

SUPREME COURT ADVISORY COMMITTEE  
JULY 15, 1989 MEETING  
AGENDA

1. Approval of Minutes of May 26-27, 1989, meeting.
2. Report on "Sealed Records" Special Project on Family Law Section: Kenneth Fuller (Tabled at last meeting)
3. Report on Reorganization of TRAP: Mike Hatchell & Rusty McMains
4. Report on TRAP 1: Mike Hatchell and Rusty McMains
5. Report on TRAP 4: Mike Hatchell and Rusty McMains
6. Report on TRAP 9: Mike Hatchell and Rusty McMains
7. Report on TRAP 20: Mike Hatchell and Rusty McMains
8. Report on TRAP 47 & 49: Elaine Carlson
9. Report on TRAP 40: Mike Hatchell and Rusty McMains
10. Report on TRAP 51 & 53: Mike Hatchell and Rusty McMains
11. Report on TRAP 52: Mike Hatchell and Rusty McMains
12. Report on TRAP 82: Mike Hatchell and Rusty McMains
13. Report on TRAP 90 question of publication if writ granted (delete last phrase of current rule): Mike Hatchell and Rusty McMains
14. Report on TRAP 130: Mike Hatchell and Rusty McMains
15. Report on TRAP Section 17 Heading: Mike Hatchell and Rusty McMains
16. Report on TRCP 13: Frank Branson
17. Report of "Direct Actions" Special Subcommittee on TRCP 38(c) and TRCP 51(b): Broadus Spivey and David Beck
18. Report on TRCP 57: David Beck
19. Report on TRCP 120a burden of proof and proof by affidavits: David Beck
20. Report on TRCP 166 and 166b: Professor Dorsaneo
21. Report on TRCP 237a: Professor Dorsaneo
22. Special Subcommittee Report on TRCP 278: Professor Edgar, Gilbert Low and Tom Ragland

23. Report on TRCP 299 and 299a: J. Hadley Edgar
24. Report on TRCP 305: Harry Tindall
25. Report on TRCP 308a: Harry Tindall
26. Special Subcommittee Report on TRCP 329(b): Harry Tindall, Mike Hatchell & Professor Dorsaneo
27. Special Subcommittee Report on TRCP 330: Elaine Carlson, Charles Herring, and Tom Davis
28. Report on TRCP 749: Elaine Carlson
29. Report on TRCP 534: Anthony Sadberry
30. Form Subcommittee regarding House Bill (1637) → *Sealed book*
31. Form Standing Subcommittee on Multi-County and Multi-District Rules
32. Form Special Subcommittee for Comprehensive Reformatting and Review of Texas Rules of Civil Procedure in order of Federal Rules of Civil Procedure
33. Form ~~Special Subcommittee to combine~~ all trial "notice" and "service" rules in a single rule, e.g. TRCP 21a & 72.
34. Other new business.

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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.

4543.001



STATE OF TEXAS  
OFFICE OF THE GOVERNOR  
AUSTIN, TEXAS 78711

WILLIAM P. CLEMENTS, JR.  
GOVERNOR

June 22, 1989

Mr. Luther H. Soules, III  
Soules & Wallace  
Tenth Floor  
Republic of Texas Plaza  
175 East Houston Street  
San Antonio, Texas 78205-2230

Dear Mr. Soules:

Thank you for your recent letter urging my veto of S.B. 874.

You will be happy to know that I vetoed this particular piece of legislation.

Constituent input was vital to my decision and I appreciate your interest.

Sincerely,

  
William P. Clements, Jr.  
Governor

WPC:DPF/smm/lis

00011



BOB GLASGOW  
STATE SENATOR  
DISTRICT 22

The Senate of  
The State of Texas  
Austin

June 23, 1989

Chairman  
JURISPRUDENCE Committee  
Vice-Chairman  
FINANCE Committee  
Member  
ADMINISTRATION Committee  
STATE AFFAIRS Committee  
LEGISLATIVE BUDGET BOA.  
TEXAS LEGISLATIVE COUNCIL

Mr. Luther Soules, III  
10th Floor Republic of Texas Plaza  
175 E. Houston Street  
San Antonio, Texas 78205-2230

Dear Luke:

I enjoyed getting to visit with you again at the Committee hearing on S.B. 1013. I also appreciated your letter outlining your thoughts on the bill.

As we discussed during the hearing, it appears that part of the solution to this question regarding sanctions for frivolous lawsuits would be to have better lines of communication opened up between the Legislature and the Supreme Court.

Again, I appreciate you taking the time to come before the Committee to share your views.

Very truly yours,

  
Bob Glasgow

BG/ms



P.O. BOX 2910  
AUSTIN, TEXAS 78768-2910  
512-463-0532

*State of Texas*  
*House of Representatives*

200 NAVARRO  
SAN ANTONIO, TEXAS 78205  
512-225-3141

ORLANDO L. GARCIA  
STATE REPRESENTATIVE  
DISTRICT 115

June 20, 1989

Luther H. Soules, III  
Tenth Floor  
Republic of Texas Plaza  
175 East Houston Street  
San Antonio, Texas 78205-2230

Dear Mr. Soules:

As you know, the 71st Legislature has concluded its Regular Session. Previously you communicated your concern and interest regarding House Bill 2223 by Representative Culberson and Senate Bill 1013 by Senator Krier relating to frivolous lawsuits. Please be advised that the Legislature did not pass either of these bills.

Again, thank you for your communication and interest in our state government. Your participation in our government is an integral part of the democratic process. If I or my staff may be of assistance to you on any matter pending before the Legislature or any state agency, please call me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Orlando L. Garcia".

ORLANDO L. GARCIA  
State Representative

OLG/bac



HUGH PARMER  
District 12  
Fort Worth

The Senate of  
The State of Texas

CHAIRMAN:  
Intergovernmental Relations  
MEMBER:  
Administration  
Health and Human Services  
State Affairs

June 9, 1989

Mr. Luther H. Soules III  
Republic of Texas Plaza  
175 East Houston Street, 10th Floor  
San Antonio, Texas 78205-2230

Dear Mr. Soules:

Thank you for your letter concerning SB1019 and HB2223 relating to frivolous lawsuits. As you probably know, neither of these bills were passed into law during the legislative session. Please be assured that I will continue to keep your concerns with this issue in mind in the future.

Once again, thank you for writing. Please feel free to call on me if I may ever be of any assistance to you in the future.

Sincerely,

Hugh Parmer  
Senator

HP/ck

*Xe Justice Held.*  
✓  
6-21-89  
ms



ALAN SCHOOLCRAFT  
DISTRICT 121

State of Texas  
House of Representatives  
Austin

District Office:  
2117 Pat Booker Rd.  
Universal City, Texas 78148  
(512) 658-0768

May 24, 1989

A large, stylized handwritten signature in black ink, likely belonging to Alan Schoolcraft, located in the upper right quadrant of the page.

Luther H. Soules, III  
Republic of Texas Plaza  
175 East Houston Street  
San Antonio, Texas 78205-2230

Dear Mr. Soules:

Thank you for your recent letter in opposition to Senate Bill 1013, relating to frivolous law suits, and the companion House Bill 2223. I am always glad to hear from interested citizens about current issues.

Senate Bill 1013 was left pending in the Senate Jurisprudence Committee. House Bill 2223 has passed out of committee in the House but has not yet been set on the House Calendar. At this late date in the session, it is highly unlikely that either of these bills can possibly complete the legislative process.

I appreciate you sharing your concerns with me and if I can be of any further assistance to you in state government matters, please don't hesitate to call on me.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Schoolcraft", located below the "Sincerely," text.

Alan Schoolcraft  
State Representative

AS:cb



The State of Texas  
House of Representatives  
Austin, Texas

BETTY DENTON  
1023 JEFFERSON  
SUITE 203  
WACO, TEXAS 76701  
817/756-2650

A handwritten signature in cursive script, appearing to read "Betty Denton".

COMMITTEES:  
APPROPRIATIONS  
FINANCIAL INSTITUTIONS  
Chairman, Budget  
& Oversight

June 6, 1989

Mr. Luther H. Soules III  
Attorney at Law  
10th Floor, Republic of Texas Plaza  
175 East Houston Street  
San Antonio, Texas 78205-2230

Dear Mr. Soules:

You had written me regarding S.B. 1019 and H.B. 2223; however, S.B. 1019 deals with schools, and I believe that you are referring to S.B. 1013. H.B. 2223 was sent to the Calendars Committee but was never scheduled for debate. S.B. 1013 was never reported from Committee.

Again, I appreciate your keeping me informed of legislation of interest to you. Many good bills were not passed this Session, since about 4,700 pieces of legislation were introduced and only about 835 were actually passed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Betty Denton".  
Betty Denton

BD/dh

00016

TRCP 3a. Rules by Other Courts

Each court of appeals, 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.

[(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.]



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

TRCP 21. Motions

An 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 in writing, shall state the grounds therefor, shall set forth the relief or order sought, [shall be served on all 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/adverse/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.

[COMMENT TO 1990 CHANGE: To require service of all described documents on all parties.]

TRCP 21a. Notice

Every notice required by these rules, [and every application to the Court for an order,] 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 or of the document to be served~~ to the party to be served, or ~~his~~ his [the party's] duly authorized agent or ~~his~~ 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~~ 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~~ or his [an] attorney of record, ~~or by the sheriff~~ [a] 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 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, such notice or service may also be had by certified mail.~~

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

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.]

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.]

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 and 279.

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

TRCP 72 Filing Pleadings: Copy Delivered to All Parties or Attorneys

[A] Whenever any party [who] files, or asks leave to file any pleading, plea, or motion of any character which is not by law or by these rules required to be served upon [all other parties] the adverse party/ he shall at the same time either deliver [by any method approved for service in Rule 21a to] or mail to the adverse party [all parties not required to be served] or their attorney(s) [attorneys] of record a copy of such pleading, plea, or motion. The [party or] attorney or authorized representative of such attorney [of record], shall certify to the court [compliance with this rule in writing over signature] on the filed pleading, [plea or motion]. In writing over his/ her/ its signature, that he/ she/ it has complied with the provisions of this rule. If there is more than one adverse [other] party and the adverse parties/ are represented by different attorneys, one copy of such pleading shall be delivered or mailed to each attorney, representing the adverse parties, but a firm of attorneys associated in the case shall count as one. Not more than four copies of any pleading, plea, or motion shall be required to be furnished to adverse parties, and if there be more than four adverse parties, four copies of such pleading shall be deposited with the clerk of court, and the party filing them, or asking leave to file them, shall inform all adverse parties of their attorneys of record that such copies have been deposited with the clerk. The copies shall be delivered by the clerk to the first four

applications/entitled/thereof//and/in/such case/no/copies/shall/be  
required/to/be/mailed/or/delivered/to/the/adverse/parties/or  
their/attorneys/by/the/attorney/whom/filing/the/pleading. After  
[one] a copy of a pleading is furnished, to/an/attorney/who  
[a party] cannot require another copy of the same pleading to/be  
furnished/to/him [without tendering reasonable charge for copying  
and delivering.]

[COMMENT TO 1990 CHANGE: To require service on all parties.]

TRCP 73. Failure to Furnish [Serve or Deliver] Copy of Pleadings  
to Adversely Party

If any party fails to furnish [serve or deliver] the adversely party [other parties] with a copy of any pleading, [plea, or motion whenever required by these rules and] in accordance with the preceding rule [Rules 21a and 72 respectively], the court may in its discretion, on notice and hearing order all or any part of such pleading 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 adversely party [other parties] the amount of reasonable costs and expenses [including attorneys fees] incurred as a result of the failure, including attorney fees, or make such other order with respect to the failure as may be just.

[COMMENT TO 1990 CHANGE: To provide sanctions for the failure to serve all parties.]

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[.] 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. 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 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) (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.]

Rule 166. Pre-Trial Procedure; Formulating Issues

In any action, the court may in its discretion 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 dilatory pleas and all motions and exceptions relating to a suit pending;

(b) The simplification of the issues;

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

(d) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(e) The limitation of the number of expert witnesses;

(f) 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.

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

(g) (h) Such other matters as may aid in the disposition of the action. The court shall make an order which 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 or agreements of counsel; and such order when entered 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 a new paragraph (g) to express the ability of the trial courts at pretrial hearings to encourage settlement.]

