

Before/you/argue/is/begin//you/trial/court/shall/read/the
charge/you/the/jury/in/the/proceedings/court/in/which/it/was/written/
inculcating/all/questions/defining/questions/and/issues/which/the
court/may/hear/

[COMMENT TO 1990 CHANGE: The substance of former Rule 275 has
been renumbered Rule 274]

TRCP 279. [275. Grounds or Elements] ~~Omissions~~^{omitted} From the Charge

Upon appeal all independent grounds of recovery or of defense not conclusively established under the evidence and no element of which is submitted are waived unless ^{requested} ~~objected to~~ in compliance with Rule 273. When a ground of recovery or defense consists of more than one element, if one or more of such elements necessary to sustain such ground of recovery or defense, and necessarily referable thereto, are submitted to and found by the jury, and one or more of such elements are omitted from the charge, without objection in compliance with Rule 272, and there is factually sufficient evidence to support a finding thereon, the trial court, at the request of either party, may after notice and hearing and at any time before the judgment is rendered, make and file written findings on such omitted element or elements in support of the judgment. If no such written findings are made, such omitted element or elements shall be deemed found by the court in such manner as to support the judgment. A claim that the evidence was legally or factually insufficient to warrant the submission of any question may be made for the first time after verdict, regardless of whether the submission of such question was requested by the complainant.

[COMMENT TO 1990 CHANGE: Former Rule 279 has been renumbered Rule 275.]

TRCP 276 Refusal/ or/ Modification [Repealed.]

[illegible]

[COMMENT TO 1990 CHANGE: Rule 276 was repealed to eliminate the necessity for submitting written questions, instructions, or definitions as a predicate for perfecting appeal except as required by paragraph 5 of Rule 273.]

TRCP 277 Submission to the Jury [Repealed.]

[illegible][illegible][illegible][illegible]

THE / COURT / SHALL / NOT / IN / ITS / CHARGE / COMMENT / DIRECTLY / ON / THE
WEIGHT / OF / THE / EVIDENCE / OR / ADVISE / THE / JURY / OF / THE / EFFECT / OF / THEIR
ANSWERS, / BUT / THE / COURT / S / CHARGE / SHALL / NOT / BE / OBJECTIONABLE / ON / THE
GROUND / THAT / IT / INCIDENTALLY / CONSTITUTES / A / COMMENT / ON / THE / WEIGHT
OF / THE / EVIDENCE / OR / ADVISES / THE / JURY / OF / THE / EFFECT / OF / THEIR

answers/when it is properly a part of an instruction or definition/

[COMMENT TO 1990 CHANGE: The provisions of former Rule 277 have to the extent they remain viable been relocated to Rule 271.]

[Repealed]

[COMMENT TO 1990 CHANGE: The substance of former Rule 279 has been renumbered Rule 275]

TRCP 294. Polling the Jury

Either party shall have the right to have the jury polled. When a jury is polled, this is done by reading once to the jury collectively the general verdict, or the ~~special~~ [questions] and answers thereto consecutively, and then calling the name of each juror separately and asking him if it is his verdict. If any juror answers in the negative when the verdict is returned signed only by the presiding juror as a unanimous verdict, or if any juror shown by his signature to agree to the verdict should answer in the negative, the jury shall be retired for further deliberation.

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRCP 296. Conclusions of Fact and Law

IN ANY CASE TRIED IN THE DISTRICT OR COUNTY COURT WITHOUT A JURY, ANY PARTY MAY REQUEST THE COURT TO STATE IN WRITING ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW. SUCH REQUEST SHALL BE ENTITLED REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW AND SHALL BE FILED WITH THE CLERK OF THE COURT WHO SHALL IMMEDIATELY CALL SUCH REQUEST TO THE ATTENTION OF THE JUDGE WHO TRIED THE CASE.

[TRCP 296. Requests for Findings of Facts and Conclusions of Law

In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law. Such request shall be entitled REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW and shall be filed with the clerk of the court who shall immediately call such request to the attention of the judge who tried the case.

Time for Filing. Such request shall be filed within twenty (20) days after judgment is signed.

Notice of Filing. Each request made pursuant to this rule shall be served on each party to the suit in accordance with Rule 21a. The party making the request shall also provide a copy of the request to the judge who tried the case by any method allowed in Rule 21a.]

[COMMENT TO 1990 CHANGE: To better prescribe the practice and times for findings of fact and conclusions of law. See also Rules 297 and 298.]

TRCP 297.

Time to File Findings and Conclusion

When demand is made hereafter, the court shall prepare its findings of fact and conclusions of law and file same within thirty days after the judgment is signed. Such findings of fact and conclusions of law shall be filed with the clerk and shall be part of the record. If the trial judge shall fail so to file them, the party so demanding, in order to complain of the failure, shall, in writing, within five days after such date, call the attention to the attention of the judge, whereupon the period for preparation and filing shall be automatically extended for five days after such notification.

[TRCP 297. Time to Make and File Findings of Facts and Conclusions of Law.

(a) The court shall make and file its findings of fact and conclusions of law within twenty (20) days after a timely request is filed. The court shall cause a copy of its findings and conclusions to be mailed to each party in the suit.

(b) If the court fails to make timely findings of fact and conclusions of law, the party making the request shall, within thirty (30) days after filing the original request, file with the clerk a NOTICE OF PAST DUE FINDINGS OF FACT AND CONCLUSIONS OF LAW which shall be immediately called to the attention of the Court by the clerk. Such notice shall state the date the original request was filed and the date the findings and conclusions were due.

(c) Upon filing the notice in (b) above, the time for the court to make findings of fact and conclusions of law is extended to forty (40) days from the date the original request was filed.

(d) The notice provided by this rule shall be served on each party to the suit in accordance with Rule 21a. A copy of the notice shall also be provided to the judge who tried the case by any method allowed in Rule 21a.]

[COMMENT TO 1990 CHANGE: To better prescribe the practice and times for findings of fact and conclusions of law. See also Rules 296 and 298.]

After the judge has filed original findings of fact and conclusions of law, either party may, within five days, request of him specified further, additional, or amended findings, and the judge shall, within five days after such request, and not later, prepare and file such further, other or amended findings and conclusions as may be proper, whereverupon they shall be considered as filed in due time. // Notice of the filing of the request provided for herein shall be served on the opposing party as provided in Rule 21a of the FRCP.

[TRCP 298. Additional or Amended Findings of Fact and Conclusions of Law; Notice.

(a) After the court files original findings of fact and conclusions of law, any party may file with the clerk of the court a request for specified additional or amended findings or conclusions, or both. The request for these findings shall be made within ten (10) days after the filing of the original findings and conclusions by the court. Each request made pursuant to this rule shall be served on each party to the suit in accordance with Rule 21a. The party making the request shall also provide a copy to the judge who tried the case by any method allowed in Rule 21a.

(b) The court shall make and file any additional or amended findings and conclusions within ten (10) days after such request is filed, and cause a copy to be mailed to

each party to the suit. No findings or conclusions shall be deemed or presumed by any failure of the court to make any additional orders or conclusions.]

[COMMENT TO 1990 CHANGE: To better prescribe the practice and times for findings of fact and conclusions of law. See also Rules 296 and 298.]

TRCP 299. Omitted Findings

~~Where~~ [When] findings of fact are filed by the trial court they shall form the basis of the judgment upon all grounds of recovery and of defense embraced therein. The judgment may not be supported upon appeal by a ~~presumption of~~ [ed] finding upon any ground of recovery or defense, no element of which has been ~~found by the trial court~~ [included in the findings of fact]; but ~~where~~ [when] one or more elements thereof have been found by the trial court, omitted unrequested elements, ~~where~~ [when] supported by evidence, will be supplied by presumption in support of the judgment. Refusal of the court to make a finding requested shall be reviewable on appeal.

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

[TRCP 299A. Findings of Fact To Be Separately Filed and Not Recited In A Judgment

Findings of fact shall not be recited in a judgment. If there is a conflict between findings of fact recited in a judgment in violation of this rule and findings of fact made pursuant to Rules 297 and 298, the Rule 297 and 298 findings will control for appellate purposes. Findings of fact shall be filed with the clerk of the court as a document or documents separate and apart from the judgment.]

[COMMENT TO 1990 CHANGE: To cause trial courts to make findings of fact separate from the judgment and provide that the separate findings of fact are controlling on appeal.]

TRCP/305///Draft

//////Counsel/of/the/party/for/whom/a/judgment/is/required/shall
prepare/the/for/of/the/judgment/to/be/entered/and/submit/it/to
the/court/

[TRCP 305. Proposed Judgment

Any party may prepare and submit a proposed judgment to the
court for signature.

Each party who submits a proposed judgment for signature
shall serve the proposed judgment on all other parties and
certify thereon that a true copy has been served on each attorney
or pro se party to the suit and indicate thereon the date and
manner of service.

Failure to comply with this rule shall not affect the time
for perfecting an appeal.]

[COMMENT TO 1990 CHANGE: To better prescribe the practice for
proposed judgments and notice to other parties.]

In Child Support Cases

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//////ExcepT /wIth /thE /cOnsEnt /of /thE /cOurT /nO /fee /shall /bE
chargeD /bY /of /pAlD /to /thE /attOrney /represenTing /thE /claimant /for
any /seViliceS / //If /thE /cOurT /shall /bE /of /thE /pInIn /thAt /an
attOrney /s /fee /shall /bE /pAlD / /thE /same /shall /bE /assesseD /agAInst
thE /pArty /in /defAult /and /cOllEcTed /as /costs /

[When the court has ordered child support or possession of
or access to a child and it is claimed that the order has been
violated, the person claiming that a violation has occurred shall
make this known to the court. The court may appoint a member of
the bar to investigate the claim to determine whether there is
reason to believe that the court order has been violated, the
attorney shall take the necessary action as provided under
Chapter 14, Family Code. On a finding of a violation, the court
may enforce its order as provided in Chapter 14, Family Code.]

Except by order of the court, no fee shall be charged by or
paid to the attorney representing the claimant. If the court
determines that an attorney's fee should be paid, the fee shall
be adjudged against the party who violated the court's order.
The fee may be assessed as costs of court, or awarded by
judgment, or both.]

[COMMENT TO 1990 CHANGE: This rule has been completely rewritten
and designed to broaden its application to cover problems dealing
with possession and access to a child as well as support.]

TRCP 534.

[Issuance and Form of] Citation

[a. Issuance.] When a claim or demand is lodged with a justice for suit, he [the clerk when requested] shall [forthwith] issue forthwith [a] citation [and deliver the citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citation and a copy of the petition if any is filed.] for the defendant or defendant's /// The clerk shall receive the defendant's proposed and answer/pleadings/submit a copy to the clerk/10/00 of clerk's/and/for the motion/hear/after the expiration of the day for the day of service/hear/and shall serve the place of the plaintiff/hear/ It shall state the number of the suit, the names of all the parties to the suit, and the nature of plaintiff's demand, and shall be dated and signed by the justice of the peace. The clerk shall further direct that if it is not served within 90 days after the day of/it is/submit/it shall be/returned/unserve/ [Upon request, separate or additional citations shall be issued by the Clerk.]

[b. Form. The citation shall (1) be styled "The State of Texas, (2) be signed by the clerk under seal of court, (3) contain name and location of the court, (4) show date of filing of the petition if any is filed, (5) show date of issuance of citation, (6) show file number, (7) show names of parties, (8) be directed to the defendant, (9) show the name and address of attorney for plaintiff, otherwise the address of plaintiff, (10) contain the time within which these rules require the defendant to file a written answer with the clerk who issued citation, (11)

contain address of the clerk, and (12) shall notify the defendant that in case of failure of defendant to file an answer, judgment by default may be rendered for the relief demanded in the petition. The citation shall direct the defendant to file a written answer to the plaintiff's petition on or before 10:00 a.m. on the Monday next after the expiration of ten days after the date of service thereof. The requirement of subsections 10 and 12 of this rule shall be in the form set forth in section c of this rule.

c. Notice. The citation shall include the following notice to the defendant: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of ten days after you were served this citation and petition, a default judgment may be taken against you.

d. Copies. The party filing any pleading upon which citation is to be issued and served shall furnish the clerk with a sufficient number of copies thereof for use in serving the parties to be served, and when copies are so furnished the clerk shall make no charge for the copies.]

[COMMENT TO 1990 CHANGE: To conform justice court service of citation to the extent practicable to conform to service of citation for other trial courts.]

TRCP 536. Special/Process/Server [Who May Serve and Method of
Service]

The / Justice, / in / case / of / an / emergency, / may / deprive / any / person
 of / good / character / to / serve / any / process, / and / the / person / so / deprived
 shall / for / such / purpose / have / all / the / advantage / of / a / sheriff / for
 conductable, / but / in / every / such / case / the / Justice / shall / in / order / to
 the / process / a / statement / in / writing, / signed / by / him / officially, / to
 the / effect / that / he / has / deprived / such / person / to / serve / such / process,
 such / person / shall / also / take / and / subscribe / an / affidavit, / to / be
 in / order / to / for / all / such / to / the / process, / to / the / effect / that / he
 will / to / the / best / of / his / ability / execute / the / same / according / to / the
 law / and / the / rules, /

[(a) Citation and other notices may be served anywhere by (1) any sheriff or constable or other person authorized by law or, (2) by any person authorized by law or by written order of the court who is not less than eighteen years of age. No person who is a party to or interested in the outcome of a suit shall serve any process. Service by registered or certified mail and citation by publication shall, if requested, be made by the clerk of the court in which the case is pending. The order authorizing a person to serve process may be made without written motion and no fee shall be imposed for issuance of such order.]

(b) Unless the citation or an order of the court otherwise directs, the citation shall be served by any person authorized by this rule by:

(1) delivering to the defendant, in person, a true copy of the citation with the date of delivery endorsed thereon with a copy of the petition attached thereto, or

(2) mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto if any is filed.

(c) Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted under either (a)(1) or (a)(2) at the location named in such affidavit but has not been successful, the court may authorize service:

(1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or

(2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.]

[COMMENT TO 1990 CHANGE: To conform justice court service of citation to the extent practicable to conform to service of citation for other trial courts.]

[TRCP 536a. Duty of Officer or Person Receiving and Return of Citation

The officer or authorized person to whom process is delivered shall endorse thereon the day and hour on which he received it, and shall execute and return the same without delay.

The return of the officer or authorized person executing the citation shall be endorsed on or attached to the same; it shall state when the citation was served and the manner of service and be signed by the officer officially or by the authorized person. The return of citation by an authorized person shall be verified. When the citation was served by registered or certified mail as authorized by Rule 536, the return by the officer or authorized person must also contain the receipt receipt with the addressee's signature. When the officer or authorized person has not served the citation, the return shall show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if he can ascertain.

Where citation is executed by an alternative method as authorized by Rule 536, proof of service shall be made in the manner ordered by the court.

No default judgment shall be granted in any cause until the citation with proof of service as provided by this rule, or as ordered by the court in the event citation is executed under Rule 536, shall have been on file with the clerk of the court three (3) days, exclusive of the day of filing and the day of judgment.]

[COMMENT TO 1990 CHANGE: To conform justice court service of
citation to the extent practicable to conform to service of
citation for other trial courts.]

TRCP 571.

Appeal Bond

The party appealing, his agent or attorney, shall within ten days from the date a judgment or order overruling motion for new trial is signed, file with the justice a bond, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the judgment, payable to the appellee, conditioned that appellant shall prosecute his appeal to effect, and shall pay off and satisfy the judgment which may be rendered against him on appeal; or if the appeal is by the plaintiff by reason of judgment denying in whole or in part his claim, he shall file with the justice a bond in the same ten-day period, payable to the appellee, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the costs incurred in the justice court and estimated costs in the county court, less such sums as may have been paid by the plaintiff on the costs, conditioned that he shall prosecute his appeal to effect and shall pay off and satisfy such costs if judgment for costs be rendered against him on appeal. When such bond has been filed with the justice, the appeal shall be held to be thereby perfected and all parties to said suit or to any suit so appealed shall make their appearance at the next term of court to which said case has been appealed. Within five (5) days following the filing of such appeal bond, the party appealing shall give notice as provided in Rule 21a ~~of the~~ of the filing of such bond to all parties to the suit who have not filed such bond. No judgment shall be taken by default against any party in the court to which the cause has been appealed without first

showing that this rule has been complied with. The appeal shall not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing appellant five (5) days after notice within which to correct or amend same.

[COMMENT TO 1990 CHANGE: Reference to Rule 21b deleted because language in Rule 21b to which Rule 571 refers is no longer in Rule 21b.]

TRCP 687. Requisites of Writ

The writ of injunction shall be sufficient if it contains substantially the following requisites:

(a) (No change.)

(b) (No change.)

(d) (No change.)

(e) If it is a temporary restraining order, it shall state the day and time set for hearing, which shall not exceed ~~ten~~ [fourteen] days from the date of the court's order granting such temporary restraining order; but if it is a temporary injunction, issued after notice, it shall be made returnable at or before ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of service thereof, as in the case of ordinary citations.

(f) (No change.)

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRCP 749c. Appeal Perfected

The appeal in any forcible detainer case shall be perfected when an appeal bond has been filed.

When a pauper's affidavit has been filed in lieu of the appeal bond, the appeal shall be perfected when the pauper's affidavit is filed with the court; /however/ /when /the /case /involves /nonpayment /of /rent/ /such /appeal /is /perfected /when /both /the /pauper's /affidavit /has /been /filed /and /when /the /rental /period's /rent /has /been /paid /into /the /justice /court /registry. In a case where the pauper's affidavit is contested by the landlord, the appeal shall be perfected when the contest is overruled /and /if /the /case /involves /nonpayment /of /rent/ /the /rental /period's /rent /has /been /paid /into /the /justice /court /registry.

[COMMENT TO 1990 CHANGE: To dispense with the appellant requirement of payment of any rent into the court registry.]

TRCP 771. Objections to Report

Either party to the suit may file objections to any report of the commissioners in partition [within 30 days of the date the report is filed], and in such case a trial of the issues thereon shall be had as in other cases. If the report be found to be erroneous in any material respect, or unequal and unjust, the same shall be rejected, and other commissioners shall be appointed by the Court, and the same proceedings had as in the first instance.

[COMMENT TO 1990 CHANGE: To set a time within which objections to a commissioners report must be filed.]

TRCP 781. Proceedings as in Civil Cases

Every person or corporation who shall be cited as hereinbefore provided shall be entitled to all the rights in the trial and investigation of the matters alleged against him, as in cases of trial in civil cases in this State. Either party may prosecute an appeal or writ of error from any judgment rendered, as in other civil cases, subject, however, to the provisions of Rule ~~384~~ [42, Texas Rules of Appellate Procedure], and the appellate court shall give preference to such case, and hear and determine the same as early as practicable.

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRAP 1 Scope of Rules; [Local Rules of Courts of Appeals]

(a) [No change.]

(b) Local Rules. Each court of appeals may, from time to time, make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made shall before their promulgation be furnished to the Supreme Court and to the Court of Criminal Appeals for approval. [When an appeal or original proceeding is docketed, the clerk shall mail a copy of the court's local rules to all counsel of record who request it.]

[COMMENT TO 1990 CHANGE: To provide for distribution of local rules of court of appeals upon docketing of an appeal.]

TRAP 4. Signing, Filing and Service

(a) Signing. Each application, brief, motion or other paper filed shall be signed by at least one of the attorneys for the party/ [and] shall give the State Bar of Texas identification number, the mailing address[, and telephone number[, and telecopier number, if any,] of each attorney whose name is signed thereto/ and shall state that a copy of the paper has been delivered or mailed to each copy of the office/parties or their counsel. A party who is not represented by an attorney shall sign his brief and give his address and telephone number. The state/note of service on the parties by one who is not a licensed attorney shall be verified by affidavit/

(b) Filing. The filing of records, briefs and other papers in the appellate court as required by these rules shall be made by filing them with the clerk, except that any justice of the court may permit the papers to be filed with him, in which event he shall note thereon the filing date and time and forthwith transmit them to the office of the clerk. If a motion for rehearing, any matter relating to taking an appeal or writ of error from the trial court to any higher court, or application for writ of error or petition for discretionary review is sent to the proper clerk by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail ~~on the day of its deposit~~ [on or before] the last day for filing same, the same, if received by the clerk not more than ten

days tardily, shall be filed by the clerk and be deemed as filed in time; provided, however, that a certificate of mailing by the United States Postal Service or a legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

(c) (No change.)

(d) (No change.)

(e) (No change.)

(f) Manner of Service. Service may be personal[,] ~~or~~ by mail[, or by telephonic document transfer to the party's current telecopier number]. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(g) ~~Proof of~~ Service. Papers presented for filing shall [be served and shall] contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names [and addresses] of the persons served, certified by the person who made the service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgement or proof of service but shall require such to be filed promptly thereafter.

[COMMENT TO 1990 CHANGE: Time period clarification, deletion of requirement of verification by a pro se litigant, provision for service by telephonic document transfer, and textual corrective changes.]

TRAP 5. Computation of Time

(a) In General. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run ~~is not to~~ [shall not] be included. The last day of the period so computed ~~is~~ [shall] be included, unless it is a Saturday, [a] Sunday or [a] legal holiday, as defined by Article 4591, Revised Civil Statutes, in which event the period ~~runs until~~ [extends to] the end of the next day which is ~~not~~ [not] a Saturday, Sunday ~~or~~ [or a] legal holiday. ~~When the last day of the period is the next day which is not a Saturday, Sunday or legal holiday, any paper filed by a party or filed in Rule 4 is filed on the day when it is filed on the last day of the period.~~

(b) (No change.)

(c) Nunc Pro Tunc Order. In civil cases, when a corrected judgment has been signed after expiration of the court's plenary power pursuant to Rule 316 ~~of~~ [of] the Texas Rules of Civil Procedure, the periods mentioned in subparagraph (b)(1) of this rule shall run from the date of signing the corrected judgment with respect to any complaint that would not be applicable to the original judgment.

(d) (No change.)

(e) (No change.)

(f) (No change.)

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRAP 9 Substitution of Parties

- (a) Death of a Party in Civil Cases. (No change.)
- (b) Death of Appellant in a Criminal Case. (No change.)
- (c) Public Officers; Separation from Office. (No change.)

[(d) Substitution for Other Causes. If substitution of a successor to a party in the appellate court is necessary for any reason other than death or separation from public office, the appellate court may order such substitution upon motion of any party at any time or as the court may otherwise determine.]

[COMMENT TO 1990 CHANGE: To provide mechanism for substitution of appellate parties as may be necessary.]

TRAP 12. Work of Court Reporters

(a) (No change.)

(b) (No change.)

(c) To aid the judge in setting the priorities in (b) above, each court reporter shall report in writing to the judge on a monthly basis the amount and nature of the business pending in the court reporter's office. A copy of this report shall be filed with the Clerk of the Court of Appeals of each ~~Supreme Judicial~~ [d]istrict in which the court sits.

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

Grounds For Disqualification and Recusal of
Appellate Judges

11Y // Disqualification

//////Appellate/Judges/shall/disqualify/themselves/in/all/proceed-
ings/in/which/

//////////lay//they/have/served/as/a/lawyer/in/the/matter/in
 connection//of/a/lawyer/with/whom/they/preservedly/practiced
 law/except/in/the/corrupt/of/a/disservice/of/courtesy/approaches
 office/served/during/such/a/supposition/as/a/lawyer/corruptly/
 in/the/matter//of

[illegible]

//////////cy//either/of/the/parties/may/be/related/to/them/by
affinity/or/consanguinity/within/the/third/degree/

111111(2Y)11R0C4\$01

////////Appellate/Judges/shoula/reduce/then sell yes/in/proceedings/in
which/their/impartiality/might/be/denied//includ-
ing/but/not/limited/to//instances/in/which/the/yay/a/personal
bias/or/prejudice/conferring/the/subject/matter/or/a/party/or
personal/knowledge/of/disputed/evidentiary/facts/conferring/the
proceeding/

A judge of an appellate court shall disqualify or recuse himself in any proceeding in which judges must disqualify or recuse themselves under Texas Rule of Civil Procedure 18b, or in which he participated in the trial or decision of any issue in the court below.

COMMENT TO 1990 CHANGE: This is a new rule which states the grounds for recusal of an appellate Judge or Justice.

TRAP 17 Issuance of Process by Appellate Court

(a) Any writ ~~of~~ [or] process issuing from any appellate court shall bear the teste of the chief justice or presiding judge under the seal of said court and be signed by the clerk, and, unless otherwise expressly provided by law or by these rules, shall be directed to the party or court to be served, may be served by the sheriff or any constable of any county of the State of Texas within which such person to be served may be found, and shall be returned to the court from which it issued according to the direction of the writ. Whenever such writ or process shall not be executed, the clerk is authorized to issue another like process or writ upon the application of the party who requested the former writ or process. Two or more writs may be issued simultaneously at the request of any party.

(b) (No change.)

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRAP 20. Amicus [Curiae] Briefs

The clerk of the appellate court may receive but not file amicus curiae briefs. An amicus curiae shall comply with the briefing rules for the parties, and shall show in the brief that copies have been furnished to all attorneys of record in the case. [In civil cases, an amicus curiae brief shall not exceed 50 pages in length, exclusive of pages containing list of names and addresses of parties, the table of contents, index of authorities, points of error, and any addendum containing statutes, rules, regulations, etc. The court may, upon motion and order, permit a longer brief.]

[COMMENT TO 1990 CHANGE: To provide for a maximum length for amicus curiae briefs in civil cases to conform with Rules 74(h) and 136(e).]

TRAP 40. Ordinary Appeal -- How Perfected

(a) Appeals in Civil Cases.

- (1) When Security is Required. (No change.)
- (2) When Security is Not Required. (No change.)
- (3) When Party is Unable to Give Security. (No change.)
- (4) Notice of Limitation of Appeal. No attempt to limit the scope of an appeal shall be effective ~~as to the party/adversely to the appellant~~ unless the severable portion of the judgment from which the appeal is taken is designated in a notice served on ~~the adverse party~~ [all other parties to the trial court's final judgment] within fifteen days after judgment is signed, or if a motion for new trial is filed by any party, within seventy-five days after the judgment is signed.

- (5) Judgment Not Suspended by Appeal. (No change.)

(b) Appeals in Criminal Cases.

- (1) (No change.)
- (2) Effect of Appeal in Criminal Cases. (No change.)

[COMMENT TO 1990 CHANGE: This amendment, together with other similar amendments conforming other appellate rules, requires the parties to any appeal to serve copies of all papers filed with the clerk of the appellate court (except the statement of facts and the transcript), and the clerk of the appellate court to mail notice and copies of all appellate court orders and opinions on all parties to the trial court's judgment.]

TRAP 41 Ordinary Appeal - When Perfected

(a) Appeals in Civil Cases.

(1) Time to Perfect Appeal. When security for costs on appeal is required, the bond or affidavit in lieu thereof shall be filed with the clerk within thirty days after the judgment is signed, or, within ninety days after the judgment is signed if a timely motion for new trial has been filed by any party [or if any party has timely filed a request for findings of fact and conclusions of law in a nonjury case]. If a deposit of cash is made in lieu of bond, the same shall be made within the same period.

(2) Extension of Time. (No change.)

(b) Appeals in Criminal Cases.

(1) Time to Perfect Appeal. (No change.)

(2) Extension of Time. (No change.)

(c) Prematurely Filed Documents. No appeal or bond or affidavit in lieu thereof, notice of appeal, or notice of limitation of appeal shall be held ineffective because prematurely filed. In civil cases, every such instrument shall be deemed to have been filed on the date of but subsequent to the ~~date~~ [time] of signing of the judgment or the ~~date~~ [time] of the overruling of motion for new trial, if such a motion is filed. In criminal cases, every such instrument shall be deemed to have been filed on the date of but subsequent to the imposition or suspension of sentence in open court or the signing of appealable order by the trial judge, provided that no notice of appeal shall be

effective if given before a finding of guilt is made or a verdict is received.

[COMMENT TO 1990 CHANGE: To make the appellate timetable for non-jury cases conform more to that in jury cases.]

TRAP 43 Orders Pending Interlocutory Appeal in Civil Cases.

(a) (No change.)

(b) Security. Except as provided in subdivision (a) the trial court may permit interlocutory order[s] to be suspended pending an appeal therefrom by filing security pursuant to Rule 47. Denial of such suspension may be reviewed for abuse of discretion on motion by the appellate court.

(c) Temporary Orders of Appellate Court. On perfection of an appeal from an interlocutory order, the appellate court may issues such temporary orders as it finds necessary to preserve the rights of the parties until disposition of the appeal and may require such security as it deems appropriate, but it shall not suspend the trial court's order if the appellant's rights would be adequately protected by supersedeas [or other orders pursuant to Rules 47 or 49.]

(d) (No change.)

(e) (No change.)

(f) (No change.)

(g) (No change.)

(h) (No change.)

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRAP 46. Bond for Costs on Appeal in Civil Cases

- (a) Cost Bond. (No change.)
- (b) Deposit. (No change.)
- (c) Increase or Decrease in Amount. (No change.)
- (d) Notice of Filing. Notification of the filing.

(d) Notice of Filing. Notification of the filing of the bond or certificate of deposit shall promptly be given ~~to~~ for [each] appellant by ~~serving~~ mailing a copy thereof ~~to~~ for each party other than the appellant or if a party is not represented by the party at this last known address the appellant shall not be responsible for the date on which the appeal bond or certificate was filed. Failure to so serve a copy on all other parties shall be ground for dismissal of the appellant's appeal or other appropriate action if an appellee is prejudiced by such failure.

- (e) Payment of Court Reporters. (No change.)
- (f) Amendment: New Appeal Bond or Deposit. (No change.)

[COMMENT TO 1990 CHANGE: To provide immediate notice to all parties in the trial court of any appeal by any other parties.]

TRAP 47. Suspension of Enforcement of Judgment Pending
Appeal in Civil Cases

(a) Suspension of Enforcement. Unless otherwise provided by law or these rules, a judgment debtor may suspend the execution of the judgment by filing a good and sufficient bond to be approved by the clerk, subject to review by the court on hearing, or making the deposit provided by Rule 48, payable to the judgment creditor in the amount provided below, conditioned that the judgment debtor shall prosecute his appeal or writ of error with effect and, in case the judgment of the Supreme Court or court of appeals shall be against him, he shall perform its judgment, sentence or decree and pay all such damages and costs as said court may award against him. If the bond or deposit is sufficient to secure the costs and is filed or made within the time prescribed by Rule 40 [41], it constitutes sufficient compliance with Rule 46. The trial court may make such orders as will adequately protect the judgment creditor against any loss or damages occasioned by the appeal.

(b) Money Judgment. When the judgment awards recovery of a sum of money, the amount of the bond or deposit shall be at least the amount of the judgment, interest, and costs.

The trial court may make an order deviating from this general rule if after notice to all parties and a hearing the trial court finds [:

(1) as to civil judgments rendered in a bond forfeiture proceeding, a personal injury or wrongful death action, a claim covered by liability insurance or a workers' compensation claim] that posting the amount of the bond or deposit will cause irreparable harm to the judgment debtor, and not posting such bond or deposit will cause no substantial harm to the judgment creditor. In such a case, the trial court may stay enforcement of the judgment based upon an order which adequately protects the judgment creditor against any loss or damage occasioned by the appeal;

[(2) as to civil judgments rendered other than in a bond forfeiture proceeding, a personal injury or wrongful death action, a claim covered by liability insurance or a workers' compensation claim, that setting the security at an amount of the judgment, interest, and costs would cause irreparable harm to the judgment debtor, and setting the security at a lesser amount would not substantially decrease the degree to which a judgment creditor's recovery under the judgment would be secured after the exhaustion of all appellate remedies.]

(c) (No change.)

(d) (No change.)

(e) (No change.)

(f) (No change.)

(g) Conservatorship or Custody. When the judgment is one involving the conservatorship or custody of a ~~child~~ [minor], the appeal, with or without security shall not have the effect of suspending the judgment as to the conservatorship or custody of

the ~~child~~ [minor], unless it shall be so ordered by the court rendering the judgment. However, the appellate court, upon a proper showing, may permit the judgment to be superseded in that respect also.

(h) (No change.)

(i) (No change.)

(j) (No change.)

(k) (No change.)

[COMMENT TO 1990 CHANGE: To conform the rule to statute.]

TRAP 49. Appellate Review of Bonds in Civil Cases

(a) (No change.)

(b) Appellate Review of [Order Setting Security or] Suspending to Enforcement of Judgment Pending Appeal. The trial court's order ~~purporting to~~ Rule/47 [setting security or staying enforcement of a judgment] is subject to review ~~by~~ [on] a motion to the ~~court of appeals~~ [appellate court for insufficiency or excessiveness]. Such motions shall be heard at the earliest practical time. The appellate court may issue such temporary orders as it finds necessary to preserve the rights of the parties.

The ~~court of appeals~~ [appellate court] reviewing the trial court's order may require a change in the trial court's order. The ~~court of appeals~~ [appellate court] may remand to the trial court for findings of fact or the taking of evidence.

(c) (No change.)

[COMMENT TO 1990 CHANGE: To make clear that within any jurisdictional limitations, all appellate courts may review a trial court order for insufficiency or excessiveness.]

TRAP 51. The Transcript on Appeal

(a) Contents. (No change.)

(b) Written Designation. At or before the time prescribed for perfecting the appeal, any party may file with the clerk a written designation specifying matter for inclusion in the transcript; the designation must be specific and the clerk shall disregard any general designation such as one for "all papers filed in the cause." ~~The failure of the clerk to include designated matter will not be grounds for complaint on appeal if the designation specifying such matter is not timely filed.~~ The party making the designation shall serve a copy of the designation on all other parties. [Failure to timely make the designation provided for in this paragraph shall not be grounds for refusing to file a transcript or supplemental transcript tendered within the time provided by Rule 54(a); however, if the designation specifying such matter is not timely filed, t] The failure of the clerk to include designated matter will not be grounds for complaint on appeal ~~if the designation specifying such matter is not timely filed.~~

(c) Duty of Clerk. (No change.)

(d) Original Exhibits. (No change.)

[COMMENT TO 1990 CHANGE: To eliminate any consideration that timely designation is a jurisdictional requisite for appeal.]

(a) General Rule. (No change.)

(b) Informal Bills of Exception and Offers of Proof. (No change.)

(c) Formal Bills of Exception. (No change.)

(d) Necessity for Motion for New Trial in Civil Cases. A point in a motion for new trial is prerequisite to appellate complaint in those instances provided in paragraph (b) of Rule 324 of the Texas Rules of Civil Procedure. [A party desiring to complain on appeal in a non-jury case that the evidence was legally or factually insufficient to support a finding of fact, that a finding of fact was established as a matter of law or was against the overwhelming weight of the evidence, or of the inadequacy or excessiveness of the damages found by the court shall not be required to comply with subdivision (a) of this rule.]

[COMMENT TO 1990 CHANGE: To clarify appellate requisites from non-jury trials.]

TRAP 53. The Statement of Facts on Appeal

(a) Appellant's Request. The appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter designating the portion of the evidence and other proceedings to be included therein. A copy of such request shall be filed with the clerk of the trial court and another copy served on the appellee. [Failure to timely request the statement of facts under this paragraph shall not prevent the filing of a statement of facts or a supplemental statement of facts within the time prescribed by Rule 54(a).]

(b) Other Requests. (No change.)

(c) Abbreviation of Statement. (No change.)

(d) Partial Statement. (No change.)

(e) Unnecessary Portions. (No change.)

(f) Certification by Court Reporter. (No change.)

(g) Reporter's Fees. (No change.)

(h) Form. (No change.)

(i) Narrative Statement. (No change.)

(j) Free Statement of Facts. (No change.)

(k) Duty of Appellant to File. (No change.)

(l) Duplicate Statement in Criminal Cases. (No change.)

(m) When No Statement of Facts Filed in Appeals of Criminal Cases. (No change.)

[COMMENT TO 1990 CHANGE: To eliminate any consideration that timely request is a jurisdictional requisite for appeal.]

TRAP 54. Time to File Record

(a) In Civil Cases -- Ordinary Timetable. The transcript and statement of facts, if any, shall be filed in the appellate court within sixty days after the judgment is signed, or, if a timely motion for new trial or to modify the judgment has been filed by any party [or if any party has timely filed a request for findings of fact and conclusions of law in a nonjury case], within one hundred twenty days after the judgment is signed. If a writ of error has been perfected to the court of appeals the record shall be filed within sixty days after perfection of the writ of error. Failure to file either the transcript or the statement of facts within such time shall not affect the jurisdiction of the court, but shall be ground for dismissing the appeal, affirming the judgment appealed from, disregarding materials filed, or applying presumptions against the appellant, either on appeal or on the court's own motion, as the court shall determine. The court has authority to consider all timely filed transcripts and statements of facts, but shall have no authority to consider a late filed transcript or statement of facts, except as permitted by this rule.

(b) In Criminal Cases - Ordinary Timetable. The transcript and statement of facts shall be filed in the appellate court within sixty days after the day sentence is imposed or suspended in open court or the order appealed from has been signed, if a motion for new trial is not filed. If a timely motion for new trial is filed, the transcript and statement of facts shall be filed within one hundred [twenty] days after the day sentence is

imposed or suspended in open court or the order appealed from has been signed.

(c) No change.

[COMMENT TO 1990 CHANGE: To make the appellate timetable for non-jury cases conform more to that in jury cases. To conform paragraph (b) to the rule amendment adopted by the Court of Criminal Appeals.]

TRAP 56. Receipt of the Record by Court of Appeals

(a) Duty of Clerk on Receiving Transcript. The clerks of the courts of appeals shall receive the transcripts delivered and sent to them, and receipt for same is required; but they shall not be required to take a transcript out of the post office or any express office, unless the postage or charges thereon be fully paid. Upon receipt of the transcript, it shall be the duty of the clerk to examine it in order to ascertain whether or not, in case of an appeal, a proper appeal bond, notice of appeal or affidavit in lieu thereof (when bond is required) have been given; and in case of a writ of error, whether or not the petition and bond or affidavit in lieu thereof (when bond is required) appear to have been filed. If it seems to ~~him~~ the clerk that the appeal or writ of error has not been duly perfected, ~~he~~ the clerk shall note on the transcript the day of its reception and refer the matter to the court. If upon such reference the court shall be of the opinion that the transcript shows that the appeal or writ of error has been duly perfected, ~~they~~ it shall order the transcript to be filed as of the date of its reception. If not, ~~they~~ it shall cause notice of the defect to issue to the attorneys of record of the appellant, to the end that they may take steps to amend the record, if it can be done; for which a reasonable time shall be allowed. If the transcript does not show the jurisdiction of the court, and if~~,~~ after notice~~,~~ it ~~is not~~ is not amended, the appeal shall be dismissed.

If a transcript, properly endorsed (when endorsement is required), is received by the clerk within the time allowed by these rules, ~~he~~ [the clerk] shall endorse his [or her] filing thereon, showing the date of its reception, and shall notify both appellant and the adverse party of the receipt of the transcript. If it is not properly endorsed, or an original transcript is received after the time allowed, the clerk shall, without filing it, make a memorandum upon it of the date of its reception and keep it in his [or her] office subject to the direction of the person who applied for it or to the disposition of the court, and shall notify the person who applied for a transcript why it has not been filed. The transcript shall not be filed until a proper showing has been made to the court for its not being properly endorsed or received in proper time, and upon this being done, the court may order it filed, if the rules have been complied with, upon such terms as may be deemed proper, having respect to the rights of the opposite party.

(b) Duty of Clerk on Receiving Statement of Facts. Upon receipt of a statement of facts, the clerk shall ascertain if it is presented within the time allowed and also if it has been properly authenticated in accordance with these rules. If the clerk finds that the statement of facts is presented in time and has been certified by the official court reporter, the clerk shall file it forthwith; otherwise, the clerk shall endorse thereon the time of the receipt of such statement of facts, hold the same subject to the order of the court of appeals, and notify

the party (or ~~his~~ [the party's] attorney) tendering the statement of facts of the action and state the reasons therefor.

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRAP 57. Docketing the Appeal

(a) (No change.)

(b) Attorneys' Names. Before an attorney has filed his [or her] brief he [or she] may notify the clerk in writing of the fact that he [or she] represents a named party to the appeal, which fact shall be ~~by the clerk~~ noted [by the clerk] upon the docket, opposite the name of the party for whom ~~he~~ [the attorney] appears, and shall be regarded by the court as having whatever effect is given to the appearance of a party to a case without [a] brief [having been] filed. After briefs have been filed, the name of [each] ~~the~~ attorney ~~or attorneys~~ signed ~~or~~ [ing] the brief shall be entered by the clerk on the docket, opposite the name of the appropriate party if such names have not already been so entered. The clerk shall add the names of additional counsel [up]on request.

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRAP 59. Voluntary Dismissal

(a) Civil Cases.

(1) The appellate court may finally dispose of an appeal or writ of error as follows:

(A) In accordance with an agreement signed by all parties or their attorneys and filed with the clerk; or

(B) On motion of appellant to dismiss the appeal or affirm the judgment appealed from, with notice to all other parties; provided, that no other party shall be prevented from seeking any appellate relief ~~if~~ it would otherwise be entitled to.

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRAP 72. Motions to Dismiss for Want of Jurisdiction

Motions to dismiss for want of jurisdiction to decide the appeal and for such [other] defects as defeat the jurisdiction in the particular case and [which] cannot be waived shall also be made, filed and docketed within thirty days after the filing of the transcript in the court of appeals; provided, however, if made afterwards they may be entertained by the court upon such terms as the court may deem just and proper.

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRAP 74. Requisites of Briefs

Briefs shall be brief. Briefs shall be filed with the Clerk of the Court of Appeals. They shall be addressed to "The Court of Appeals" of the correct ~~Supreme/Judicial/D~~ [d]istrict. In civil cases the parties shall be designated as "Appellant" and "Appellee", and in criminal cases as "Appellant" and "State".

(a) Names of All Parties [to the Trial Court's Final Judgment]. A complete list of the names [and addresses] of all parties [to the trial court's final judgment and their counsel in the trial court, if any] shall be listed at the beginning of the appellant's brief, so the members of the court may at once determine whether they are disqualified to serve or should recuse themselves from participating in the decision of the case [and so the clerk of the court of appeals may properly notify the parties to the trial court's final judgment and their counsel, if any, of the judgment and all orders of the court of appeals].

(b) Table of Contents and Index of Authorities. (No change.)

(c) Preliminary Statement. (No change.)

(d) Points of Error. (No change.)

(e) Brief of Appellee. (No change.)

(f) Argument. (No change.)

(g) Prayer for Relief. (No change.)

(h) Length of Briefs. Except as specified by local rule of the court of appeals, appellate briefs in civil cases shall not exceed 50 pages, exclusive of pages containing the [list of names and addresses of parties,] table of contents, index of

authorities, points of error, and any addendum containing statutes, rules, regulations, etc. The court may, upon motion, permit a longer brief. A court of appeals may direct that a party file a brief, or another brief, in a particular case. If any brief is unnecessarily lengthy or not prepared in conformity with these rules, the court may require same to be redrawn.

- (i) Number of Copies. (No change.)
- (j) Briefs Typewritten or Printed. (No change.)
- (k) Appellant's Filing Date. (No change.)
- (l) Failure of Appellant to File Brief. (No change.)
- (m) Appellee's Filing Dates. (No change.)
- (n) Modifications of Filing Time. (No change.)
- (o) Amendment or Supplementation. (No change.)
- (p) Briefing Rules to be Construed Liberally. (No change.)

[(q) Service of Briefs. All briefs filed in the appellate court shall at the same time be served on all parties to the trial court's final judgment.]

[COMMENT TO 1990 CHANGE: This amendment, together with other similar amendments conforming other appellate rules, requires the parties to any appeal to serve copies of all papers filed with the clerk of the appellate court (except the statement of facts and the transcript), and the clerk of the appellate court to mail notice and copies of all appellate court orders and opinions on all parties to the trial court's judgment.]

(a) (No change.)

(b) (No change.)

(c) (No change.)

(d) (No change.)

(e) A hearing or rehearing en banc is not favored and should not be ordered ~~except~~ [unless consideration by the full court is necessary to secure or maintain uniformity of its decisions or] in extraordinary circumstances. A vote need not be taken to determine whether a cause shall be heard or reheard en banc unless a justice of the en banc court requests a vote. If a vote is requested and a majority of the membership of the en banc court vote to hear or rehear the case en banc, the case will be heard or reheard en banc; otherwise, it will be decided by a panel of the court.

[COMMENT TO 1990 CHANGE: To provide for en banc review by courts of appeals where necessary to secure or maintain uniformity of court decisions between or among panels of justices.]

TRAP 90. Opinions, Publication and Citation

(a) Decision and Opinion. The court of appeals shall hand down a written opinion which shall be as brief as practicable but which shall address every issue raised and necessary to final disposition of the appeal. Where the issues are clearly settled, the court shall write a brief memorandum opinion. /~~which shall be~~
~~not published~~/

(b) Signing of Opinions. A majority of the justices participating in the decision of the case shall determine whether the opinion shall be signed by a justice or issued per curiam. The names of the justices participating in the decision shall be noted on all written opinions or orders handed down by a panel.

(c) [c] Determination to Publish. A majority of the justices participating in the decision of a case shall determine, prior to the time it is issued, whether an opinion meets the criteria for publishing, and if it does not meet the criteria for publication, the opinion shall be distributed only to the persons specified in Rule 91, but a copy may be furnished to any interested person. On each opinion a notation shall be made to "publish" or "do not publish." [Any party may move the appellate court to reconsider the determination whether to publish an opinion. The justices participating in the decision of a case may reconsider their determination whether to publish an opinion after it has issued. However, the appellate court shall not order any unpublished opinion to be published after the Supreme Court or Court of Criminal Appeals has acted on any party's application for writ of error, discretionary review, or any other

relief. The Supreme Court or the Court of Criminal Appeals may on request of any party or non-party to a court of appeals decision order a court of appeals opinion published at any time.]

~~(d)~~ [(d)] Standards for Publication. An opinion by a court of appeals shall be published only if, in the judgment of a majority of the justices participating in the decision, it is one that (1) establishes a new rule of law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases; (2) involves a legal issue of continuing public interest; (3) criticizes existing law; or (4) resolves an apparent conflict of authority.

~~(d)~~ [(e)] Concurring and Dissenting Opinions. Any justice may file an opinion concurring in or dissenting from the decision of the court of appeals. A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the criteria established in paragraph (c), but in such event the majority opinion shall be published as well.

(f) (No change.)

(g) Action of Court En Banc. The court en banc may modify or overrule a panel's decision with regard to the signing or publication of the panel's opinion or opinions in a particular case. A majority of justices shall determine whether written opinions handed down by the court en banc shall be signed by a justice or issued per curiam, and whether they should be published. [However, the appellate court shall not order any unpublished opinion to be published after the Supreme Court or Court of Appeals has acted on any party's application for writ of

error, discretionary review, or any other relief.]

(h) Order of the Supreme Court. Upon the grant or refusal of an application for writ of error, ~~whether by affirmance/refusal or by refusal/no reversal/affirmance~~, an opinion previously unpublished shall forthwith be released [by the clerk of the court of appeals] for publication. ~~///if the Supreme Court so orders/~~

[Upon the denial or dismissal of an application for writ of error[,] an opinion previously unpublished shall forthwith be released by the clerk of the court of appeals for publication, if the Supreme Court so orders.]

(i) (No change.)

[COMMENT TO 1990 CHANGE: To preclude publication of an unpublished opinion by a court of appeals after court action in the appeal by the Supreme Court or the Court of Criminal Appeals; to provide that anyone, whether or not a party, can seek an order from the Supreme Court or Court of Criminal Appeals to publish any such opinion at any time; to require the clerks of the courts of appeals to release for publication all court of appeals opinions following grant or refusal of writ of error by the Supreme Court of Texas and to make other textual changes.]

TRAP 91. Copy of Opinion and Judgment to Attorneys/ /Etc/
[Interested Parties, and Other Courts]

On the date an opinion of an appellate court is handed down, it /shall/ be /the/ duty/ of the clerk of the appellate court to [shall] mail or deliver to the clerk of the trial court, to the trial judge who tried the case, and to one/ of/ the/ attorneys/ for the/ plaintiff/ or/ the/ state/ and/ one/ of/ the/ attorneys/ for/ the defendant/ [the State and each of the defendants in a criminal case and to each of the parties to the trial court's final judgment in a civil case] a copy of the opinion delivered [handed down] by the appellate court and a copy of the judgment rendered by such [the] appellate court as entered in the minutes. [Deliv- ery on a party having counsel indicated of record shall be made on counsel.] The copy/ received/ by/ the clerk of the trial court shall be/ by/ him filed [the copy of the opinion] among the papers of the cause in such court. When there is more than one attorney on/ each/ side [for a party], the attorneys may designate in advance the one to whom the copies of the opinion and judgment shall be mailed. In criminal cases, copies shall also be provided to the State Prosecuting Attorney, P. O. Box 12405, Austin, Texas 78711 and to the Clerk of the Court of Criminal Appeals and/ any/ appellate/ representatives/ himself.

[COMMENT ON 1990 CHANGE: This amendment, together with other similar amendments conforming other appellate rules, requires the parties to any appeal to serve copies of all papers filed with the clerk of the appellate court (except the statement of facts

and the transcript), and the clerk of the appellate court to mail notice and copies of all appellate court orders and opinions on all parties to the trial court's judgment.]

TRAP 100. Motion and ~~§§§§§~~ [Further] Motion for Rehearing

- (a) Motion for Rehearing. (No change.)
- (b) Reply. (No change.)
- (c) Decision on Motion. (No change.)
- (d) ~~§§§§§~~ [Further] Motion for Rehearing. (No change.)
- (e) Amendments. (No change.)

(f) En Banc Reconsideration. A majority of the justices of the court en banc may order an en banc reconsideration of any decision of a panel ~~within/fifteen/days/after/each/decision/is~~ is made [the period of the court's plenary jurisdiction] with or without a motion for reconsideration en banc. A majority of the justices may call for an en banc review by (1) notifying the clerk in writing within said ~~fifteen/day~~ period, or (2) by written order issues within said ~~fifteen/day~~ period, either with or without en banc conference. In such event, the panel decision shall not become final, and the case shall be resubmitted to the court for an en banc review and disposition.

- (g) Extensions of Time. (No change.)

[COMMENT TO 1990 CHANGE: To provide that en banc review may be conducted at any time within the period of plenary jurisdiction of a court of appeals.]

SECTION NINE. APPLICATION FOR WRIT OF ERROR
AND BRIEF IN RESPONSE [IN THE SUPREME COURT]

TRAP 130. Filing of Application in Court of Appeals

(a) Method of Review. (No change.)

(b) [Number of Copies;] Time and Place of Filing. [Twelve copies of] T[t]he application shall be filed with the Clerk of the Court of Appeals within thirty days after the ~~order~~ruling of ~~the~~ ~~last~~ [on all] timely [filed] motion[s] for rehearing/~~filed~~/by ~~any~~/party. [An application filed prior to the filing of a motion for rehearing by a party shall not preclude a party, including the party filing the application, from filing a motion for rehearing, or the court of appeals from ruling on such motion. An application filed prior to the last ruling on all timely filed motions for rehearing shall be deemed to have been filed on the date of but subsequent to the last ruling on any such motion].

(c) Successive Applications. (No change.)

(d) Extension of Time. (No change.)

[COMMENT TO 1990 CHANGE: To provide that the court of appeals shall rule on all timely filed motions for rehearing regardless of any prematurely filed application for writ of error and to deem that all premature applications for writ of error are filed on the date of but subsequent to the last ruling by the court of appeals on the last timely filed motion for rehearing.]

TRAP 131. Requisites of Applications

The application for writ of error shall be addressed to "The Supreme Court of Texas," and shall state the name of the party or parties applying for the writ. The parties shall be designated as "Petitioner" and "Respondent." Applications for writs of error shall be as brief as possible. The respondent should file a brief in response. The application shall contain the following:

(a) Names of All Parties. A complete list of the names [and addresses] of all parties [to the trial court's final judgment and their counsel in the trial court, if any] shall be listed on the first page of the application, so the members of the court may at once determine whether they are disqualified to serve or should recuse themselves from participation in the decision of the case [and so the clerk of the court may properly notify the parties to the trial court's final judgment and their counsel, if any, of the judgment and all orders of the Supreme Court].

(b) (No change.)

(c) (No change.)

(d) (No change.)

(e) (No change.)

(f) (No change.)

(h) (No change.)

(i) (No change.)

(j) (No change.)

[COMMENT TO 1990 CHANGE: This amendment, together with other similar amendments conforming other appellate rules, requires the

parties to any appeal to serve copies of all papers filed with the clerk of the appellate court (except the statement of facts and the transcript), and the clerk of the appellate court to mail notice and copies of all appellate court orders and opinions on all parties to the trial court's judgment.]

TRAP 132. Filing and Docketing Application in Supreme Court

(a) Duty of Clerk of Court of Appeals. When an application for writ of error to the Supreme Court is filed with the Clerk of the Court of Appeals, he shall record the filing of the application, and shall [, after the court of appeals has ruled on all timely filed motions for rehearing,] promptly forward it to the Clerk of the Supreme Court with the original record in the case and the opinion of the court of appeals, the motions filed in the case, and certified copies of the judgment and orders of the court of appeals. The clerk need not forward any exhibits that are not documentary in nature unless ordered to do so by the Supreme Court.

(b) Expenses. (No change.)

(c) Duty of the Clerk of the Supreme Court. The Clerk of the Supreme Court shall receive the application for writ of error, shall file it and the accompanying record from the court of appeals, and shall enter the filing upon the docket, but he shall not be required to receive the application and record from the post office or express office unless the postage or express charges shall have been paid. The clerk shall notify ~~the/appellate~~ ~~party/of/referred~~ [each party to the trial court's final judgment, as listed on the first page of the application,] by letter of the filing of the application in the Supreme Court. [Notification to parties having counsel indicated of record shall be made to counsel.]

[COMMENT TO 1990 CHANGE: This amendment, together with other similar amendments conforming other appellate rules, requires the

parties to any appeal to serve copies of all papers filed with the clerk of the appellate court (except the statement of facts and the transcript), and the clerk of the appellate court to mail notice and copies of all appellate court orders and opinions on all parties to the trial court's judgment.]

TRAP 133. Orders on Applications for Writ of Error

(a) (No change.)

(b) Conflict in Decisions. In cases of conflict ~~named in~~
[under] subsection (a)(2) of section 22.001 of the Government Code, the Supreme Court will grant the application for writ of error, unless it is in agreement with the decision of the court of appeals in the case in which the application is filed. In that event said Supreme Court will so state in its order, with such explanatory remarks as may be deemed appropriate. If the decision of the court of appeals is in conflict with an opinion of the Supreme Court, is contrary to the Constitution, the statutes or any rules promulgated by the Supreme Court, the Supreme Court may, upon granting writ of error and without hearing argument in the case, reverse, reform or modify the judgment of the court of appeals, making, at the same time, such further orders as may be appropriate.

(c) (No change.)

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRAP 134. When Application [Denied,] Dismissed or Refused

When the application shall have been filed for a period of ten days, if the court determines to [deny,] refuse[,] or dismiss the same, whether or not the respondent has filed a brief in response, the clerk of the court will retain the application, together with the record and accompanying papers, for fifteen days from the date of rendition of the judgment [denying,] refusing or dismissing the writ. At the end of that time, if no motion for rehearing has been filed, or upon the overruling or dismissal of a motion for rehearing, the Clerk of the Supreme Court shall transmit to the court of appeals a certified copy of the orders denying[, refusing] or dismissing the application and of the order overruling the motion for rehearing and shall return all filed papers to the Clerk of the Court of Appeals, except the application for writ of error, any brief in response and any other briefs filed in the Supreme Court.

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRAP 135. Notice of Granting, Etc.

When the Supreme Court grants, [denies,] refuses, or dismisses an application for writ of error or a motion for rehearing, the clerk of the court shall notify the parties or their attorneys of record by letter.

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRAP 136. Briefs of Respondents and Others

(a) Time and Place of Filing. (No change.)

(b) Form. (No change.)

(c) Objections to Jurisdiction. (No change.)

(d) Reply and Cross-Points. (No change.)

(e) Length of Briefs. A brief in response to the application, a brief of an amicus curiae as provided in Rule 20 and any other brief shall not exceed 50 pages in length, exclusive of pages containing the [list of names and addresses of parties,] table of contents, index of authorities, points of error, and any addendum containing statutes, rules, regulations, etc. The court may, upon motion and order, permit a longer brief.

(f) Reliance on Prior Brief. (No change.)

(g) Amendment. (No change.)

[(h) Service of Briefs. Any application filed in the court of appeals and all briefs filed in the Supreme Court shall at the same time be served on all parties to the trial court's final judgment.]

[COMMENT TO 1990 CHANGE: This amendment, together with other similar amendments conforming other appellate rules, requires the parties to any appeal to serve copies of all papers filed with the clerk of the appellate court (except the statement of facts and the transcript), and the clerk of the appellate court to mail notice and copies of all appellate court orders and opinions on all parties to the trial court's judgment.]

SECTION TEN. DIRECT APPEALS [TO THE SUPREME COURT]

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRAP 160. Form and Content of Motions for Extension of Time

All motions for extension of time for filing an application for writ of error shall be filed in, directed to, and acted upon by the Supreme Court. [Twelve copies of the motion for extension of time shall be filed in the Supreme Court.] A copy of the motion shall [also] be filed at the same time in the court of appeals and the Clerk of the Supreme Court shall notify the court of appeals of the action taken on the motion by the Supreme Court. Each such motion shall specify the following:

- (a) the court of appeals and the date of its judgment, together with the number and style of the case;
- (b) the date upon which the last timely motion for rehearing was overruled;
- (c) the deadline for filing the application; and
- (d) the facts relied upon to reasonably explain the need for an extension.

[COMMENT TO 1990 CHANGE: To provide that 12 copies of a motion for extension be filed.]

TRAP 172. Argument

(a) Time. In the argument of cases in the Supreme Court, each side may be allowed ~~thirty~~ [twenty-five] minutes in the argument at the bar, with ~~fifteen~~ [ten] minutes more in conclusion by petitioner. In cases involving difficult questions, the time allotted may be extended by the court, provided application is made before the day of argument. The court may, in its discretion, shorten the time for argument. It may also align the parties for purposes of presenting oral argument.

(b) (No change.)

(c) (No change.)

[COMMENT TO 1990 CHANGE: To reduce standard times for oral submissions.]

TRAP 181. Judgments in Open Court

In all cases decided by the Supreme Court, its judgments or decrees will be ~~pronounced/in/open~~ [announced through the clerk of the] court; and the opinion of the court will be reduced to writing in such cases as the court deems of sufficient importance to be reported. Where the court, after the submission of a case, is of the opinion that the court of appeals has entered a correct judgment, and that the writ should not have been granted, the court may set aside the order granting the writ, and dismiss or ~~refuse~~ [deny] the application as though the writ had never been granted, without writing any opinion.

[COMMENT TO 1990 CHANGE: To conform Rule 181 to the Supreme Court's current method of announcing its orders.]

TRAP 182. Judgment on Affirmance or Rendition

(a) (No change.)

(b) Damages for Delay. Whenever the Supreme Court shall determine that application for writ of error has been taken for delay and without sufficient cause, then the court may ~~award each prevailing respondent an amount not to exceed ten percent of the amount of damages awarded to such respondent as damages against such petitioner. If there is no amount awarded to the prevailing respondent as money damages, then the court may award~~ ~~each prevailing respondent an amount not to exceed ten times the total taxable costs as damages against such petitioner.~~

A request for damages pursuant to this rule, or an imposition of such damages without request, shall not authorize the court to consider allegations or error that have not been otherwise properly preserved or presented for review.

[COMMENT TO 1990 CHANGE: To provide for sanctions whether or not the court renders a judgment.]

TRAP 190. Motion for Rehearing

(a) Time for Filing. (No change.)

(b) Contents and Service. The points relied upon for the rehearing shall be distinctly specified in the motion. The motion shall state the name and address of the attorneys of record for the parties [to the trial court's final judgment], and if there is no attorney of record, the name and address of the party [to the trial court's final judgment]. The party filing such motion shall ~~deliver or mail to~~ [serve on] each party [to the trial court's final judgment], or his attorney of record, a true copy of such motion, and shall note on the motion so filed with the clerk that such copies have been so ~~furnished~~ [served].

(c) Notice of the Motion. Upon the filing of the motion, the clerk shall notify the attorneys of record or other parties [to the trial court's final judgment] by mail of the filing.

(d) Answer and Decision. (No change.)

[(e) Extensions of Time. An extension of time may be granted for late filing in the Supreme Court of a motion for rehearing, if a motion reasonably explaining the need therefor is filed with the Supreme Court not later than fifteen days after the last date for filing the motion.]

[COMMENT ON 1990 CHANGE: To conform with Rule 54(c) providing for extensions of time in the courts of appeals.]

SECTION TWELVE. SUBMISSION AND ORAL ARGUMENT [IN THE SUPREME COURT]

SECTION THIRTEEN. DECISION, JUDGMENT AND MANDATE [IN THE SUPREME COURT]

SECTION FOURTEEN. MOTION FOR REHEARING [IN THE SUPREME COURT]

SECTION SEVENTEEN. SUBMISSIONS, ORAL ARGUMENTS, AND OPINIONS [IN THE COURT OF CRIMINAL APPEALS]

SECTION EIGHTEEN. REHEARINGS AND MANDATE [IN THE COURT OF CRIMINAL APPEALS]

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

APPENDIX FOR CRIMINAL CASES

TEXAS RULES OF APPELLATE PROCEDURE

Adopted by orders of the Supreme Court and the Court of
Criminal Appeals April 10, 1986

Effective September 1, 1986

This appendix, adopted by order of the Court of Criminal Appeals on April 10, 1986, effective September 1, 1986, to apply to criminal cases and criminal law matters, preserves the substance of Rule 201 and Forms 3, 4, and 5 of the former Rules of Post Trial and Appellate Procedure in Criminal Cases which were repealed effective September 1, 1986, by another order of April 10, 1986.

Rule 1. The Record on Appeal

Pursuant to the provisions Rule 51(c) and 53(h), the Court of Criminal Appeals directs that a record consisting of transcript and statement of facts (formerly transcription of court reporter's notes) in case of an appeal or writ of error (Article 44.43, C.C.P.) from trial court to an appellate court shall be prepared in accordance with applicable Rules in the following formats, respectively:

(a) Transcript

(1) (No change.)

(2) (No change.)

(3) The front cover page shall be labeled in bold type "TRANSCRIPT" and it shall state the number and style of the criminal case, the court in which the case is pending, the name of the judge presiding and the names and mailing addresses of attorneys for the parties. The Clerk shall endorse thereon the day the transcript was transmitted to the court of appeals and shall sign his name officially thereto, and shall provide a space for the Clerk of the Court of Appeals to endorse his filing thereon, showing the date received, and to enter the docket number assigned to the cause. For those purposes the following form will be sufficient.

TRANSCRIPT

(Trial Court) No. _____

In the _____ District (County) Court of _____ County,
Texas, Honorable _____, Judge Presiding.

_____, Appellant

vs.

The State of Texas

Appealed to the Court of Appeals for the _____ ~~Supreme/Judicial~~
District of Texas, at _____, Texas.

Appellate Attorney for Appellant: Appellate Attorney for State:

(name) _____

(name) _____

(address) _____

(address) _____

Delivered to Court of Appeals for the _____ ~~Supreme~~ /Judicial
District of Texas, at _____, Texas on the _____ day of
_____, 19____.

(signature _____)

(name of trial court clerk _____)

(title _____)

(Court of Appeals) Cause No. _____

Filed in the Court of Appeal for the _____ ~~Supreme~~ /Judicial
District of Texas, at _____, Texas this _____ day of
_____, 19____.

_____, Clerk

By _____, Deputy

VOLUME _____

(4) (No change.)

(5) (No change.)

(6) (No change.)

(7) (No change.)

(b) Statement of Facts. (No change.)

[COMMENT TO 1990 CHANGE: Textual corrective change only.]

TRCE 604. Interpreters

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.

[COMMENT: See Rule 183, Texas Rules of Civil Procedure, regarding appointment and compensation of interpreters.]

TRCE 614. Exclusion of Witnesses

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person or the spouse of such natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause. [This rule is not applicable to discovery proceedings.]

[COMMENT TO 1990 CHANGE: See Rules 200 and 208, Texas Rules of Civil Procedure, relating to depositions.]

TRCE 703. Bases of Opinion Testimony

The facts or data in the particular case upon which an expert bases an ~~his~~ opinion or inference may be those perceived by or ~~made known to~~ [reviewed by the expert] ~~him~~ at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

[COMMENT TO 1990 CHANGE: This amendment conforms this rule of evidence to the rules of discovery in utilizing the term "reviewed by the expert." See also comment to Rule 166b.]

APPENDIX

MINUTES OF THE
SUPREME COURT ADVISORY COMMITTEE
MAY 26-27, 1989

The Advisory Committee of the Supreme Court of Texas convened at 8:30 o'clock a.m. on Friday, May 26, 1989, pursuant to call of the Chairman.

Friday, May 26, 1989:

Members present: Chair Luther H. Soules III, Justice Nathan L. Hecht, Honorable Sam Houston Clinton, Mike A. Hatchell, Kenneth D. Fuller, Vester T. Hughes, Jr., Honorable Raul Rivera, John M. O'Quinn, Buddy Low, Anthony J. Sadberry, Honorable Stan Pemberton, Professor Elaine Carlson, Chuck Herring, Tom Ragland, John E. Collins, Charles Morris, Tom Davis, Steve McConnico, Russell McMains, Gilbert Adams, Professor J. Hadley Edgar, Franklin Jones, Jr., Thomas Black, David Beck, Pat Beard, Professor William Dorsaneo III, Newell H. Blakely, and Broadus A. Spivey. Also present were Chief Justice Thomas R. Phillips, Honorable Ted Robertson, Sarah B. Duncan, and Holly J. Halfacre.

Members absent: Frank L. Branson, Honorable Solomon Casseb, Jr., Chief Justice Austin McCloud, Harry M. Reasoner, Justice Linda B. Thomas, Harry L. Tindall, Sam D. Sparks, and Sam Sparks.

Discussion was had regarding SB 874 and the adverse effect it may have on Supreme Court of Texas rule making, if it is constitutional. Committee members resolved unanimously to urge the Governor to veto the bill.

A request for amendment to TRAP 687(e) was reported on, motion was made and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

Professor Elaine Carlson reported on substantial progress of the Texas Pattern Local Rules project.

A request for amendment to TRAP 680 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A discussion was had regarding changing TRAP 133 n.r.e. designations to "d.r.d." discretionary review denied. The Committee voted unanimously not to recommend that the Supreme Court promulgate the requested amendment.

A report was given by Ken Fuller on Special Family Law Project regarding purging of child abuse allegations that are not proven and sealing of records. The Committee voted to table this matter for future reconsideration when better public information is available for subcommittee to study.

A report was given by David Beck on Code of Judicial Conduct, Canon 5e regarding using an active judge as arbitrator in case not in his court and regarding settlement discussion in cases pending in his court. Mr. Beck's committee recommended no change. The Committee voted not to change Canon 5e, but to make an addition to Rule 166 to permit judges to "encourage" settlement at pretrial conferences.

A subcommittee report on the Rules of Civil Evidence was given by Professor Newell Blakely. A request for amendment to TRCE 705 was made to preclude expert testimony on underlying facts during direct examination. An additional proposal was made orally by Professor Blakely to change to TRCE 705. Motion was made to reject both proposals because the trial court already has power to limit expert testimony under TRCE 403, the Committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCE 902(12) was reported on, motion was made, and the committee voted 9 to 12 to recommend that the Supreme Court not promulgate the requested amendment.

A request to repeal TRCP 184 and 184a due to redundancy with Texas Rules of Evidence 202 and 203, was reported on, motion was made and the committee voted 12 to 11 to recommend that the Supreme Court repeal TRCP 184 and 184a.

A request for amendment to TRCE 604 cross referencing Texas Rule of Civil Procedure 183 was reported on. Motion was made to table and assigned to Dorsaneo to work on and report tomorrow.

A request for amendment to Civil Practice and Remedies Code Sec. 18.031 was reported on, motion was made, and the committee voted not to recommend that the Supreme Court promulgate the requested amendment.

Discussion was had regarding TRCE 614 on who may be present at deposition Dorsaneo suggested revision to Rule 166b(5)(b) TRCP to say who may be present. The committee voted to recommend the changes shown on page 00046. The remaining changes tabled until tomorrow.

A request for amendment to TRCE 703 was reported on, motion was made to table and make consistent with TRCP 166b, and the committee voted to table and take up later with the report on Rule 166 to TRCP.

A report on Rules of Appellate Procedure was made by Rusty McMains.

A request for amendment to TRAP 4b was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 5a was reported on. Motion was made and the Committee unanimously voted for leaving the reference to Article 4591 in the rule. Motion was made and the committee unanimously voted to recommend all other changes be recommended that the Supreme Court promulgate the suggested amendment. Rusty McMains to consider Federal Rule 6a and counterparts for inclusion.

A request for amendment to TRAP 40 was reported on, motion was made and the committee unanimously voted to table.

A request for amendment to TRAP 79 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 84 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRAP 184(b) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRAP 90 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

Request was made for discussion regarding publication of cases under Rule 90 and whether the Supreme Court should order unpublished opinions published when writ of error granted at end of agenda.

Discussion was had as to whether to include rules of professionalism in the TRCP or Texas Disciplinary Rules of Professional Conduct. The committee voted to recommend inclusion of the rules in the Disciplinary Rules of Professional Conduct.

A request for amendment to TRAP 100 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 121 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRAP 123 was reported on, motion was made, and the committee voted 12 to 10 to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRAP 130 was reported on, motion was made, and the committee voted unanimously to table for written suggestions.

A request for amendment to TRAP 136 was reported on, motion was made, and a majority of the committee voted to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRAP 190 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

Handout given on requested changes made by Sarah B. Duncan to Rules of Appellate Procedure that were omitted from the agenda.

Motion was made and the committee voted unanimously to recommend that the Supreme Court promulgate the following requested amendments: Rule 1; Rule 4; Rule 17; Rule 20; Rule 41; Rule 43; Rule 47; Rule 56; Rule 57; Rule 59; Rule 72; Rule 90; Rule 91; Rule 130; Rule 133; Rule 134; Rule 135; heading change to Section 10; Rule 160; heading changes to Section Twelve, Thirteen, Fourteen, and Eighteen.

Rule 82a tabled until tomorrow.

A request for amendment to TRCP 3a was reported on, motion was made, and the committee voted unanimously to table until tomorrow.

A request for amendment to TRCP 5 was reported on, motion was made, and the committee voted unanimously to table for report from Professor Dorsaneo and Professor Edgar tomorrow.

A request for amendment to TRCP 21a was reported on, motion was made, and the committee voted 11 to 7 to recommend that the Supreme Court promulgate the requested amendment. The committee discussed a three day extension when notice sent by telecopier. Motion was made and the committee voted 9 to 6 to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 72 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

Discussion had regarding putting notice under one rule - should be a special project. A committee is to be appointed.

A request for amendment to TRCP 73 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 26 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 305 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 87 was reported on, motion was made to table until tomorrow.

A request for amendment to TRCP 106 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 107 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 120a was reported on, motion was made, and the committee voted 5 to 11 to recommend that the Supreme Court not promulgate the requested amendment. Nonetheless, Justice Hecht requested a proposal be made at the next meeting on burden of proof and proof by affidavits.

A request for amendment to TRCP 145(1) was reported on. A discussion was had regarding compensation for court reporter on indigent appeals. TRCP 145(1) provides for costs to be paid by other party. A motion was made and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 216 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 223 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 239 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

Meeting adjourned by Chairman Soules until 8:30 o'clock a.m. tomorrow.

Saturday, May 27, 1989

Meeting called to order by Luther H. Soules III, Chairman.

Members present: Chair Luther H. Soules III, Justice Nathan L. Hecht, Mike A. Hatchell, Kenneth D. Fuller, Vester T. Hughes, Jr., Honorable Raul Rivera, John M. O'Quinn, Anthony J. Sadberry, Professor Elaine Carlson, Chuck Herring, Tom Ragland, John E. Collins, Charles Morris, Tom Davis, Russell McMains, Gilbert Adams, Professor J. Hadley Edgar, David Beck, Professor William Dorsaneo III, Newell H. Blakely, Gilbert I. Low and Broadus A. Spivey. Also present were Chief Justice Thomas R. Phillips, Honorable Ted Robertson, Sarah B. Duncan, and Holly J. Halfacre.

Members absent: Frank L. Branson, Honorable Solomon Casseb, Jr., Chief Justice Austin McCloud, Harry M. Reasoner, Justice Linda B. Thomas, Harry L. Tindall, Sam D. Sparks, Honorable Sam Houston Clinton, Honorable Stanton Pemberton, Steve McConnico, Franklin Jones, Jr., Thomas Black, Pat Beard, and Sam Sparks.

Justice Nathan Hecht had oral requests for TRCP changes as follows:

In TRAP 5c delete reference to TRCP 317. A motion was made and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

In TRAP 74 delete the words "Supreme Judicial". Also delete reference to "Supreme Judicial" in Criminal Case Appendix. Holly Halfacre to do search for any other references to "Supreme Judicial". A motion was made and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 172 was made by Justice Hecht changing time limits for oral argument in the Supreme Court from 30 minutes to 25 minutes and 15 minutes to 10 minutes. A motion was made and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

Subcommittee Report by J. Hadley Edgar on Rules 216 - 314.

A motion was made and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment by adding the following language to TRCP 245: "A request for trial setting constitutes a representation that the requesting party reasonably and in good faith expects to be ready for trial by the date requested, but no additional representation concerning the completion of pre-trial proceedings or current readiness for trial shall be required in order to obtain a trial setting in a contested case."

A request for amendment to TRCP 248 was reported on, motion was made, and the committee voted 6 to 4 to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 254 was reported on. This is a legislative continuance problem. No action needed by this

committee. A motion was made, and the committee voted unanimously not to recommend that the Supreme Court promulgate the requested amendment.

A request to repeal TRCP 260 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 269 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 278 was reported on, after a lengthy discussion motion was made, and the committee voted unanimously to request further study of TRCP 278 by the committee.

A request for amendment to TRCP 279 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 295 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 296 was reported on, motion was made, and the committee voted 11 to 5 to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 298 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment. Professor Elaine Carlson, Professor J. Hadley Edgar and Michael Hatchell were assigned to review Rule 298 regarding possible changes to 41(a)(1) and 54(a) to be reported on at the next meeting.

Discussion had regarding making changes to TRCP 200 to list in notice who will be attending. Add same language to TRCP 208 and put comment referencing Rules 200 and 208 at the end of 614.

A motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment to TRCP 166 by adding the following sentence "(g) The Settlement of the Case. To aid such consideration, the court may encourage settlement".

A request for amendment to TRCP 166b(e), 166b(2)(e)(1), 166b(2)(e)(2) and 166b(3)(b) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 166b(c) and (d) was reported on, motion was made, and the committee voted unanimously to

recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 166b(4) was reported on, motion was made, and the committee voted by majority to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 167a was reported on, motion was made, and the committee voted by majority to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 168 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 169 was reported on, motion was made to approve certain changes, and the committee voted unanimously to recommend that the Supreme Court promulgate portions of the requested amendment.

A request for amendment to TRCP 201 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 206 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 208 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 215 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 166a was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 87 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A subcommittee Report on TRCP 781 was given by Professor Elaine Carlson. Motion was made and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A subcommittee Report on TRCP 523-591 was given by Anthony Sadberry.

A request for amendment to TRCP 534 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 13 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 18b was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 329b was reported on, motion was made, and the committee voted unanimously to table same for assignment to a special subcommittee for comprehensive review and revision where necessary.

Upon request of Justice Hecht, a new committee was created to study and make recommendations regarding TRCP 330, on multi district complex litigation. Professor Elaine Carlson, Charles Herring and Tom Davis volunteered to be on committee. A Chair will be named and additional members will be appointed.

A request for amendment to TRCP 604 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 183 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to Rule 15a was reviewed, motion was made and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 40 was reported on and assigned for further study to the Standing Subcommittee on Rules of Appellate Procedure.

Michael Hatchell was named Co-chair of the Standing Subcommittee on Rules of Appellate Procedure.

A request for amendment to TRAP 47 was reported on and assigned to Professor Elaine Carlson as Chair of a special subcommittee for a report at the next meeting.

A request for amendment to Rule 49 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRAP 130a was reported on and assigned to the Subcommittee on Rules of Appellate Procedure for further study and report at next meeting.

A request for amendment to TRAP 5 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 201(5) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 771 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

Meeting adjourned.

MINUTES OF THE
SUPREME COURT ADVISORY COMMITTEE

JULY 15, 1989

The Advisory Committee of the Supreme Court of Texas convened at 8:30 o'clock a.m. on Saturday, July 15, 1989, pursuant to call of the Chairman.

Members present: Chair Luther H. Soules III, Justice Nathan L. Hecht, Honorable Sam Houston Clinton, Honorable Austin McCloud, Honorable David Peeples, Honorable Solomon Casseb, Jr., Honorable Raul Rivera, David Beck, R. Doak Bishop, Anthony Sadberry, Chuck Herring, Elaine Carlson, Rusty McMains, John O'Quinn, Tom Davis, Charles Morris, Franklin Jones, J. Hadley Edgar, Professor Newell Blakely, Harry Tindall, Pat Beard, William Dorsaneo III, and Kenneth Fuller. Also present were Chief Justice Thomas R. Phillips, Sarah B. Duncan, and Holly J. Halfacre.

Members absent were: Gilbert T. Adams, Jr., Frank L. Branson, John E. Collins, Michael A. Hatchell, Vester T. Hughes, Jr., Gilbert I. Low, Steve McConnico, Tom L. Ragland, Harry M. Reasoner, Broadus A. Spivey, Sam D. Sparks, and Sam Sparks.

Minutes of the May 26-27, 1989 meeting were approved.

Professor Elaine Carlson reported on progress of Texas Pattern Local Rules Project.

Discussion was had regarding letters receiving from state representatives regarding SB 1013 and HB 2223. Resolution was made for better communication with the legislature.

Redlined rules approved at the May 26-27, 1989 meeting for promulgation by the Supreme Court were approved with minor corrections to Rule 167a and 297a.

A report was given by Ken Fuller on Family Law Project regarding sealing of records and letter from John H. McElhaney. A committee was appointed to study same which consists of members Charles Morris- Co-Chair, Charles Herring - Co-Chair, Ken Fuller, Judge Solomon Casseb, Jr., Judge David Peeples, and Luke Soules and invitee John McElhaney. Luke Soules will prepare letter to Orlando Garcia and report formation of the committee and invite suggestions.

A request for reorganization of the TRAP rules was reported on, motion was made and the committee voted unanimously to

recommend that the Supreme Court not promulgate the requested reorganization but refer the project to the rules recodification effort over the next bi-innuim.

A report was made by Justice Sam Houston Clinton regarding changes to proposed TRAP 1 and TRAP 20, motion was made and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendments.

A request for amendment to TRAP 4 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 9 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 47 was reported on by Professor Elaine Carlson, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 49 was reported on by Elaine Carlson, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 40 was reported on, motion was made, and the committee voted unanimously to table same for assignment Rusty McMains to do fully study and deliver a written report at next meeting, August 12, 1989.

A request for amendment to TRAP 46d was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 40(a)(4) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 51(b) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 53 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 51(c) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRAP 52(d) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 299 and 299a was reported on, motion was made, and the committee voted 13 to 2 to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 90 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 99-107 was reported on, these rules have currently been amended. No action of committee required.

A request for amendment to TRCP 38(c) and 51(b) was reported on, motion was made to reject, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 57 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 120a was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 238 was reported on, motion was made to reject, and a majority of the committee voted to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 82 was reported on, motion was made, and the committee voted to table for assignment to R. Doak Bishop to deliver a written report at next meeting, August 12, 1989.

A request for amendment to TRCP 130a was reported on, motion was made to table, and the committee voted unanimously to reassign to Rusty McMains to deliver a written report at next meeting, August 12, 1989.

A request for amendment to heading of Section 17 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 13 was reported on, motion was made to reject, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 166(b)(3)(b) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 237a was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 278 was reported on, motion was made, and the committee voted unanimously to reassign to Hadley Edgar to deliver a written report on August 12, 1989. The following members were appointed to prepare suggested redline versions and submit to Hadley Edgar by July 21: Rusty McMains, Professor Dorsaneo, John O'Quinn, Professor Edgar, Pat Beard and Luke Soules.

A request for amendment to TRCP 308a was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 305 was reported on, motion was made to reject, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 329b was reported on, motion was made to reject, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 329 was reported on, motion was made to reject, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 329c was reported on, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment until further information is received with briefing Skipper Lay.

A request for amendment to TRCP 749c was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 534 was reported on, motion was made, and the committee voted unanimously to refer to Anthony Sadberry for written report at next meeting, August 12, 1989.

The following matters were placed on the agenda for August 12, 1989:

Form standing subcommittee on Multi-County, Multi-District Rules.

Form special subcommittee for consideration towards comprehensive reformatting and review of Texas Rules of Civil Procedure in order of Federal Rules of Civil Procedure.

Report of special subcommittee to combine all trial "notice" and "service" rules in a single rule, e.g. TRCP 21a and 72 - David Beck.

Report on Rule 278 - Professor Edgar

Report on Rule 40 - Rusty McMains

Report on Rule 82 - Doak Bishop

Report on Rule 329c - Harry Tindall

Report on Rule 534 - Sadberry

Report on Rule 130a (premature filing of application) Hatchell

Report on TRAP 90(e) - Rusty McMains

Report on TRAP 121 - Rusty McMains

Report on TRAP 181 - Rusty McMains

Report on TRCP 10 - Frank Branson

Report on TRAP 15a and 18b - David Beck

Staff was recognized with appreciation.

Meeting adjourned.

MINUTES OF THE
SUPREME COURT ADVISORY COMMITTEE

AUGUST 12, 1989

The Advisory Committee of the Supreme Court of Texas convened at 8:30 o'clock a.m. on Saturday, August 12, 1989, pursuant to call of the Chair.

Members present: Chair Luther H. Soules III, Justice Nathan L. Hecht, Honorable David Peeples, Honorable Raul Rivera, R. Doak Bishop, Elaine Carlson, Rusty McMains, Tom Davis, Steve McConnico, Harry Tindall, Pat Beard, William Dorsaneo III, Michael A. Hatchell, Gilbert I. Low, and Kenneth Fuller. Also present were Ted Robertson, Sarah B. Duncan, and Holly J. Halfacre.

Members absent were: Gilbert T. Adams, Jr., David Beck, Professor Newell Blakely, Frank L. Branson, Judge Solomon Casseb, Jr., John E. Collins, Professor J. Hadley Edgar, Charles F. Herring, Vester T. Hughes, Jr., Franklin Jones, Jr., Charles Morris, John M. O'Quinn, Tom L. Ragland, Harry M. Reasoner, Anthony J. Sadberry, Broadus A. Spivey, Sam D. Sparks, Sam Sparks, Chief Justice Austin McCloud, Justice Sam Houston Clinton.

Minutes of the July 15, 1989, meeting were approved.

Redlined rules approved at the July 15, 1989, meeting to be recommended for promulgation by the Supreme Court were approved with minor corrections to TRAP 51 and TRAP 53.

A request for amendments to TRCP 271 through TRAP 279 (including reorganization and repealers) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendments.

A proposal was presented in effort to simplify perfection of appeals and cross appeals. The members voted unanimously in favor of permitting all parties to a trial court judgment to participate in the sequence of perfecting the appeal and getting the appellate record timely filed so long as each requisite step is accomplished by some party whether or not that party accomplished any other requisite step. The members voted unanimously in favor of retaining the current time deadlines without changes that might accommodate the chain of parties accomplishing various appellate record requisites so that regardless of how many parties participate, the steps must be done on time in conformity with current time limitations. The

members differed, however, on how a briefing schedule should operate and how various parties should be required to present their appellate points, cross-points, counter-points and reply points. One suggestion was to continue present briefing schedule requirements. Another was to liberalize briefing schedule requirements. The members voted that the Standing Subcommittee on TRAP rules continue study of the subject for 1992 revisions.

A request for amendment to TRAP 40(a)(4) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 74(a)(h)(g) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 91 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 100(d) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 131(a) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 132 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 136 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 190(b)(c) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 4 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 82 was reported on, motion was made, and the committee voted by majority to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 21 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 21a was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for new rule TRCP 21b was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request to repeal and relocate TRCP 72 to TRCP 21 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request to repeal and relocate TRCP 73 to new Rule 21b was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 60 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 15a was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 18b was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 10 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 7 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court not promulgate the requested amendment.

A request for amendment to TRCP 63 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 166 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 206 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 248 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request regarding "independent" court reporters was referred to the Committee on Administration of Justice.

A request for amendment to TRCP 296 was reported on, no action of the committee required, changes requested were made at July 15, 1989, meeting. Chair to notify W. Michael Murray of same.

A request for amendment to TRCP 329 was reported on, motion was made, and the committee voted unanimously to request written brief in support from Robert Fuller.

A request for amendment to TRCP 534 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 535 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 536 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 90(e) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 130 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 132(a) was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRAP 181 was reported on, motion was made, and the committee voted unanimously to recommend that the Supreme Court promulgate the requested amendment.

A request for amendment to TRCP 329b was reported on, motion was made to reject, and the committee voted unanimously to send back to Aaron L. Jackson to adjust and resubmit to the committee.

Discussion was had regarding Family Law Council legislative activities changing procedural rules. Chairman Soules to prepare a resolution and send to Family Law Council to request procedural conformity with Texas Rules of Civil Procedure.

Motion was made and the committee voted unanimously to submit TRCP 229, 231, 232, 233 & 234 to J. Hadley Edgar's subcommittee for further study and proposed changes effective 1992.

Meeting adjourned.