



The Supreme Court of Texas

CHIEF JUSTICE
NATHAN L. HECHT

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July 5, 2017

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters.

Rules on Enforcement of a Foreign Judgment or Arbitration Award in Family Law Cases. HB 45, passed by the 85th Legislature, directs the Court to adopt evidentiary and procedural rules to ensure that neither the Constitution nor public policy is violated by the application of foreign law or the recognition or enforcement of a foreign judgment or arbitration award in an action under the Family Code. Section 2 of the bill adds to the Government Code Section 22.0041, which contains the rulemaking directive and enumerates requirements for the rules. The Family Law Section of the State Bar and the Texas Family Law Foundation have offered to assist in writing these rules, and the Committee should work with them in preparing its recommendations. Because section 3 of the bill requires that the rules be adopted by January 1, 2018, the Committee should conclude its work by its October 27, 2017 meeting.

Supersedeas Rules for State-Actor Appellants. HB 2776, passed by the 85th Legislature, amends the Government Code to direct the Court to adopt rules providing that the right of a state-actor appellant under Section 6.001(b)(1)-(3) of the Civil Practice and Remedies Code to supersede a judgment or order on appeal is not subject to being counter-superseded under Rule of Appellate Procedure 24, except in an appeal involving a contested-case, administrative-enforcement action. Section 2 of the bill requires the rules to be adopted by May 1, 2018.

Forms for an Application for Injunctive Relief in Cyberbullying Cases. SB 179, known as David’s Law and passed by the 85th Legislature, amends several state statutes to address cyberbullying of minors. Section 11 of the bill adds Chapter 129A to the Civil Practice and Remedies Code and authorizes a victim of cyberbullying to seek injunctive relief against the perpetrator. Civil Practice and Remedies Code Section 129A.003 directs the Court to promulgate forms for an application for injunctive relief under the chapter and enumerates requirements for the forms.

Texas Rule of Appellate Procedure 11. In the attached memorandum, the State Bar Court Rules Committee proposes amendments to Rule of Appellate Procedure 11.

Procedural Rules on Limited-Scope Representation. In its December 6, 2016 report, the Texas Commission to Expand Civil Legal Services recommends that the Court adopt procedural rules to address issues raised by limited-scope representation. The Court requests the Committee to draft rules for the Court’s consideration. The Committee should solicit input from the family-law bar in doing so. The Commission’s report is available through the Court’s website.

Local Rules. Rule of Civil Procedure 3a and Rule of Judicial Administration 10 require the Court to approve any new or amended local rule of a trial court. The Court asks the Committee to propose a new process and corresponding rule amendments that remove the primary responsibility for approving the local rules of trial courts from the Supreme Court. The Committee should consider:

- whether statewide rules should define what must be in a local rule, rather than a standing order;
- whether the regional presiding judge, the regional court of appeals, or both should be required to approve local rules of trial courts and whether the process should be different for rules that only apply to criminal cases;
- whether trial courts should be able to adopt certain kinds of rules without prior approval of a supervising court; and
- a process for Supreme Court review of a proposed or enacted local rule at the request of any person.

Texas Rule of Civil Procedure 99. Subsections (b) and (c) set the deadline for filing an answer as “10:00 a.m. on the Monday next after the expiration of twenty days after the date of service.” The Court asks the Committee to consider whether the deadline should be simplified and to draft any recommended amendments.

Subsection (d) states: “The party filing any pleading upon which citation is to be issued and served shall furnish the clerk with a sufficient number of copies thereof for use in serving the parties to be served, and when copies are so furnished the clerk shall make no charge for the copies.” The advent of e-filing has rendered this language outdated. Filers want to avoid paying additional fees for service copies of the petition by printing out the copies themselves and having the clerk return the citation by email. But some trial court clerks refuse to provide a citation by email. The Court asks the Committee to consider what changes to Rule 99 are needed to update the process for issuing a citation on an e-filed petition and to draft any recommended amendments. The Committee should consider whether the rule should instruct the clerk to return a citation on an e-filed petition by email.

The Court asks the Committee to consider whether any other changes are necessary to conform the text of Rule 99 to modern practice.

Civil Case Information Sheet. Texas Rule of Civil Procedure 78a requires the filing of a civil case information with a petition that initiates a new civil lawsuit or requests modification or enforcement of an order in a family-law case. Appendix A to the Rules of Civil Procedure contains a form for the civil case information sheet. The Office of Court Administration has reported to the Court that all the information required by the civil case information sheet is captured independently by the e-filing system when a petition is e-filed. The Court asks the Committee's advice whether Rule 78a and Appendix A should be repealed or amended to apply to a smaller subset of cases.

Texas Rule of Civil Procedure 167. Rule 167.2(e)(2) imposes a 60-day waiting period after the appearance of the offeror or offeree, whichever is later, before an offer of settlement can be made under the rule. Subsection (b)(4) requires that the terms of a settlement offer include "attorney fees . . . that would be recoverable up to the time of the offer." Practitioners report that the 60-day waiting period is often unnecessary and increases the amount required to settle a claim under the rule. The Court asks the Committee's advice whether the 60-day waiting period should be eliminated or shortened.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Hecht", with a long, sweeping horizontal line extending to the right.

Nathan L. Hecht
Chief Justice

Attachment

February 14, 2017

Via Email

Chief Justice Nathan L. Hecht
Supreme Court of Texas
PO Box 12248
Austin, Texas 78711
nathan.hecht@txcourts.gov

Justice Jeffrey S. Boyd
Supreme Court of Texas
PO Box 12248
Austin, Texas 78711
jeff.boyd@txcourts.gov

Dear Chief Justice Hecht and Justice Boyd:

On behalf of the State Bar of Texas Court Rules Committee, I am pleased to submit the attached proposal for amendments to Rule 11 of the Texas Rules of Appellate Procedure. Please do not hesitate to contact me if you have any questions or concerns about the proposal.

Respectfully submitted,



Kennon L. Wooten
Chair, State Bar Court Rules Committee

Encl.

CC (via email):

Martha Newton, Rules Attorney, Supreme Court of Texas – martha.newton@txcourts.gov
Giana Ortiz, Vice-Chair, State Bar Court Rules Committee – gortiz@ortizlawtx.com

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STATE BAR OF TEXAS COURT RULES COMMITTEE

PROPOSED AMENDMENT TO RULE OF APPELLATE PROCEDURE 11

I. Exact language of existing Rule: TRAP 11

An appellate clerk may receive, but not file, an amicus curiae brief. But the court for good cause may refuse to consider the brief and order that it be returned. An amicus curiae brief must:

- (a) comply with the briefing rules for parties;
- (b) identify the person or entity on whose behalf the brief is tendered;
- (c) disclose the source of any fee paid or to be paid for preparing the brief; and
- (d) certify that copies have been served on all parties.

II. Proposed changes to existing rule:

An appellate clerk may receive, but not file, an amicus curiae brief. But the court for good cause may refuse to consider the brief and order that it be returned. An amicus curiae brief must:

- (a) **either be in the form of a letter or** comply with the briefing rules for **responding** parties;
- (b) identify the person or entity on whose behalf the brief is tendered;
- (c) disclose the source of any fee paid or to be paid for preparing the brief; and
- (d) certify that copies have been served on all parties.

III. Brief statement of reasons for requested change and advantages to be served by proposed new rule:

The existing rule states that amicus briefs must comply with the briefing rules for the parties, which requires the amicus to include, at a minimum, a table of contents and authorities, a summary of the argument, and an argument section, as is required for an appellee's brief pursuant to TRAP 38.2. Many times, amicus briefs include additional sections, such as a statement of the issues and a statement of facts consistent with the requirements for an appellant's brief pursuant to TRAP 38.1. The current practice, however, is that many amici submit letters rather than briefs. The proposed changes make clear that (1) an amicus can submit a letter in lieu of a brief; and (2) when submitting a brief, the amicus need only comply with the requirements for responding parties' briefs.