

MISCELLANEOUS RULES
SUPREME COURT ADVISORY COMMITTEE
May 31, 1985 Meeting

July 1, 1985

Mr. Luther H. Soules
Soules & Cliffe
800 Milam Bldg.
San Antonio, Texas 78205

\$1,087.30

SC AC Inc

Dear Mr. Soules,

Enclosed, please find the original and one copy of the proceedings of the Supreme Court Advisory Committee which met May 31, 1985.

I wanted to take this opportunity to thank you and to offer my personal services to you and the Supreme Court. I have a keen interest, along with Chief Justice Hill, in educating the lawmakers of Texas as to the enormous benefits Computer Aided Transcription can offer to the efficiency of the courts.

I represented a court reporting computer company for several years as well as a logging tape recorder company. That experience, along with the production experience of our court reporting firm, gives me a unique overview of transcript production methodology.

The best way to prove those benefits is to show them in person. Last year I gave a demonstration of the computer at the Louisiana Judicial Conference. With the help of a very good court reporter, who had been on the computer only three months, we reported a speech by machine shorthand and displayed the text on a five foot TV screen only seconds behind the speaker. My wife, Monica Weidmann, who is Judge Clark's Official Reporter, will be providing this service in August for a deaf attorney allowing him to participate in the trial. We have provided that service on several occasions already. Beginning some time in July, Monica will be demonstrating this service in her court with a new twist. She will be providing "Real-time" Daily Copy, whereby the proceedings are printed on paper simultaneously with her writing.

These are some of the new technology we are using and my time and services are available if you can use them.

Finally, I am asking your permission to provide complimentary copies of this transcript to both Chief Justice Hill and Justice Wallace. If you choose to use us at the next meeting, one reporter will be sufficient and we will be able to produce it quicker now that we are familiar with the subject matter.

I hope the Index proves useful to you.

Sincerely,


Duke Weidmann

AGENDA
 Supreme Court Advisory Committee Meeting
 May 31, 1985

	<u>Date of Request</u>	<u>Request Submitted by</u>	<u>Action taken, if any</u>	<u>Comments</u>
3a	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.
8	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.
8	2/84	Ray Hardy	Proposed Revision approved by COAJ on 6/9/84	10, 14b
8	9/15/83	Ray Hardy	None	10, 65, 165a, 127, 131 proposes New Rule
10	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.
10	2/84	Ray Hardy	Proposed Revision approved by COAJ on 6/9/84	10, 14b
10	9/15/83	Ray Hardy	None	10, 65, 165a, 127, 131 proposes New Rule
10a	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.
10b	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.
14b	2/84	Ray Hardy	Proposed Revision approved by COAJ on 6/9/84	10, 14b

	<u>Date of Request</u>	<u>Request Submitted by</u>	<u>Action taken, if any</u>	<u>Comments</u>
14c	2/3/83	W.J. Kronzer	At 11/5/83 meeting, Chairman Green request the subcommittee to study the rule for a later report. At 2/25/84 meeting Gary Hopkins was to have a report at the next meeting; however, it was not on the 4/14/84 agenda prepared by Greene	
21c	6/26/84	Jordan & Haggren	Approved 12/3/83 by S.C. on 3/9/85 Agenda for Report by Doak Bishop on 306(2); Written report on 306(2) also received from Tom Pollan dated 3/6/85.	456,457,458
27a	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.
27b	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.
27c	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.
47	8/31/82	W.J. Kronzer	Referred to State Bar Committee on Professional Ethics	None
47	12/1/83	Hubert Green	Referred to State Bar Committee on Professional Ethics	None
47	9/20/84	Robert Davis	On 3/9/85 agenda for report by Jim Weber	None

	<u>Date of Request</u>	<u>Request Submitted by</u>	<u>Action taken, if any</u>	<u>Comments</u>
47	Unknown	Jim Weber	None	None
65	9/15/83	Ray Hardy	None	10, 65, 165a, 127, 131 proposes New Rule
86	1/9/84	Judge Wallace	None	87,88, 89
87	1/9/84	Judge Wallace	None	87,88, 89
87(2) (b)	2/10/84	Hubert Green	Approved by COAJ at 6/9/84 meeting	None
87	2/16/84	Bill Dorsaneo	Approved by COAJ at 6/9/84 meeting	None
87(2) (b)	8/29/83	Bob Martin	Approved by COAJ at 6/9/84 meeting	None
88	1/9/84	Judge Wallace	None	87,88, 89
89	1/9/84	Judge Wallace	None	87,88, 89
103	8/6/84	Donald Baker	On 3/9/85 Agenda for Appointment to Subcommittee	106
106	3/10/83	Ellen Grimes	Removed from docket 6/4/83, returned to docket and placed on 3/9/85 Agenda for Report on from Jeffrey Jones	None
127	9/15/83	Ray Hardy	None	10, 65, 165a, 127, 131 proposes New Rule
131	9/15/83	Ray Hardy	None	10, 65, 165a, 127, 131 proposes New Rule

	<u>Date of Request</u>	<u>Request Submitted by</u>	<u>Action taken, if any</u>	<u>Comments</u>
161	1/25/84	Don L. Baker	Amended version adopted by S.C. by order 12/3/83, on 3/9/85 Agenda for Appt. to Subcommittee	None
161	2/21/84	Putnam/K.Reiter	<u>pertains to attorney fees not 161</u>	
165a	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.
	9/15/83	Ray Hardy	None	10, 65, 165a, 127, 131 proposes New Rule
165a	8/21/84	Jeremy Wicker	Adopted by S.C. by Order of 12/3/83. On 3/9/85 Agenda; Written Report has been submitted by Tom Pollan dated 3/6/85.	306 (a) (1)
166f	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.
200	3/7/84	Richard Kelsey	Approved by S.C. by Order of 12/3/83. On 3/9/85 Agenda for Appointment to Subcommittee.	324 (b)
201	1/25/84	Don L. Baker	Approved S.C. by Order of 12/3/83. On 3/9/85 Agenda for Appointment to Subcommittee.	None
204	1/9/84	Harris Morgan	Approved by S.C. by Order of 12/3/83. On 3/9/85 Agenda for Report by Collins and Haworth.	None
204	6/20/84	David Hyde	Approved by S.C. by Order of 12/3/83. On 3/9/85 Agenda for Report by Collins and Haworth.	None

	<u>Date of Request</u>	<u>Request Submitted by</u>	<u>Action taken, if any</u>	<u>Comments</u>
204(4)	3/6/84	Judge Barrow	Approved by S.C. by Order of 12/3/83. On 3/9/85 Agenda for Report by Collins and Haworth.	206(3), 207(2), 208(a)
204(4)	2/21/85	L. Soules	Approved by S.C. by Order of 12/3/83. On 3/9/85 Agenda for Report by Collins and Haworth.	None
206(3)	3/6/84	Judge Barrow	Approved by S.C. by Order of 12/3/83. On 3/9/85 Agenda for Report by Collins and Haworth.	206(3), 207(2), 208(a)
207(2)	3/6/84	Judge Barrow	Approved by S.C. by Order of 12/3/83. On 3/9/85 Agenda for Report by Collins and Haworth.	206(3), 207(2), 208(a)
208(a)	3/6/84	Judge Barrow	Approved by S.C. by Order of 12/3/83. On 3/9/85 Agenda for Report by Collins and Haworth.	206(3), 207(2), 208(a)
216	9/22/83	Bradford Moore	Was on 11/5/83 Agenda for suggested action by COAJ. No further record.	
247	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.
247a	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.
250	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.

	<u>Date of Request</u>	<u>Request Submitted by</u>	<u>Action taken, if any</u>	<u>Comments</u>
264	Unknown	Unknown	Proposed change presented by Richard Clarkson was approved at the 6/9/84 meeting	None
265 (a)	6/14/83	Judge Onion	On 3/9/85 Agenda for Report by Judge Curtiss Brown	None
272	12/13/83	Judge Wallace	On 3/9/85 Agenda for Appointment to Subcommittee	297,373,749
296	6/14/83	D. Bickel	Appoved by S.C. 12/3/83 On 3/9/85 Agenda by Doak Bishop.	None
296	8/6/84	Jeremy Wicker	Appoved by S.C. 12/3/83 On 3/9/85 Agenda by Doak Bishop.	306 (c)
297	12/13/83	Judge Wallace	On 3/9/85 Agenda for Appointment to Subcommittee	²⁷² 297,373,749
305a	1/11/85	Judge Wallace	Amended version adopted by Supreme Court 12/3/83. No record of new request.	See also Rules 8, 10, 10a, 10b, 27a, 27b, 27c, 165a, 166f, 247, 247a, 250, 305a.
306 (a) (1)	8/21/84	Jeremy Wicker	Adopted by S.C. by Order of 12/3/83. On 3/9/85 Agenda; Written Report has been submitted by Tom Pollan dated 3/6/85.	306(a)(1) 165a
306 (a) (4)	6/26/84	Jordan & Haggren	Approved 12/3/83 by S.C. on 3/9/85 Agenda for Report by Doak Bishop on 306(a); Written report on 306(2) also received from Tom Pollan dated 3/6/85.	456,457,458

	<u>Date of Request</u>	<u>Request Submitted by</u>	<u>Action taken, if any</u>	<u>Comments</u>
306(c)	8/6/84	Jeremy Wicker	Approved by S.C. 12/3/83 On 3/9/85 Agenda by Doak Bishop.	306(e) 296
324(b)	3/7/84	Richard Kelsey	Approved by S.C. by Order of 12/3/83. On 3/9/85 Agenda for Appointment to Subcommittee.	324(b) 200
329	3/9/84	Charles Childress	Approved 12/3/83 by S.C. On March 9, 1985 Agenda for Appointment to Subcommittee.	None
354	4/6/84	Jim Milam	Approved COAJ 4/14/84	355 354 380
355	4/6/84	Jim Milam	Approved COAJ 4/14/84	355 354 380
364(a)	5/2/84	Guy Hopkins	Approved COAJ 6/9/84	None
373	12/13/83	Judge Wallace	On 3/9/85 Agenda for Appointment to Sub- committee	297,373,749
380	4/6/84	Jim Milam	Approved COAJ 4/14/84	354, 380
438	7/17/84	Michael Remme	On 3/9/85 Agenda for Appointment to Sub- Committee	None
452	3/23/84	John Feather	At 4/14/84 meeting it was determined that Sub- committee would continue its work; No further record.	None

	<u>Date of Request</u>	<u>Request Submitted by</u>	<u>Action taken, if any</u>	<u>Comments</u>
456	6/26/84	Jordan & Haggen	Approved 12/3/83 by S.C. on 3/9/85 Agenda for Report by Doak Bishop on 306(a); Written report on 306(2) also received from Tom Pollan dated 3/6/85.	456,457,458 306(a)(4)
457	6/26/84	Jordan & Haggen	Approved 12/3/83 by S.C. on 3/9/85 Agenda for Report by Doak Bishop on 306(a); Written report on 306(2) also received from Tom Pollan dated 3/6/85.	306(a)(4) 456,457,458
458	6/26/84	Jordan & Haggen	Approved 12/3/83 by S.C. on 3/9/85 Agenda for Report by Doak Bishop on 306(a); Written report on 306(2) also received from Tom Pollan dated 3/6/85.	306(a)(4) 456,457,458
621A	6/29/84	John Pace	3/9/85 Agenda for Appointment to Subcommittee.	627
627	6/29/84	John Pace	3/9/85 Agenda for Appointment to Subcommittee.	627
680	7/6/83	W. C. Martin	On 3/9/85 Agenda for Appointment to Subcommittee.	None
680	7/27/83		On 3/9/85 Agenda for Appointment to Subcommittee.	None
680	1/27/84		On 3/9/85 Agenda for Appointment to Subcommittee.	None
680	2/10/84	Kenneth Fuller	On 3/9/85 Agenda for Appointment to Subcommittee.	683

	<u>Date of Request</u>	<u>Request Submitted by</u>	<u>Action taken, if any</u>	<u>Comments</u>
683	2/10/84	Kenneth Fuller	Approved by S.C. 12/3/83. 3/9/85 Agenda for Appointment to Subcommittee.	680
735-755	1/16/85	Jefferson Erving and Robert Ray	S.C. AC. only proposed changes to Rules 741-746. Changes in Rules 741-746 approved by S.C. 12/3/83. No record of new Request.	
749	12/13/83	Judge Wallace	On 3/9/85 agenda for appointment to sub-committee	297,373,749
792	8/25/83	John Williamson	At 6/4/83 meeting this was deferred to new committee on COAJ.	
792	6/2/83	John Williamson	At 11/5/83 meeting Frank Jones moved further considerations be given to the rules, including Rules 791 and 798. At the 2/25/84 meeting, it was referred to the Section on Real Estate, Probate and Trust Law before final approval. No further action at this time.	
792	1/27/83	Carl Hoppess		

Supplement to
AGENDA
 Supreme Court Advisory Committee Meeting
 May 31, 1985

	<u>Date of Request</u>	<u>Request Submitted by</u>	<u>Action taken, if any</u>	<u>Comments</u>
10	4/17/85	Reese Harrison	None	165a, 306a
106	2/27/85	Jeffrey Jones	None	See 107
204	4/9/85	Charles Haworth	None	See 216
296	4/8/85	R. Doak Bishop	None	See 306a, 306c
Rules of Evidence	5/8/85	Newell Blakely	None	
Canon 3c	5/28/85	Luke Soules and Justice Kilgarin	None	
FRAP 10	4/23/85	Frank Baker	None	11

*These rules are located in the back.



THE SUPREME COURT OF TEXAS

P.O. BOX 12248 CAPITOL STATION
AUSTIN, TEXAS 78711

CHIEF JUSTICE
JACK POPE

JUSTICES
SEARS MCGEE
ROBERT M. CAMPBELL
FRANKLIN S. SPEARS
C.L. RAY
JAMES P. WALLACE
TED Z. ROBERTSON
WILLIAM W. KILGARLIN
RAUL A. GONZALEZ

CLERK
GARSON R. JACKSON

EXECUTIVE ASS'T.
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.
MARY ANN DEFIBAUGH

January 11, 1985

Mr. Luther H. Soules, III, Chairman
Supreme Court Advisory Committee
Soules & Cliffe
1235 Milam Building
San Antonio, TX 78205

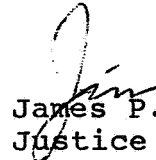
Re: Rules 3a, 8, 10, 10a, 10b, 27a, 27b, 27c,
165a, 166f, 247, 247a, 250, 305a.

Dear Luke:

I am enclosing herewith copies of amendments to the Rules of Civil Procedure as recommended by the Committee on Local Rules of the Council of Administrative Judges. I am also enclosing a copy of that Committee's report to Judge Pope which sets out the reasons for the proposed changes.

If you would like a copy to go to each member of the Advisory Committee at this time, please call Flo in my office (512/475-4615) and we will take care of it.

Sincerely,


James P. Wallace
Justice

JPW:fw
Enclosures

To: Jack Pope, Chief Justice, Supreme Court of Texas

Re: Report of Committee on Local Rules

Little vacuum exists in case processing; necessity, inventiveness and the skill of the martinet will rush in to plug gaps in any system of rules, wherever adopted.

Your committee was furnished copies of all Local Rules filed by District and County Courts with the Supreme court by April 1, 1984. Our work was divided, with Judges Ovard and Thurmond reviewing Criminal case processing and Judges McKim and Stovall civil case processing. Our approach was to group Local Rules by function, so each could be compared for likenesses and differences. Most Local rules addressed these functions:

1. Division of work load in overlapping districts.
2. Schedules for sitting in multi-county districts.
3. Procedures for setting cases: Jury, non-jury, ancillary and dilatory, preferential.
4. Announcements, assignments, pass by agreements, and continuances.
5. Pre-trial methods and procedures.
6. Dismissal for Want of Prosecution.
7. Notices - lead counsel.
8. Withdrawal/Substitution of Counsel.
9. Attorney vacations.
10. Engaged counsel conflicts.
11. Courtroom decorum - housekeeping.
12. Exhortatory suggestions about good-faith settlement efforts.

The Committee found three broad groups of Local Rules and offer the following comments:

Group One: General Administrative Rules

Most courts have general administrative rules, particularly those who serve more than one county, setting out terms of court in each county, types of setting calendars and information about who to call for settings, what kind of notice is to be given others in the case and general housekeeping provisions, subject to change, depending on circumstances.

Comment: The Committee notes that terms of court are governed by statute, usually when the court was created or in a reconstituting statute, making most, if not all, continuous term courts. This language is probably not needed in a Local Rule. Calendars setting out the "who, when, what and where" are useful and must be flexible, to fit court needs, such as illness, vacations and the unexpected long case or docket collapse. Our recommendation: place this information in a "broadside", post it in all courthouses in the District and instruct the clerk to send a copy to all out-of-district attorneys and pro se who file papers, when the first appearance is made. The local Bar can be copied when the schedule is first made and notified of any changes. We note that many multi-county Judicial

Districts serve overlapping counties and the division of work load is governed by statute or agreement of the affected Judges. All the above could be covered by a "Court Information Bulletin", spelling out the manner of getting a setting on motions, -pre-trial and trial matters.

Recommendation: Adopt as a statewide Rule the following:

LOCAL RULES: NOTICE TO COUNSEL AND PUBLIC

Local Schedules and Assignments of Court shall be mailed by each District or County Clerk upon receipt of the first pleading or instrument filed by an attorney or pro se party not residing within the county. The clerk shall not be required to provide more than one copy of the rules during a given year to each attorney or litigant who resides outside of the county in which the case is filed. It shall be the attorney and litigant's responsibility to keep informed of amendments to local rules, which shall be provided by the clerk on request for out of county residents. Local Rules and Amendments thereto shall be printed and available in the clerks office at no cost, and shall be posted in the Courthouse at all times.

Group Two: State Rules of Procedure

Many of Local Rules address functions which could best be served by a statewide uniform rule. These are suggested, as examples.

36th, 156th

Rule 3a. Rules by Other Courts

(a) Each Court of Appeals, each administrative judicial district, each district court, and each county court 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 of Texas for approval.

(b) If a judge of a single judicial district desires to adopt a local rule of procedure governing his judicial district, he shall request approval of such rule by filing with the Presiding Judge of the Administrative Judicial District the rule and the reason for its adoption. In a county or counties having two judicial districts, both judges must approve the proposed rule before submitting it to the Presiding Judge. In counties of three or more judicial districts, a majority of judges must approve the proposed rule before it is sent to the Presiding Judge of the Administrative Judicial District in accordance with Section 3(b), Article 200b, V.T.C.S. All requests for approval of new rules of procedure or amendments thereto shall be filed with the Presiding Judge of the Administrative Judicial District on or before December 31st of each year. The Presiding Judge shall provide written support or opposition to the proposed rule, which shall accompany the proposed rule and which shall be filed by the Presiding Judge with the Supreme Court not later than January 31st of the succeeding year. The Supreme Court shall have final authority to approve or disapprove the adoption of all local rules of procedure as provided by Section (a) of this Rule and Section 3(b), Article 200b, V.T.C.S.

Rule 8. Attorney in Charge [~~Leading Counsel Defined~~]

Each party shall, on the occasion of its first appearance through counsel, designate in writing the "attorney in charge" for such party. Thereafter, until such designation is changed by written notice to the court and written notice to all other parties in accordance with Rules 21a and 21b, said attorney in charge shall be responsible for the suit as to such party and shall attend or send a fully authorized representative to all hearings, conferences, and the trial.

All communications from the court or other counsel with respect to a suit will be sent to the attorney in charge. [~~The attorney first employed shall be considered leading counsel in the case, and, if present, shall have control in the management of the cause unless a change is made by the party himself, to be entered of record.~~]

Rule 10. Withdrawal of Counsel [~~Attorney of Record Defined~~]

Withdrawal of an attorney in charge may be effected (a) upon motion showing good cause and under such conditions imposed by the Presiding Judge; or (b) upon presentation by such attorney in charge of a notice of substitution designating the name, address, telephone number, and State Bar Number of the substitute attorney, with the signature of the attorney to be substituted, the approval of the client, the client's current address and telephone number, and an averment that such substitution will not delay any setting currently in effect. [An attorney of record is one who has appeared in the case, as evidenced by his name subscribed to the pleadings or to some agreement of the parties filed in the case; and he shall be considered to have continued as such attorney to the end of the suit in the trial court, unless there is something appearing to the contrary in the record.]

Rule 10a (new). Attorney Vacations

Each attorney practicing in the district and county courts who desires to assure himself of a vacation period not to exceed four weeks in June, July, and August, may do so automatically by designating the four weeks, in writing, addressed and mailed or delivered to the District or County Clerk, or any officer designated as the Docket Clerk in his own county, with a copy thereof to the District Clerk or Docket Clerk of any other county in which he has cases pending trial, before the 15th of May of each year. The vacation period so designated shall be honored by all judges so notified.

This provision shall not apply to vacations for attorneys engaged in a criminal case. Nothing herein provided shall prevent the various judges from recognizing vacations of attorneys as a discretionary matter.

CA:RULE4(69th)

Rule 10b (new). Conflict in Trial Settings

1. Attorney Already in Trial Assigned to Trial in Another Court:

When the docket clerk or judge is informed that an attorney is already in trial, the clerk will determine the designation of the court, the county where it is located, and the time the attorney went to trial. If the judge or opposing attorney desires the information to be verified, the court will ascertain if the attorney is actually in trial and the probable time of release. The case may then be put on "hold", or another date may be set for trial.

If the attorney is not actually in trial, the case will be assigned to trial as scheduled, and the court shall inform all parties.

If the attorney's office cannot provide the clerk with an attorney's location, the case will nevertheless be scheduled for trial as planned, and his office so advised, with the warning that the case will be tried without further notice.

2. Attorney Assigned to Two Courts Simultaneously: Whenever an attorney has two or more cases on trial dockets and is set for trial at the same time, it shall be the duty of the attorney to bring the matter to the attention of the judges concerned immediately upon learning of the conflicting settings.

3. General Priority of Cases Set for Trial -- Determination: Insofar as practicable, judges should attempt to agree on which case has priority, otherwise, the following priorities shall be observed by the judges of respective courts:

- (1) criminal cases have priority over civil cases and jail cases over bond cases;
- (2) preferentially set cases have priority over those not given preference by statute or otherwise;
- (3) the oldest case, on the basis of filing date, has priority;
- (4) courts in metropolitan counties should yield to courts in rural counties in all other instances of conflicting trial settings.

4. Comity Between Federal and State Courts: The judges of local State Courts should enter into agreements with the Chief Judge of Federal Judicial Districts having jurisdiction in the same counties to establish the priorities for trial in the event of setting conflicts between the Federal and State Courts.

Rule 27a (new). Filing of Cases; Random Assignment

Except as provided in this rule, all cases filed in counties having two or more district courts shall be filed in random order, in a manner prescribed by the judges of those courts. Each garnishment action shall be assigned to the court in which the principal suit is pending, and should transfer occur, both cases shall be transferred. Every suit in the nature of a bill of review or other action seeking to attach, avoid or set aside a judgment or other court order shall be assigned to the court which rendered such decree. Every motion for consolidation or joint hearing under Rule 174(a) shall be heard in the court in which the first case filed is pending. Upon motion granted, the cases being consolidated shall be transferred to the granting court.

CA:RULE9(69th)

Rule 27b (new). Transfer of Cases

Whenever any pending case is so related to another case pending in or dismissed by another court that a transfer of the case to such other court would facilitate orderly and efficient disposition of the litigation, the judge of the court in which either case is or was pending may, upon motion and notice (including his own motion) transfer the case to the court in which the earlier case was filed. Such cases may include but are not limited to:

1. Any case arising out of the same transaction or occurrence as did an earlier case, particularly if the earlier case was dismissed for want of prosecution or voluntarily dismissed by plaintiff at any time before final judgment;

2. Any case involving one or more of the same parties in an earlier case and requiring a determination of any of the same questions of fact or law as those involved in the earlier case;

3. Any case involving a plea that a judgment in the earlier case is conclusive of any of the issues of the later case by way of res judicata or estoppel by judgment, or any pleading that requires a construction of the earlier judgment or a determination of its effect;

4. Any suit for a declaration concerning the alleged duty of an insurer to provide a defense for a party to another suit; or

5. Any suit concerning which the duty of an insurer to defend was involved in another suit.

Rule 27c (new). Temporary Orders

Except in emergencies when the clerk's office is closed, no application for immediate or temporary relief shall be presented to a judge until a case has been filed and assigned to a court according to these rules. If the judge of the court to which a case is assigned is absent, cannot be contacted or is occupied, emergency application may be made to either a judge appointed to hear such matters, or in his absence, any judge of the same jurisdiction, who may sit for the judge of the court in which the case is pending, and who shall make all orders, writs, and process returnable to the court in which the case is pending. Any case not initially filed with the clerk before temporary hearing shall be filed, docketed and assigned to a court under normal filing procedures at the earliest practicable time. All writs and process shall be returnable to that court.

CA:RULE11(69th)

Rule 165a. Dismissal for Want of Prosecution

1. Dismissal. A case may be dismissed for want of prosecution on failure of any party seeking affirmative relief or his attorney to appear for any hearing or trial of which the party or attorney had notice, or on failure of the party or his attorney to request a hearing or take other action specified by the court within fifteen days after the mailing of notice of the court's intention to dismiss the case for want of prosecution. Notice of the court's intention to dismiss shall be sent by the clerk to each attorney of record, and to each party not represented by an attorney and whose address is shown on the docket or in the papers on file, by posting same in the United States Postal Service. Notice of the signing of the order of dismissal shall be given as provided in Rule 306a. Failure to mail notices as required by this rule shall not affect any of the periods mentioned in Rule 306a except as provided in that rule.

2. Reinstatement. A motion to reinstate shall set forth the grounds therefor and be verified by the movant or his attorney. It shall be filed with the clerk within 30 days after the order of dismissal is signed or within the period provided by Rule 306a. A copy of the motion to reinstate shall be served on each attorney of record and each party not represented by an attorney whose address is shown on the docket or in the papers on file. The clerk shall deliver a copy of the motion to the judge, who shall set a hearing on the motion as soon as practicable. The court shall notify all parties or their attorneys of record of the date, time and place of the hearing.

The court shall reinstate the case upon finding after a hearing that the failure of the party or his attorney was not intentional or the result of conscious indifference but was due to an accident or mistake or that the failure has been otherwise reasonably explained.

In the event for any reason a motion for reinstatement is not decided by signed written order within seventy-five days after the judgment is signed, or, within such other time as may be allowed by Rule 306a, the motion shall be deemed overruled by operation of law. If a motion to reinstate is timely filed by any party, the trial court, regardless of whether an appeal has been perfected, has plenary power to reinstate the case until 30 days after all such timely filed motions are overruled, either by a written and signed order or by operation of law, whichever occurs first.

3. Cumulative Remedies. This dismissal and reinstatement procedure shall be cumulative of the rules and laws governing any other procedures available to the parties in such cases. The same reinstatement procedure and timetable is applicable to all dismissals for want of prosecution including cases which are dismissed pursuant to the court's inherent power, whether or not a motion to dismiss has been filed.

4. Cases on File for Two or More Years. Except as provided in this rule, each civil case on file for two or more years which does not meet one of the exceptions herein provided, shall be dismissed for want of prosecution by the court unless set for hearing on written motion to retain submitted by counsel or set by the court within thirty days of receipt of notice of intent to dismiss which shall be sent by the court to all attorneys in charge and pro se litigants. Dismissal for want of prosecution shall occur at least once a year on the first Monday of April, and may occur at any time in accordance with section 1. of this rule.

Upon receipt of a motion to retain, the court shall notify the parties of the hearing date. At the hearing, if the parties request trial, the court shall either set the case for final pretrial conference to insure prompt completion of discovery, or, if the court finds the case is ready for trial, shall set the case for trial not less than 30 days from the date of hearing on retention. Cases shall be exempt from dismissal for want of prosecution if at the time of eligibility their status is one or more of the following:

- (1) set for trial;
- (2) one or more of the parties announces ready for trial subsequent to the issuance of the notice of intent to dismiss;
- (3) under Bankruptcy Stay Order;
- (4) having legal or other impediments which the court shall determine as justifiable grounds for retaining the case from dismissal.

Judicial districts previously by local rule having eligibility for dismissal for want of prosecution set at less than two years may retain their dismissal age criteria at less than two years; jurisdictions previously having eligibility for dismissal for want of prosecution set at over two years from the date of filing shall set dismissal for want of prosecution at three years maximum from the date of filing.

Rule 166f (new). Oral Hearings; Rulings of Submissions

The judge of the court in which a case is pending will hear all matters regarding cases either by submission without oral hearing or by oral hearing where such is requested in writing.

1. Form of the Motion. Motions shall be in writing, shall state the grounds therefor, and may include or be accompanied by authority for the motion. Motions shall set a date of submission, and shall be accompanied by a proposed order granting the relief sought. The proposed order shall be a separate instrument.

2. Service. Motions and responses shall be served in accordance with Rule 21 on all attorneys in charge and shall contain a certificate of service.

3. Submission Date. Motions shall bear a submission date at least ten (10) days from the date of filing. The motion will be submitted to the court on the specified day or as soon after as is practical.

4. Response. Responses by opposing parties shall be in writing, shall advise the court whether the motion is opposed or unopposed and may be accompanied by authority for opposition. Failure to file a response shall be a representation of no opposition.

5. Supporting Material. If the motion or response to motion requires consideration of facts not appearing of record, proof will be by affidavit or other documentary evidence which shall be filed with the motion or response.

6. Oral Argument. The motion or response shall include a request for hearing for oral argument if either party views argument as necessary, which the court shall grant in the form of an oral hearing or by telephone conference. The court may order oral argument.

7. Attorneys attending. Counsel attending a hearing shall be the attorney who expects to try the case, or who shall be fully authorized to state his party's position on the law and facts, make stipulations, and enter into any proceeding in behalf of the party. If the court finds counsel unqualified, the court may take any actions specified in this rule.

8. Failure to Appear. Where hearing is set and counsel fails to appear, the court may rule on motions and exceptions timely submitted, shorten or extend time periods, request or permit additional authorities or supporting material, award the prevailing party its costs, attorneys fees, or make other orders as justice requires.

Rule 247. Tried When Set

Every suit shall be tried when it is called, unless continued or postponed to a future day, unless continued under the provisions of Rule 247a, or placed at the end of the docket to be called again for trial in its regular order. No cause which has been set upon the trial docket for the date set except by agreement of the parties or for good cause upon motion and notice to the opposing party.

CA:RULE15(69th)

Rule 247a (new). Trial Continuances

Motions for continuance or agreements to pass cases set for trial shall be made in writing, and shall be filed not less than 10 days before trial date or 10 days before the Monday of the week set for trial, if no specific trial date has been set. Provided however, that agreed motions for continuance may be announced at first docket call in courts utilizing docket-call court setting methods. Emergencies requiring delay of trial arising within 10 days of trial or of the Monday preceding the week of trial shall be submitted to the court in writing at the earliest practicable time. Agreements to pass shall set forth specific legal, procedural or other grounds which require that trial be delayed. The court shall have full discretion in granting or denying delay in the trial of a case. Upon motion or agreement granted, the court shall reset the date for trial.

CA:RULE16(69th)

Rule 250 (new). Cases Set for Trial; Announcement of Ready

Cases set for trial on the merits shall be considered ready for trial, and there shall be no need for counsel to declare ready the week, month, or term prior to trial date after initial announcement of ready has occurred. Cases not tried as scheduled due to court delay shall be considered ready for trial at all times unless informed otherwise by motion, and such cases shall be carried over to the succeeding term for trial assignment until trial occurs or the case is otherwise disposed. In all instances it shall be the attorney's or pro se party's responsibility to know the status of a case set for trial.

CA:RULE14(69th)

Rule 305a (new). Final Preparation of Rulings, Orders and Judgments

Rulings, orders and judgments requiring the signature of the judge must be prepared by the prevailing party and submitted to all other counsel for "approval as to form", then transmitted to the court for signature. If the counsel for the prevailing party does not receive an "approved as to form" instrument after 10 days (or 3 days in temporary injunction matters) after submission to such other counsel, prevailing counsel may forward a duplicate original of such instrument to the court with a request that the court sign same without the "approval as to form" of the non-prevailing counsel and an affidavit verifying that the instrument has been submitted to the non-prevailing counsel as required by this rule and that no response has been received.

Non-prevailing counsel may oppose the instrument proffered to the court by requesting the court to set such matter for hearing thereon, provided that such request for setting of hearing must be made prior to the lapse of the said 10 (or 3) day period. It will be the further responsibility of the non-prevailing party to advise the court of the intention to appeal any such ruling, order or judgment.

CA:RULE13(69th)

Proposed Rule: Parties Responsible
for Accounting of Own Costs

Each party to a suit shall be responsible for accurately recording all costs and fees incurred during the course of a lawsuit, and such record shall be presented to the Court at the time the Judgment is submitted to the Court for entry, if the Judgment is to provide for the taxing of such costs. If the Judgment provides that costs are to be borne by the party by whom such costs were incurred, it shall not be necessary for any of the parties to present a record of court costs to the Court in connection with the entry of a Judgment.

A judge of any court may include in any order or judgment all taxable costs including the following:

- (1) Fees of the clerk and service fees due the county;
- (2) Fees of the court reporter for the original of stenographic transcripts necessarily obtained for use in the suit;
- (3) Compensation for experts, masters, interpreters, and guardians ad litem appointed pursuant to these rules and state statutes;
- (4) Such other costs and fees as may be permitted by these rules and state statutes.

Proposed Rule: Documents Not To Be Filed

Depositions, interrogatories, answers to interrogatories, requests for production or inspection, responses to those requests, and other pre-trial discovery materials propounded and answered in accordance with these rules shall not be filed with the Clerk. When any such documents are needed in connection with a pre-trial procedure, those portions which are relevant shall be submitted to the Court as an exhibit to a motion or answer thereto. Any of such material needed at a trial or hearing shall be introduced in Open Court as provided by these rules and the Rules of Evidence.

Proposed Rule 8: Attorney in Charge

Each party shall, on the occasion of its first appearance through counsel, designate in writing the "attorney in charge" for such party. Thereafter, until such designation is changed by written notice to the Court and written notice to all other parties in accordance with Rules 21a and 21b, said attorney in charge shall be responsible for the suit as to such party and shall attend or send a fully authorized representative to all hearings, conferences, and the trial.

All communications from the court or other counsel with respect to a suit will be sent to the attorney in charge.

Proposed Rule 10: Withdrawal of Counsel

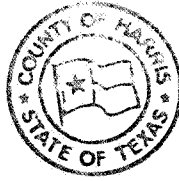
Withdrawal of counsel in charge may be effected (a) upon motion showing good cause and under such conditions imposed by the Presiding Judge; or (b) upon presentation by such attorney in charge of a notice of substitution designating the name, address and telephone number of the substitute attorney, with the signature of the attorney to be substituted, the approval of the client, and an averment that such substitution will not delay any setting currently in effect.

Proposed Rule 14(b): Return or Other
Disposition of Exhibits

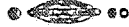
(1) Exhibits offered or admitted into evidence which are of unmanageable size (such as charts, diagrams and posters) will be withdrawn immediately upon completion of the trial and reduced reproductions substituted therefor. Model exhibits (such as machine parts) will be withdrawn upon completion of trial, unless otherwise ordered by the Judge.

(2) Exhibits offered or admitted into evidence will be removed by the offering party within thirty (30) days after final disposition of the cause by the court without notice if no appeal is taken. When an appeal is taken, exhibits returned by the Court of Appeals will be removed by the offering party within ten (10) days after telephonic notice by the clerk. Exhibits not so removed will be disposed of by the clerk in any convenient manner and any expense incurred taxed against the offering party without notice.

(3) Exhibits which are determined by the Judge to be of a sensitive nature, so as to make it improper for them to be withdrawn, shall be retained in the custody of the clerk pending disposition on order of the Judge.



RAY HARDY
DISTRICT CLERK
HOUSTON, TEXAS 77002



September 15, 1983

Supreme Court Justice James P. Wallace
Supreme Court Building
P. O. Box 12248
Austin, Texas 78711

Dear Justice Wallace:

I am writing to you again regarding the consideration of adopting several State Rules to delineate the following areas:

(1) Clarification of Lead Counsel and Attorney of Record

There appears to be some inconsistency with respect to which attorney is attorney of record and lead counsel, and which are recorded only as attorneys of record. According to State Rules 8 and 10, lead counsel is the first attorney employed (does this mean just employed, or the attorney whose signature appears on the first instrument filed by a party to a suit?), and remains such until he designates another attorney in his stead. Does State Rule 65, substitution of amended instrument for the original, act to substitute the lead counsel automatically? Or simply to remove the superceded instrument? If lead counsel remains such until a separate designation is made, of record, by the counsel substituting "out", then is it necessary to provide notice under State Rule 165a of dismissal for want of prosecution to all attorneys of record, or only to lead counsel? If the intent of the rule is to insure notification be made to the party, then notification to lead counsel should suffice; if, however, the notice is intended to protect every attorney connected to the suit (multiple attorneys representing one party, potentially), then the Rule would be left as written.

Below is Rule 1.G. (1) and (4), of the Local Rules Of The United States District Court for the Southern District of Texas, amended May, 1983, effective July 1, 1983, which appears to adequately answer these questions:

1.G. Attorney in Charge.

(1) Designation and Responsibility. Unless otherwise ordered, in all actions filed in or removed to the Court, each party shall, on the occasion of his first appearance through counsel, designate as "attorney in charge" for such party an attorney who is a member of the Bar of this Court or is appearing under the terms of paragraph E of this rule. Thereafter, until such designation is changed by notice pursuant to Local Rule 1.G.(4), said attorney in charge shall be responsible for the action as to such party and shall attend or send a fully authorized representative to all hearings, conferences and the trial.

1.G.(4) Withdrawal of Counsel. Withdrawal of counsel in charge may be effected (a) upon motion showing good cause and under such conditions imposed by the presiding judge; or (b) upon presentation by such attorney in charge of a notice of substitution designating the name, address and telephone number of the substitute attorney, the signature of the attorney to be substituted, the approval of the client, and an averment that such substitution will not delay any setting currently in effect.

Regarding the problem of appropriate attorney notification, the same Rule, 1.G.(5), regarding Notices, specifies:

All communications from the Court with respect to an action will be sent to the attorney in charge who shall be responsible for notifying his associate or co-counsel of all matters affecting the action.

(2) Attorney responsibility for the preparation and submission of a Bill of Costs:

Originally legislation was proposed to place the responsibility on each party to maintain a record and cause to have included in the judgment their recoverable costs. This legislation was not adopted. We recommend consideration of a State Rule which would require that each attorney be responsible for the inclusion of the recoverable cost in the Judgment submitted to the court. This might be attached to either State Rule 127 or State Rule 131, or be a separate rule, such as:

Rule: Parties Responsible for Accounting of Own Costs.

Each party to a suit shall be responsible for the accurate recordation of all costs incurred by him during the course of a law suit, and such shall be presented to the court at the time the Judgment is submitted.

(3) Removal of the Filing of All Depositions and Exhibits:

It is recommended that in an effort to save the counties from increasing space requirements to provide library facilities for case files, that a limit be set on the depositions, interrogatories, answers to interrogatories, requests for production or inspection and other discovery material so that only those instruments to be used in the course of the trial are filed. Again, the United States District Court for the Southern District of Texas has adopted this rule:

Rule 10. Filing Requirements.

F. Documents Not to be Filed. Pursuant to Rule 5(d), Fed. R. Civ. P., depositions, interrogatories, answers to interrogatories, requests for production or inspection, responses to those requests and other discovery material shall not be filed with the Clerk. When any such document is needed in connection with a

pretrial procedure, those portions which are relevant shall be submitted to the Court as an exhibit to a motion or answer thereto. Any of this material needed at trial or hearing shall be introduced in open court as provided by the Federal Rules. (Added May, 1983).

and

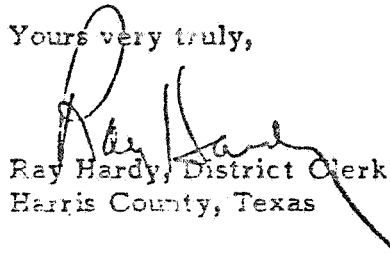
Rule 12. Disposition of Exhibits.

A. Exhibits offered or admitted into evidence which are of unmanageable size (such as charts, diagrams, and posters) will be withdrawn immediately upon completion of the trial and reduced reproductions substituted therefor. Model exhibits (such as machine parts) will be withdrawn upon completion of trial unless otherwise ordered by the Judge.

B. Exhibits offered or admitted into evidence will be removed by the offering party within 30 days after final disposition of the cause by the Court without notice if no appeal is taken. When an appeal is taken, exhibits returned by the Court of Appeals will be removed by the offering party within 10 days after telephonic notice by the Clerk. Exhibits not so removed will be disposed of by the Clerk in any convenient manner and any expenses incurred taxed against the offering party without notice.

C. Exhibits which are determined by the Judge to be of a sensitive nature so as to make it improper for them to be withdrawn shall be retained in the custody of the Clerk pending disposition on order of the Judge.

Yours very truly,



Ray Hardy, District Clerk
Harris County, Texas

RH/ba

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JOHN R. LEACH III
GRANT KAISER
CRAIG D. BALL

February 3, 1983

Honorable Jack Pope
Chief Justice
Supreme Court of Texas
Capitol Station
Austin, Texas 78701

Mr. George W. McCleskey
Chairman
Advisory Committee
Texas Rules of Civil Procedure
McCleskey, Harriger, Brazill & Graff
P. O. Box 6170
Lubbock, Texas 79413

Mr. Jack Eisenberg
c/o Messrs. Byrd, Davis & Eisenberg
P. O. Box 4917
Austin, Texas 78765

Dear Judge Pope, George and Jack:

The recent holding of the Dallas Court in number 05-82-00992-CV, Herritage Housing Corporation v. Harriett A. Ferguson, construing Rule 14c, seems to me to light up a problem that needs attention in Texas.

In the case mentioned the Dallas Court held that a "letter of credit" would not pass muster as a "negotiable obligation" under Rule 14c, which thus in turn could be used to supersede a judgment under Rule 364.

I have no great quarrel with the bottom line holding insofar as it interprets Rule 14c, but I do with the current restrictive interpretations of our supersedeas rules and principles as contrasted with the corresponding Federal rules. More specifically, Federal Rule 62 permits the district courts and courts of appeal to fashion stay orders that both protect the right of appeal, and, of course, the rights of the prevailing party.

Charles Byrd

W. W. Watkins

Robert E. Ballard

Harriett A. Ferguson

*Letter of credit
law statutes*

-2-

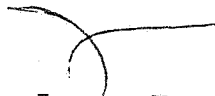
February 3, 1983

It is true that in most instances the Federal courts have required cash bonds, or the equivalent thereof, but where there are serious appellate questions, and it can be made to appear that the judgment plaintiff or creditor will not suffer a loss of actual rights and remedies by fashioning a remedy less than requiring of full cash or security, the Federal courts have not been unwilling to do so.

It is also true that the prevailing party insists upon his "full pound of flesh" to prevent the appeal, particularly if the judgment rests on shaky grounds but it has always seemed to me the right to levy and execute upon the trial court judgment which remains un-superseded can in some instances be too harsh and requires action and relief by the judgment-debtor that may be irreversible regardless of the success of the appeal.

In any event, I do suggest that both Committees give consideration to adopting a practice similar to the Federal rule which does permit some protection against the battering ram use of power to execute pending appeal.

Yours very truly,



W. James Kronzer

WJK/ja

Revision Proposed by Judge Thomas R. Phillips

14c: Deposit in Lieu of Surety Bond.

I don't understand the scope of the term "surety bonds";
are supersedeas bonds included?

W.E. GREER
CHARLES BROWN
JAMES R. FOUTCH
IRWIN M. HERZ, JR., P.C.
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FRANK T. CREWS, JR.
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June 26, 1984

Justice Pope
Mallory
answer for
us J.P.

Chief Justice Jack Pope
The Supreme Court of Texas
P. O. Box 12248
Capital Station
Austin, Texas 78711

Dear Mr. Chief Justice:

This letter is meant to call your attention to a problem that has become apparent with current practice under the Texas Rules of Civil Procedure, specifically Rules 456 and 457. This problem does not involve a case currently pending before any court. As you are aware, these rules require several notices of judgment to go to the attorneys involved in a case at the Court of Appeals. Rule 457 requires immediate notice of the disposition of the case. Rule 456 additionally requires a copy of the opinion to be sent out within three (3) days after rendition of the decision, in addition to a copy of the judgment to be mailed to the attorneys within ten (10) days after rendition of the decision. As you can see, the Rules contemplate three (3) separate notices to be mailed out by first class letter, which should, in this most perfect of all possible worlds, result in at least one of them getting through to an attorney to give him notice of the Court of Appeal's decision.

The problem arises when, as has been done, the office of the Clerk of a Court of Appeals decides to mail a copy of the judgment and the opinion together in one envelope to, in their minds at least, satisfy the combined requirements of Rules 456 and 457. With this as a regular practice, it takes very little in the way of a slip-up by a clerk or the post office to result in no notice at all being sent to an unsuccessful party.

The combination of Rules 21c and 458 as interpreted by the Supreme Court make jurisdictional the requirement that any Motion for Extension of Time to File a Motion for Rehearing be filed within thirty (30) days of the rendition of judgment. It can happen, and has happened, that because of failure of the Clerk of the Court to mail notice of the rendition of judgment the party can be foreclosed from pursuing Application for Writ of Error to the Texas Supreme Court.

While strict adherence to the requirements of the Rules for three (3) separate notices would go far to eliminate the problem, there are no adequate sanctions or protections for the parties when the clerks fail to provide the proper notices. One possible solution that may create some additional burden upon the staff of the Clerk of the Courts of Appeals, but would go far to protect the appellate attorney from clerical missteps, would be to amend the Rules to require at least one of the notices to be sent registered mail, return receipt requested. The second step could take one of two forms. One method would be to require proof of delivery of the notice by registered mail before the time limits for the Motion for Rehearing would be used to foreclose a party from further pursuant of their appeal. A second alternative would require the clerk of the court to follow up by telephone call if the green card is not returned within, say, fifteen (15) days. An amendment to the rules along these lines would help to push towards the goal expressed by the Supreme Court in B.D. Click Co. v. Safari Drilling Corp., 638 S.W.2d 8680 (Tex. 1982), when it said that the Texas Rules of Civil Procedure had been amended "to eliminate, insofar as practical, the jurisdictional requirements which have sometimes resulted in disposition of appeals on grounds unrelated to the merits of the appeal."

A second, more unwieldy alternative would be to make it explicit that Rule 306a(4) also applies to judgments by the Courts of Appeals. This would allow an attorney to prove lack of notice of the judgment of the Court of Appeals to prevent being foreclosed from filing a motion for rehearing and subsequent appeal to the Supreme Court.

Because of the problem outlined in this letter, we have now made it a practice, as a part of our appellate work, to call the clerk's office every week, after oral argument, to see if a decision has been rendered. If this becomes standard practice by all attorneys, it will add significantly to the work load of our already overburdened clerks.

We certainly appreciate your consideration of these suggestions made above.

Yours very truly,


Charles M. Jordan



I. Nelson Heggen

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NICHOLS, BALLARD & FRIEND**

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August 31, 1982

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COUNSEL TO THE FIRM

Honorable Jack Pope
Associate Justice
Supreme Court of Texas
Capitol Station
Austin, Texas 78711

Re: Rule 47

Dear Judge Pope:

I have taken a hand at preparing "sanctions" that might slow down the past and current abuse of the pleading Rules. I would suggest:

Failure to comply with (b) may result in

- (1) the imposition of any of the applicable sanctions provided in Rule 170(b) and (c),
- (2) an instruction to offending counsel not to inform the jury of the amount stated except in response to his opponent, or
- (3) be considered conduct in contravention of DR 7-102 (A) of the State Bar Rules governing Professional Responsibility...

At first I was so distressed that I wanted to make the sanctions mandatory, but I do believe the practice will slow down with these discretionary penalties.

I do hope it will be considered because the "violators" abound in the woods.

Sincerely,



W. James Kronzer

WJK/ja

