SCAC Meeting Agenda
Friday, October 10, 2025
9:00 a.m.

Location: State Bar of Texas Building
1414 Colorado Street
Austin, TX 78701

Welcome from Chief Justice Tracy Christopher

Status Report from Justice Jane Bland

Justice Bland will report on Supreme Court actions and those of other courts related to the Supreme Court Advisory Committee since the August 29, 2025 meeting.

Comments from Justice Evan Young

I. Eviction Rules

Eviction Rules Task Force

Hon. Jennifer Rymell – Chair
Hon. Brad Cummings
David Fritsche
Hon. Cody Henson
Hon. Sylvia Holmes
Sandy Hoy
Hon. Tricia Krenek
Eric Kwartler
Nelson Mock
Hon. Manpreet Monica Singh
Hon. Stacye Speck
Hon. Amy Tarno
Bronson Tucker
Hon. Holly Williamson

Eviction Rules Task Force Cover Letter
Exhibit A – October 3, 2025 Redline Modified Rules
Exhibit B – October 3, 2025 Clean Modified Rules

II. Summary Judgment

Summary Judgment Ad Hoc Subcommittee:

Richard Orsinger – Chair
Hon. Ana E. Estevez – Vice Chair
Hon. Harvey G. Brown
Prof. Elaine A. G. Carlson
Hon. Tracy E. Christopher
Prof. William V. Dorsaneo III
Hon. David L. Evans
Prof. Lonny S. Hoffman
John Kim
Hon. Emily Miskel
Giana Ortiz
Jim Perdue, Jr.
Pete Schenkkan
Hon. John F. Warren

October 1, 2025 Memo re: Draft Revisions to TRCP 166a
Exhibit A – Version 1
Exhibit B – Version 2
Exhibit C – Version 3
SB 293
HB 16

III. Business Court

Business Court Subcommittee:
Marcy Hogan Greer – Chair
Robert Levy – Vice Chair
Hon. Harvey G. Brown
Hon. Jerry Bullard
Rusty Hardin
Hon. Peter Michael Kelly
Hon. Emily Miskel
Christopher D. Porter
Hon. H.R. Wallace, Jr.
Hon. John F. Warren

October 6, 2025 Memo re: Proposed Revised Rules Changes
Exhibit A – October 6, 2025 Proposed Revised Rules Changes
Exhibit B – June 24, 2025 Memo re: Proposed Rules Changes

IV. Code of Judicial Conduct

Judicial Administration Subcommittee:
Hon. Bill Boyce – Chair
Kennon Wooten – Vice Chair
Hon. Nicholas Chu
Hon. Tom Gray
Michael A. Hatchell
Prof. Lonny S. Hoffman
Macey Reasoner Stokes
Hon. Maria Salas Mendoza

October 6, 2025 Memo re: Revisions to Code of Judicial Conduct
Exhibit A – Texas Code of Judicial Conduct

V. Confidential Identity in Court Proceedings

Legislative Mandates Subcommittee:
Jim M. Perdue, Jr. – Chair
Pete Schenkkan – Vice Chair
Hon. John Browning
Hon. Jerry Bullard
Prof. Elaine A. G. Carlson
Hon. David L. Evans
Cynthia Barela Graham
Robert Levy
Richard Orsinger

October 6, 2025 Memo re: Confidential Identities and Other Sensitive Information-Updated Report
Exhibit A – September 13, 2019 San Antonio Express-News Article
Exhibit B – April 3, 2011 The Lufkin Daily News Article

VI. Texas Rule of Evidence 404 and 405

Evidence Subcommittee:
Hon. Harvey G. Brown – Chair
Roger W. Hughes – Vice Chair
Prof. Elaine A. G. Carlson
Jack P. Carroll
Marcy Hogan Greer
Prof. Lonny S. Hoffman
Hon. Peter Michael Kelly

August 18, 2025 Memo re: Impact of HB 1778 on TRE 404 and 405

VII. Texas Rules of Evidence

Evidence Subcommittee:

Hon. Harvey G. Brown – Chair
Roger W. Hughes – Vice Chair
Prof. Elaine A. G. Carlson
Jack P. Carroll
Marcy Hogan Greer
Prof. Lonny S. Hoffman
Hon. Peter Michael Kelly

June 20, 2025 Memo re: FRE Amendments Effective December 1, 2024

Tab I-Eviction Rules Task Force

Supreme Court of Texas Eviction Rules Task Force Report

In 2025, the 89th Texas Legislature passed Senate Bill 38 (SB 38), a bill that amends current law relating to the eviction from real property of certain persons not entitled to enter, occupy, or remain in possession of a premises. The effective date of the legislation is January 1, 2026. This bill requires that the Supreme Court adopt rules as necessary to clarify eviction procedures consistent with Chapter 24 of the Property Code, as amended.

In that regard, on September 2, 2025, the Court appointed the Eviction Rules Task Force, who reviewed and proposed changes to the Rules of Practice in Justice Court (Texas Rules of Civil Procedure 500-510), as well as Rule 143a. The Task Force is chaired by Hon. Jennifer Rymell, Tarrant County Court at Law #2. The other Task Force members are Hon. Brad Cummings, David Fritsche, Hon. Cody Henson, Hon. Sylvia Holmes, Sandy Hoy, Hon. Tricia Krenek, Eric Kwartler, Nelson Mock, Hon. Manpreet Monica Singh, Hon. Stayce Speck, Hon. Amy Tarno, Bronson Tucker, and Hon. Holly Williamson- included are Justices of the Peace, County Court at Law Judges, practitioners and the General Counsel of the Texas Justice Court Training Center. The work of the Task Force was accomplished through three subcommittees. Each subcommittee was tasked with reviewing and proposing changes to the Rules of Practice in Justice Court based on specific sections of SB 38. The first subcommittee, chaired by Hon. Holly Williamson, Harris County Justice of the Peace Court, Precinct 8, focused on Sections 1-6 and 14. The second subcommittee chaired by Hon. Sylvia Holmes, Travis County Justice of the Peace Court, Precinct 3, focused on Sections 7,8, and 13. Lastly, the third subcommittee, chaired by the Hon. Manpreet Monica Singh, Harris County, Civil County Court at Law #4, focused on Sections 9-12. Each subcommittee circulated its proposed rule changes to all Task Force members and full Task Force meetings were devoted to reviewing the subcommittees' work and providing input on

the rules. These draft rule changes are a compilation of those efforts and based on a general consensus of the Task Force.

RULE 143a. COSTS ON APPEAL TO COUNTY COURT

Except for appeals of eviction cases, ~~If~~ if the appellant fails to pay the costs on appeal from a judgment of a justice court ~~of the peace or small claims court~~ within twenty (20) days after being notified to do so by the county clerk, the appeal shall be deemed not perfected and the county clerk shall return all papers in said cause to the justice of the peace having original jurisdiction and the justice ~~of the peace~~court shall proceed as though no appeal had been attempted. A party who perfects an appeal of a justice court judgment with a Statement of Inability to Afford Payment of Court Costs is not required to pay the county court filing fee or file an additional Statement of Inability in the county court ~~is not required to file a second Statement of Inability~~to waive costs on appeal.

RULE 500. GENERAL

RULE 500.2. DEFINITIONS

In Part V of these Rules of Civil Procedure:

(a) "Answer" is the written response that a party who is sued must file with the court after being served with a citation.

(b) "Citation" is the court-issued document required to be served upon a party to inform the party that it has been sued.

(c) "Claim" is the legal theory and alleged facts that, if proven, entitle a party to relief against another party in court.

(d) "Clerk" is a person designated by the judge as a justice court clerk, or the judge if there is no clerk available.

(e) "Counterclaim" is a claim brought by a party who has been sued against the party who filed the lawsuit, for example, a defendant suing a plaintiff.

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

(g) "Court proceeding" is an appearance before the court, such as a hearing or a trial.

(h) "Cross-claim" is a claim brought by one party against another party on the same side of a lawsuit. For example, if a plaintiff sues two defendants, the defendants can seek relief against each other by means of a cross-claim.

(i) "Default judgment" is a judgment awarded to a plaintiff when the defendant fails to answer and dispute the plaintiff's claims in the lawsuit.

(j) "Defendant" is a party who is sued, including a plaintiff against whom a counterclaim is filed.

(k) "Defense" is an assertion by a defendant that the plaintiff is not entitled to relief from the court.

(l) "Discovery" is the process through which parties obtain information from each other in order to prepare for trial or enforce a judgment. The term does not refer to any information that a party is entitled to under applicable law.

(m) "Dismissed without prejudice" means a case has been dismissed but has not been finally decided and may be refiled.

(n) "Dismissed with prejudice" means a case has been dismissed and finally decided and may not be refiled.

(o) "Forcible Entry" is (1) an entry without the consent of the person in actual possession of the property; (2) an entry without the consent of a tenant at will or by sufferance; or (3) an entry without the consent of a person who acquired possession by forcible entry.

(p) "Forcible Entry and Detainer" is when a person has committed a forcible entry onto another's property and refuses to surrender possession on demand.

~~(o)~~(q) "Judge" is a justice of the peace.

~~(p)~~(r) "Judgment" is a final order by the court that states the relief, if any, a party is entitled to or must provide.

~~(q)~~(s) "Jurisdiction" is the authority of the court to hear and decide a case.

~~(r)~~(t) "Motion" is a request that the court make a specified ruling or order.

~~(s)~~(u) "Notice" is a document prepared and delivered by the court or a party stating that something is required of the party receiving the notice.

~~(t)~~(v) "Participant" is any party, attorney, witness, or juror who participates in a court proceeding.

~~(u)~~(w) "Party" is a person or entity involved in the case that is either suing or being sued, including all plaintiffs, defendants, and third parties that have been joined in the case.

~~(v)~~(x) "Petition" is a formal written application stating a party's claims and requesting relief from the court. It is the first document filed with the court to begin a lawsuit.

~~(w)~~(y) "Plaintiff" is a party who sues, including a defendant who files a counterclaim.

~~(x)~~(z) "Pleading" is a written document filed by a party, including a petition and an answer, that states a claim or defense and outlines the relief sought.

~~(y)~~(aa) "Relief" is the remedy a party requests from the court, such as the recovery of money or the return of property.

~~(z)~~(bb) "Serve" and "service" are delivery of citation as required by Rule 501.2, or of a document as required by Rule 501.4.

(cc~~aa~~) "Sworn" means signed in front of someone authorized to take oaths, such as a notary, or signed under penalty of perjury. Filing a false sworn document can result in criminal prosecution.

(dd~~ab~~) "Third party claim" is a claim brought by a party being sued against someone who is not yet a party to the case.

RULE 501. CITATION AND SERVICE

RULE 501.2. SERVICE OF CITATION

(a) *Who May Serve.* No person who is a party to or interested in the outcome of the suit may serve citation in that suit, and, unless otherwise authorized by written court order, only a sheriff or constable may serve ~~a citation in an eviction case,~~ a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced by the person delivering the process. ~~Other c~~Citations other than in eviction suits may be served by:

(1) a sheriff or constable;

(2) a process server certified by the Judicial Branch Certification Commission;

(3) the clerk of the court, if the citation is served by registered or certified mail; or

(4) a person authorized by court order who is 18 years of age or older.

(b) *Method of Service.* Citation must be served by:

(1) delivering a copy of the citation with a copy of the petition attached to the defendant in person, after endorsing the date of delivery on the citation; or

(2) mailing a copy of the citation with a copy of the petition attached to the defendant by registered or certified mail, restricted delivery, with return receipt or electronic return receipt requested.

(c) *Service Fees*. A plaintiff must pay all fees for service unless the plaintiff has filed a Statement of Inability to Afford Payment of Court Costs with the court. If the plaintiff has filed a Statement, the plaintiff must arrange for the citation to be served by a sheriff,

constable, or court clerk.

(d) *Service on Sunday*. A citation cannot be served on a Sunday except in attachment, garnishment, sequestration, or distress proceedings.

(e) *Alternative Service of Citation*. If the methods under (b) are insufficient to serve the defendant, the plaintiff, or the constable, sheriff, process server certified by the Judicial Branch Certification Commission, or other person authorized to serve process, may make a request for alternative service. This request must include a sworn statement describing the methods attempted under (b) and stating the defendant's usual place of business or residence, or other place where the defendant can probably be found. The court may authorize the following types of alternative service:

(1) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also leaving a copy of the citation with petition attached at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age; or

(2) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also serving by any other method that the court finds is reasonably likely to provide the defendant with notice of the suit.

(f) *Service by Publication*. In the event that service of citation by publication is necessary, the process is governed by the rules in county and district court.

RULE 503. DEFAULT JUDGMENT; PRE-TRIAL MATTERS; TRIAL

RULE 503.2. SUMMARY DISPOSITION

(a) *Motion*. A party may file a sworn motion for summary disposition of all or part of a claim or defense without a trial. The motion must set out all supporting facts. All documents on which the motion relies must be attached. The motion must be granted if it shows that:

(1) there are no genuinely disputed facts that would prevent a judgment in favor of the party;

(2) there is no evidence of one or more essential elements of a defense which the defendant must prove to defeat the plaintiff's claim; or

(3) there is no evidence of one or more essential elements of the plaintiff's claim.

(b) *Response.* The party opposing the motion may file a sworn written response to the motion.

(c) *Hearing*. The court must not consider a motion for summary disposition until it has been on file for at least 14 days. The judge may consider evidence offered by the parties at the hearing. By agreement of the parties, the judge may decide the motion and response without a hearing.

(d) *Order*. The judge may enter judgment as to the entire case or may specify the facts that are established and direct such further proceedings in the case as are just. A judgment must comply with Rule 505.1.

~~(d)~~(e) *Forcible Entry and Detainer Suits*. Summary disposition in a forcible entry and detainer suit must be conducted pursuant to Rule 510.XX.

RULE 503.4. PRETRIAL CONFERENCE

(a) *Conference Set; Issues.* If all parties have appeared in a lawsuit, the court, at any party's request or on its own, may set a case for a pretrial conference. Reasonable notice must be sent to all parties at their addresses of record. Appropriate issues for the pretrial conference include:

(1) discovery;

(2) the amendment or clarification of pleadings;

(3) the admission of facts and documents to streamline the trial process;

(4) a limitation on the number of witnesses at trial;

(5) the identification of facts, if any, which are not in dispute between the parties;

(6) mediation or other alternative dispute resolution services;

(7) the possibility of settlement;

(8) trial setting dates that are amenable to the court and all parties;

(9) the appointment of interpreters, if needed;

(10) the application of a Rule of Civil Procedure not in Part V or a Rule of Evidence; and

(11) any other issue that the court deems appropriate.

(b) *Eviction Cases.* A court may not adopt local rules, forms, or standing orders for eviction suits that require any pretrial conference or other proceeding before trial. The court must not schedule a pretrial conference in an eviction case if it would delay trial.

RULE 503.5. ALTERNATIVE DISPUTE RESOLUTION

(a) *State Policy.* The policy of this state is to encourage the peaceable resolution of disputes through alternative dispute resolution, including mediation, and the early settlement of pending litigation through voluntary settlement procedures. For that purpose, the judge may order any case to mediation or another appropriate and generally accepted alternative dispute resolution process.

(b) *Eviction Cases.* A court may not adopt local rules, forms, or standing orders for eviction suits that require any mediation or other proceeding before trial. The court must not order mediation or any other alternative dispute resolution process in an eviction case if it would delay trial.

RULE 510. EVICTION CASES

RULE 510.1. APPLICATION AND LIMITS ON AUTHORITY TO MODIFY PROCEDURES

(a) Rule 510 applies to a lawsuit to recover possession of real property under Chapter 24 of the Texas Property Code.

~~(a)~~(b) Except as provided by Chapter 24 of the Texas Property Code, only the Texas Legislature may modify or suspend procedures in eviction cases.

RULE 510.2. COMPUTATION OF TIME FOR EVICTION CASES

(a) *Computation of Time*. A period of time for eviction cases:

(1) does not include the day of the event that begins the period;

(2) includes Saturdays, Sundays, and state or federal holidays;

(3) includes the last day of the period; and

(4) if the last day of the period is a Saturday, Sunday, or state or federal holiday, is extended so that the last day of the period is the next day that is not a Saturday, Sunday, or state or federal holiday.

~~(a)~~(b) *Court Closures*. Additionally, the time period for filing any document with the court is extended to the next day that the court is open if the last day of that time period falls on a day when the court is closed all day for any reason or a day when the court closes before 5:00 PM. The time period for paying rent into the court's registry is extended to the next day that the court is open if the last day of that time period falls on a day when the court is closed all day for any reason or a day that the court closes before the time listed on the notice to pay rent into the registry.

~~Rule 500.5 applies to the computation of time in an eviction case. But if a document is filed by~~

~~mail and not received by the court by the due date, the court may take any action authorized by these rules, including issuing a writ of possession requiring a tenant to leave the property.~~

RULE 510.3. PETITION

(a) *Contents*. In addition to the requirements of Rule 502.2, a petition in an eviction case must be sworn to by the plaintiff and must contain:

(1) a description, including the address, if any, of the premises that the plaintiff seeks possession of;

(2) a description of the facts and the grounds for eviction;

(3) a description of when and how pre-suit notice was given, and whether it was a notice to vacate or a notice to pay rent or vacate ~~or a notice to vacate was delivered~~;

(4) the total amount of rent due and unpaid at the time of filing, if any, and if the eviction is based solely on nonpayment of rent, whether the tenant was late or delinquent in paying rent before the month in which notice ~~i~~was given, regardless of whether the landlord is joining a claim for back rent; ~~and~~

(5) a statement that attorney fees are being sought, if applicable; and

(6) if the plaintiff is alleging a forcible entry and detainer, whether a sworn motion for summary disposition is included in or attached to the petition.

(b) A court may not adopt local rules, forms, or standing orders that:

(1) require content in or with the petition other than the content required by this rule; or

~~(5)~~(2) authorize the dismissal of an eviction suit on the basis that the petition is improper if the petition meets or can be amended to meet the requirements of this rule.

~~(b)~~(c) *Where Filed*. The petition must be filed in the precinct where the premises is located. If it is filed elsewhere, the judge must dismiss the case. The plaintiff will not be entitled to a refund of the filing fee, but will be refunded any service fees paid if the case is dismissed before service is attempted.

~~(c)~~(d) *Defendants Named*. If the eviction is based on a written residential lease, the plaintiff must name as defendants all tenants obligated under the lease residing at the premises whom plaintiff seeks to evict. No judgment or writ of possession may issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition and served with citation.

~~(d)~~(e) *Claim for Rent*. A claim for rent within the justice court's jurisdiction may be asserted in an eviction case.

~~(e)~~(f) *Only Issue*. The court must adjudicate the right to actual possession and not title. Counterclaims and the joinder of suits against third parties are not permitted in eviction cases. A claim that is not asserted because of this rule can be brought in a separate suit in a court of proper jurisdiction.

RULE 510.4. ISSUANCE, SERVICE, AND RETURN OF CITATION

(a) *Issuance of Citation; Contents*. When a petition is filed, the court must immediately issue citation directed to each defendant. The citation must:

(1) be styled "The State of Texas";

(2) be signed by the clerk under seal of court or by the judge;

(3) contain the name, location, and address of the court;

(4) state the date of filing of the petition;

(5) state the date of issuance of the citation;

(6) state the file number and names of parties;

(7) state the plaintiff's cause of action and relief sought;

(8) be directed to the defendant;

(9) state the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff;

(10) state the day the defendant must appear in person for trial at the court issuing citation, which must not be less than 10 days nor more than 21 days after the petition is filed;

(11) notify the defendant that if the defendant fails to appear in person for trial, judgment by default may be rendered for the relief demanded in the petition;

(12) inform the defendant that, upon timely request and payment of a jury fee no later than 3 days before the day set for trial, the case will be heard by a jury;

(13) contain all warnings required by Chapter 24 of the Texas Property Code, including the following notices to the defendant on the first page, in English and Spanish, in conspicuous bold print:

(A) FAILURE TO APPEAR FOR TRIAL MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU; and

(B) SUIT TO EVICT:
THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL RIGHTS OR RELIEF RELATED TO THIS SUIT UNDER FEDERAL LAW, INCLUDING THE SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501 ET SEQ.) OR STATE LAW, INCLUDING SECTION 92.017, TEXAS PROPERTY CODE. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE; and

(14) include the following statement: "For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

(b) *Service and Return of Citation*.

(1) Who May Serve. ~~Unless otherwise authorized by written court order, citation must be served by~~Except as provided by (b)(5), ~~O~~only a sheriff or constable may serve a citation in an eviction case.

~~(1)~~(2) A plaintiff must pay all fees for service unless the plaintiff has filed a Statement of Inability to Afford Payment of Court Costs with the court.

~~(2)~~(3) Method of Service. The ~~constable,~~ sheriff or constable~~, or other person authorized by written court order~~ receiving the citation shall make a diligent effort to ~~must~~ execute it within five business days after the date the petition is filed by delivering a copy with a copy of the petition attached to the defendant, or by leaving a copy with a copy of the petition attached with some person, other than the plaintiff, over the age of 16 years, at the defendant's usual place of residence, at least ~~6~~ 4 days before the day set for trial. A citation cannot be served on a Sunday.

(4) Return of Service. At least one day before the day set for trial, the ~~constable,~~ sheriff or constable~~, or other person authorized by written court order~~ must complete and file a return of service in accordance with Rule 501.3 with the court that issued the citation. In addition, if service was executed by another law enforcement officer under ~~510.4~~(b)(5), the return of service must also include an attestation that the officer was qualified to serve the citation under Chapter 24 of the Texas Property Code.

(5) *Service by Other Law Enforcement Officer*. If, after the fifth business day from

the date the petition is filed, the sheriff or constable has not served the citation and petition, the plaintiff may file with the court a request for issuance of an alias citation to be served by any other law enforcement officer, including an off-duty officer with appropriate identification, that has received appropriate training in the service of process, eviction procedures, and the execution of writs, as determined by the Texas Commission on Law Enforcement.

(A) When such a request is filed with the court, the clerk shall immediately issue the alias citation.

~~(A)~~(B) The plaintiff will not be entitled to a refund of any service fee and is responsible to the other law enforcement officer for payment of a fee for the service, if any.

(c) *Alternative Service by Delivery to the Premises*.

(1) When Allowed. The citation may be served by delivery to the premises if:

(A) the ~~constable,~~ sheriff, constable, or other law enforcement officer ~~person authorized by written court order~~ is unsuccessful in serving the citation under (b);

(B) the petition lists all home and work addresses of the defendant that are known to the plaintiff and states that the plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located; and

(C) the ~~constable,~~ sheriff, constable, or other ~~person authorized~~law enforcement officer files a sworn statement that it has made diligent efforts to serve such citation on at least two occasions at all addresses of the defendant in the county where the premises are located, stating the times and places of attempted service.

(2) Authorization. The judge must promptly consider a sworn statement filed under (1)(C) and determine whether citation may be served by delivery to the premises. The plaintiff is not required to make a request or motion for alternative service.

(3) Method. If the judge authorizes service by delivery to the premises, the sheriff, constable, ~~sheriff,~~ or other ~~person authorized by written court order~~law enforcement officer must, at least ~~6~~ 4 days before the day set for trial:

(A) deliver a copy of the citation with a copy of the petition attached to the premises by placing it through a door mail chute or slipping it under the front door; if neither method is possible, the officer may securely affix the citation to the front door or main entry to the premises; and

(B) deposit in the mail a copy of the citation with a copy of the petition

attached, addressed to defendant at the premises and sent by first class mail.

(4) Notation on Return. The sheriff, constable~~, sheriff~~, or other ~~person authorized by written court order~~law enforcement officer must note on the return of service the date the citation was delivered and the date it was deposited in the mail.

RULE 510.5. REQUEST FOR IMMEDIATE POSSESSION

(a) *Immediate Possession Bond.* The plaintiff may, at the time of filing the petition or at any time prior to final judgment, file a possession bond to be approved by the judge in the probable amount of costs of suit and damages that may result to defendant in the event that the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages that are adjudged against plaintiff.

(b) *Notice to Defendant*. The court must notify a defendant that the plaintiff has filed a possession bond. The notice must be served in the same manner as service of citation and must inform the defendant that if the defendant does not file an answer or appear for trial, and judgment for possession is granted by default, an officer will place the plaintiff in possession of the property on or after the 7th day after the date defendant is served with the notice.

(c) *Time for Issuance and Execution of Writ*. If judgment for possession is rendered by default and a possession bond has been filed, approved, and served under this rule, a writ of possession must issue immediately upon demand and payment of any required fees. The writ must not be executed before the 7th day after the date defendant is served with notice under (b).

(d) *Effect of Appearance*. If the defendant files an answer or appears at trial, no writ of possession may issue before the 6th day after the date a judgment for possession is signed or the day following the deadline for the defendant to appeal the judgment, whichever is later.

RULE 510.XX. REQUEST FOR SUMMARY DISPOSITION

(a) *Motion for Summary Disposition*. The plaintiff may, at the time of filing a sworn petition alleging a forcible entry and detainer, file a sworn motion for summary disposition without trial. The motion must set out all supporting facts, and all documents on which the motion relies must be attached.

~~(a)~~(b) *Notice to Defendant*. The court must notify a defendant that the plaintiff has filed a motion for summary disposition. The notice must be included in the citation, on the first page, in English and Spanish, in conspicuous bold print, and contain the following notice language:

THE PETITION INCLUDES A MOTION FOR SUMMARY DISPOSITION. IF THE

MOTION SHOWS THERE ARE NO GENUINELY DISPUTED FACTS THAT WOULD PREVENT A JUDGMENT IN FAVOR OF THE LANDLORD, THE COURT MAY ENTER JUDGMENT IN FAVOR OF THE LANDLORD WITHOUT A TRIAL UNLESS: (1) NOT LATER THAN THE FOURTH DAY AFTER YOU ARE SERVED WITH THE LANDLORD'S SWORN PETITION, YOU FILE A RESPONSE SETTING OUT SUPPORTING FACTS AND ANY APPLICABLE DOCUMENTS ON WHICH YOUR RESPONSE RELIES; AND (2) THE JUSTICE COURT DETERMINES THAT SERVICE ON YOU WAS PROPER AND, BASED ON THE LANDLORD 'S SWORN PETITION AND YOUR RESPONSE, THERE ARE GENUINELY DISPUTED FACTS THAT WOULD PREVENT A JUDGMENT IN FAVOR OF THE LANDLORD.

(c) *Response*. Not later than the fourth day after the defendant is served with the sworn petition and motion, the defendant may file a response setting out supporting facts and must provide all documents on which the response relies. The court may consider a response filed after the fourth day if the court determines that there are genuinely disputed facts and judgment has not been entered.

(d) *No Disputed Facts*. After proper service and consideration of the sworn petition and defendant's response, if any, the court may enter judgment for the plaintiff if there are no genuinely disputed facts.

(e) *Trial*. If the court determines that there are genuinely disputed facts, and a trial setting is not pending, the court shall set a trial date that is not earlier than the 10th day and not later than the 21st day after the date the sworn petition is filed by the plaintiff. The court may immediately set the case for a trial upon the defendant's request for a trial in response to a motion for summary disposition.

(f) *Judgment*. Judgment entered on a motion for summary disposition has the same effect as any other judgment in an eviction suit.

~~(b)~~(g) *Notice of Default*. If a default judgment under this section is signed, the clerk must comply with Rule 503.1(d) and immediately mail written notice of the judgment by first class mail to the defendant at the address provided by the plaintiff and, if different, at the address of the premises. A default judgment must comply with Rule 505.1.

~~The court must notify a tenant in writing of a default judgment under this section by sending a copy of the judgment to the premises by first class mail not later than 48 hours after the entry of the judgment.~~

RULE 510.6. TRIAL DATE; ANSWER; DEFAULT JUDGMENT

(a) *Trial Date and Answer*. The defendant must appear for trial on the day set for trial in the citation or subsequent trial notice. The defendant may, but is not required to, file a written answer with the court on or before the day set for trial in the citation.

(b) *Default Judgment*. If the defendant fails to appear at trial and fails to file an answer before

the case is called for trial, and proof of service has been filed in accordance with Rule 510.4, the allegations of the petition must be taken as admitted and judgment by default rendered accordingly. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence and render judgment accordingly. Notice of a default judgment, as required by Rule 503.1(d), must be sent to the defendant. A default judgment must comply with Rule 505.1.

(c) *Notice of Default.* When a default judgment is signed, the clerk must comply with Rule 503.1(d) and immediately mail written notice of the judgment by first class mail to the defendant at the address provided by the plaintiff and, if different, at the address of the premises.

RULE 510.7. TRIAL

(a) *Trial*. An eviction case will be docketed and tried as other cases. No eviction trial may be held less than ~~6~~ 4 days after service under Rule 510.4 has been obtained.

(b) *Jury Trial Demanded***.** Any party may file a written demand for trial by jury by making a request to the court at least 3 days before the trial date. The demand must be accompanied by payment of a jury fee or by filing a Statement of Inability to Afford Payment of Court Costs. If a jury is demanded by either party, the jury will be impaneled and sworn as in other cases; and after hearing the evidence it will return its verdict in favor of the plaintiff or the defendant. If no jury is timely demanded by either party, the judge will try the case.

(c) *Limit on Postponement*. The court may not postpone the date of a trial ~~in an eviction case must not be postponed~~ for more than 7 days ~~total~~ unless ~~both~~ the parties agree to the postponement in writing.

RULE 510.YY. ELECTRONIC APPEARANCES AT COURT PROCEEDINGS

Rule 500.10 applies to appearances in an eviction case, except that a party may not be required to appear at a court proceeding by videoconference, teleconference, or other available electronic means without the party's agreement.

RULE 510.8. JUDGMENT; WRIT; NO NEW TRIAL

(a) *Judgment Upon Jury Verdict*. Where a jury has returned a verdict, the judge may render judgment on the verdict or, if the verdict is contrary to the law or the evidence, judgment notwithstanding the verdict.

(b) *Judgment for Plaintiff*. If the judgment is in favor of the plaintiff, the judge must render judgment for plaintiff for possession of the premises, costs, delinquent rent as of the date of entry of judgment, if any, and attorney fees if recoverable by law.

(c) *Judgment for Defendant*. If the judgment is in favor of the defendant, the judge must

render judgment for defendant against the plaintiff for costs and attorney fees if recoverable by law.

~~(c)~~(d) *Determination of Rent and Rental Pay Period*. If the justice court enters judgment for the landlord in a residential eviction case, the court shall determine the amount of rent to be paid by the defendant each rental pay period during the pendency of any appeal in accordance with the terms of the rental agreement and applicable laws and regulations, and shall note that amount in the judgment. If there is no oral or written rental agreement, the court shall determine: (1) the rental pay period; and (2) the amount of rent to be paid by the defendant in each rental pay period, which must be the greater of: (A) $250; or (B) the fair market rent, if determined by the court.

~~(d)~~(e) *Writ*. If the judgment or verdict is in favor of the plaintiff, the judge must award a writ of possession upon demand of the plaintiff and payment of any required fees. The issuance of a writ of possession upon a proper and timely demand is a ministerial act not subject to review or delay. The writ must be executed by a sheriff or~~, the~~ constable, except that if the writ is not served on or before the fifth business day after it is issued, the plaintiff may have the writ served by any other law enforcement officer, including an off-duty officer with appropriate identification who has received training in the service of process, eviction procedures, and the execution of writs as determined by the Texas Commission on Law Enforcement (TCOLE)~~, or another law enforcement officer shall execute the writ of possession in accordance with the Texas Property Code~~. The plaintiff shall bear the costs of issuing and executing the writ of possession.

(1) Time to Issue. Except as provided by Rule 510.5, no writ of possession may issue before the 6th day after the date a judgment for possession is signed or the day following the deadline for the defendant to appeal the judgment, whichever is later. A writ of possession may not issue more than 60 days after a judgment for possession is signed. For good cause, the court may extend the deadline for issuance to 90 days after a judgment for possession is signed.

(2) Time to Execute. A writ of possession may not be executed after the 90th day after a judgment for possession is signed.

(3) Effect of Appeal. A writ of possession must not issue if an appeal is perfected and, if applicable, rent is paid into the registry, as required by these rules.

~~(3) The issuance of a writ of possession upon a proper request is a ministerial act not subject to review or delay.~~

~~(e)~~(f) *No Motion For New Trial*. No motion for new trial may be filed.

RULE 510.9. APPEAL

(a) *How Taken; Time.* A party may appeal a judgment in an eviction case by filing a bond, making a cash deposit, or filing a Statement of Inability to Afford Payment of Court Costs with the justice court within 5 days after the judgment is signed. A defendant who files an appeal must affirm, under penalty of perjury, the tenant's good faith belief that the

tenant has a meritorious defense and that the appeal is not for the purpose of delay. Such affirmation is not reviewable by the justice court. An appeal is perfected when a bond, cash deposit, or Statement of Inability to Afford Payment of Court Costs is timely filed with the justice court.

(b) *Amount of Security; Terms.* The justice court judge will set the amount of the bond or cash deposit to include the items enumerated in Rule 510.11, taking into consideration the money required to be paid into the court registry in a residential eviction appeal. The bond or cash deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(c) *Statement of Inability to Afford Payment of Court Costs*.

(1) Filing. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a Statement of Inability to Afford Payment of Court Costs. The Statement must be on the form approved by the Supreme Court or include the information required by the Court-approved form. A party who perfects an appeal of a justice court judgment with a Statement of Inability to Afford Payment of Court Costs is not required to pay the county court filing fee or file an additional Statement of Inability in the county court to waive costs on appeal.

(2) Contest. The Statement may be contested as provided in Rule 502.3(d) within 5 days after the opposing party receives notice that the Statement was filed.

(3) Appeal If Contest Sustained. If the contest is sustained, the appellant may appeal that decision by filing notice with the justice court within 5 days of that court's written order. The justice court must then forward all related documents to the county court for resolution. The county court must set the matter for hearing within 5 days and hear the contest de novo, as if there had been no previous hearing, and, if the appeal is granted, must direct the justice court to transmit to the clerk of the county court the transcript, records, and papers of the case, as provided in these rules.

(4) If No Appeal or If Appeal Overruled. If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within one business day, post an appeal bond or make a cash deposit in compliance with this rule.

(d) *Payment of Rent in ~~Nonpayment of Rent~~ Appeals*.

(1) Notice. If a defendant appeals a~~n~~ residential eviction~~ for nonpayment of rent by filing a Statement of Inability to Afford Payment of Court Costs~~, the justice court must provide to the defendant a written notice at the time the ~~Statement~~appeal is filed that contains the following information in bold or conspicuous type:

(A) ~~the amount of~~ the initial ~~deposit of~~ rent amount as stated in the judgment~~, equal to one rental period's rent under the terms of the rental agreement,~~ that the defendant must pay into the justice court registry;

~~(i)~~

~~(ii)~~(i) whether the initial ~~deposit~~ rent payment must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;

~~(iii)~~(ii) the calendar date by which the initial ~~deposit~~ rent payment must be paid into the justice court registry, which must be within 5 days of the date the appeal is filed;

(iii) for a justice court that closes before 5 p.m. on the date specified in (ii), the time the court closes;

(B) that, after the initial rent payment, the defendant must pay the rent amount stated in the judgment on or before the beginning of each rental pay period during the pendency of the appeal, into the justice or county court registry, according to the court in which the case is pending at the time of payment;

(i) whether the rent that must be paid on or before the beginning of each rental pay period must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;

(ii) the calendar dates by when the rent must be paid on or before the beginning of each rental pay period during the pendency of the appeal into the justice court or county court registry, as applicable, according to the court in which the case is pending at the time of payment;

~~(iv)~~(iii) for a justice court or county clerk's office that closes before 5 p.m. on the dates specified in (ii), the time the court or office closes; and

(C) a statement that failure to pay the required amount into the justice court or county court registry by the required dates may result in the court issuing a writ of possession without hearing.

(2) Defendant May Remain in Possession. A defendant who appeals a~~n~~ residential eviction ~~for nonpayment of rent by filing a Statement of Inability to Afford Payment of Court Costs~~ is entitled to stay in possession of the premises during the pendency of the appeal by complying with the following procedure:

(A) Within 5 days of the date that the defendant files an ~~Statement of Inability to Afford Payment of Court Costs~~appeal, ~~it~~ they must pay into the justice

court registry the amount ~~set forth~~ in the notice provided at the time the defendant filed the ~~Statement~~appeal. ~~If the defendant was provided with notice and fails to pay the designated amount into the justice court registry within 5 days, and the transcript has not been transmitted to the county clerk, the plaintiff is entitled, upon request and payment of the applicable fee, to a writ of possession, which the justice court must issue immediately and without hearing.~~

(B) During the appeal process ~~as rent becomes due under the rental agreement,~~ the defendant must pay the rental amount on or before the beginning of each rental pay period, as designated in the notice provided at the time the defendant filed the appeal, ~~the designated amount~~ into the justice court or county court registry, depending on the court in which the case is pending at the time of payment ~~within 5 days of the rental due date under the terms of the rental agreement~~.

(C) If a government agency is responsible for all or a portion of the rent, the defendant must pay only that portion of the rent determined by the justice court to be paid during appeal. Either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by filing a contest within 5 days after the judgment is signed. If a contest is filed, the justice court must notify the parties and hold a hearing on the contest within 5 days. ~~If the defendant objects to the justice court's ruling at the hearing, the defendant is required to pay only the portion claimed to be owed by the defendant until the issue is tried in county court.~~

(D) If the defendant fails to pay the designated amount into the justice or county court registry within the time limits prescribed by these rules~~,~~ and the justice court provided notice required by Rule 510.9(d)(1), the plaintiff may ~~file a sworn motion that the defendant is in default in county court. The plaintiff must notify the defendant of the motion and the hearing date. Upon a showing that the defendant is in default, the court must issue~~request a writ of possession from the court in which the case is pending, and upon determining that the defendant has failed to pay the designated amount, the court shall issue the writ without a hearing.

(E) The justice court or county court, as applicable, shall disburse rent paid into the justice court or county court registry to the landlord on request at any time during or after the pendency of the appeal.~~The plaintiff may withdraw any or all rent paid into the justice or the county court registry upon sworn motion and hearing, prior to final determination of the case, showing just cause; dismissal of the appeal; or order of the court after final hearing.~~

~~(E)~~(F) A defendant's payment of rent into a court registry relieves them ~~tenant~~ of the obligation to pay rent to the landlord for the rental pay period for which the payment is made.

~~(F)~~(G) All ~~hearings~~ requests and motions under this subparagraph are entitled to precedence in the county court.

(e) *Notice to Other Parties Required.* If a Statement of Inability to Afford Payment of Court Costs is filed, the court must provide notice to all other parties that the Statement was filed no later than the next business day. Within 5 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(f) *No Default on Appeal Without Compliance With Rule.* No judgment may be taken by default against the adverse party in the court to which the case has been appealed without first showing substantial compliance with this rule.

~~(g) *Appeal Perfected*. An appeal is perfected when a bond, cash deposit, or Statement of Inability to Afford Payment of Court Costs is filed in accordance with this rule.~~

RULE 510.10. RECORD ON APPEAL; DOCKETING; TRIAL DE NOVO

(a) *Preparation and Transmission of Record*. Unless otherwise provided by law or these rules, when an appeal has been perfected, the judge must stay all further proceedings on the judgment and ~~must~~the court shall forward to the county court, by electronic means or otherwise, not earlier than 4 p.m. on the sixth day or later than 4 p.m. on the 10th day after the date the tenant files the appeal, the transcript and the original papers of the case, together with any money in the court registry. If the court confirms that the tenant has timely paid the initial rent payment into the justice court registry in accordance with Rule 510.9(d)(2)(A), the court may forward the transcript and original papers immediately. ~~immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case together with any money in the court registry, including sums tendered pursuant to Rule 510.9(e)(5)(B).~~

(b) *Docketing; Notice*. The county clerk must docket the case and must immediately notify the parties of the date of receipt of the transcript and the docket number of the case. ~~The notice must advise the defendant that it must file a written answer in the county court within 8 days if one was not filed in the justice court.~~

(c) *Trial De Novo*. The county court shall hold a trial not later than the 21st day after the date the transcript and original papers are delivered to the county court. The case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. The trial, as well as any hearings and motions, is entitled to precedence in the county court.

~~(b)~~(d) *Nonlawyer Representation*. In an appeal of an eviction suit for nonpayment of rent, an owner of a multifamily residential property may be represented by the owner's authorized agent, who need not be an attorney.

RULE 510.11. DAMAGES ON APPEAL

On the trial of the case in the county court the appellant or appellee will be permitted to plead, prove and recover his damages, if any, suffered for withholding or defending possession of the premises during the pendency of the appeal. Damages may include but are not limited to loss of rentals during the pendency of the appeal and attorney fees in the justice and county courts provided, as to attorney fees, that the requirements of Section 24.006 of the Texas Property Code have been met. Only the party prevailing in the county court will be entitled to recover damages against the adverse party. The prevailing party will also be entitled to recover court costs and to recover against the sureties on the appeal bond in cases where the adverse party has executed an appeal bond.

~~**RULE 510.12. JUDGMENT BY DEFAULT ON APPEAL**~~

~~An eviction case appealed to county court will be subject to trial at any time after the expiration of 8 days after the date the transcript is filed in the county court. If the defendant has filed a written answer in the justice court, it must be taken to constitute his appearance and answer in the county court and may be amended as in other cases. If the defendant made no answer in writing in the justice court and fails to file a written answer within 8 days after the transcript is filed in the county court, the allegations of the complaint may be taken as admitted and judgment by default may be entered accordingly.~~

RULE 510.12. JUDGMENT ON APPEAL

A judgment issued by the county court must set the amount of the supersedeas bond that an appellant must pay to stay the execution of the judgment, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate.

RULE 510.13. WRIT OF POSSESSION ON APPEAL

The writ of possession, or execution, or both, will be issued by the clerk of the county court according to the judgment rendered, and the same will be executed by the sheriff or constable, as in other cases. The judgment of the county court may not be stayed unless within 10 days from the judgment the appellant files a supersedeas bond in an amount set by the county court pursuant to ~~Section 24.007 of the Texas Property Code~~Rule 510.12.

RULE 143a. COSTS ON APPEAL TO COUNTY COURT

Except for appeals of eviction cases, if the appellant fails to pay the costs on appeal from a judgment of a justice court within twenty (20) days after being notified to do so by the county clerk, the appeal shall be deemed not perfected and the county clerk shall return all papers in said cause to the justice of the peace having original jurisdiction and the justice court shall proceed as though no appeal had been attempted. A party who perfects an appeal of a justice court judgment with a Statement of Inability to Afford Payment of Court Costs is not required to pay the county court filing fee or file an additional Statement of Inability in the county court to waive costs on appeal.

RULE 500. GENERAL

RULE 500.2. DEFINITIONS

In Part V of these Rules of Civil Procedure:

(a) "Answer" is the written response that a party who is sued must file with the court after being served with a citation.

(b) "Citation" is the court-issued document required to be served upon a party to inform the party that it has been sued.

(c) "Claim" is the legal theory and alleged facts that, if proven, entitle a party to relief against another party in court.

(d) "Clerk" is a person designated by the judge as a justice court clerk, or the judge if there is no clerk available.

(e) "Counterclaim" is a claim brought by a party who has been sued against the party who filed the lawsuit, for example, a defendant suing a plaintiff.

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

(g) "Court proceeding" is an appearance before the court, such as a hearing or a trial.

(h) "Cross-claim" is a claim brought by one party against another party on the same side of a lawsuit. For example, if a plaintiff sues two defendants, the defendants can seek relief against each other by means of a cross-claim.

(i) "Default judgment" is a judgment awarded to a plaintiff when the defendant fails to answer and dispute the plaintiff's claims in the lawsuit.

(j) "Defendant" is a party who is sued, including a plaintiff against whom a counterclaim is filed.

(k) "Defense" is an assertion by a defendant that the plaintiff is not entitled to relief from the court.

(l) "Discovery" is the process through which parties obtain information from each other in order to prepare for trial or enforce a judgment. The term does not refer to any information that a party is entitled to under applicable law.

(m) "Dismissed without prejudice" means a case has been dismissed but has not been finally decided and may be refiled.

(n) "Dismissed with prejudice" means a case has been dismissed and finally decided and may not be refiled.

(o) "Forcible Entry" is (1) an entry without the consent of the person in actual possession of the property; (2) an entry without the consent of a tenant at will or by sufferance; or (3) an entry without the consent of a person who acquired possession by forcible entry.

(p) "Forcible Entry and Detainer" is when a person has committed a forcible entry onto another's property and refuses to surrender possession on demand.

(q) "Judge" is a justice of the peace.

(r) "Judgment" is a final order by the court that states the relief, if any, a party is entitled to or must provide.

(s) "Jurisdiction" is the authority of the court to hear and decide a case.

(t) "Motion" is a request that the court make a specified ruling or order.

(u) "Notice" is a document prepared and delivered by the court or a party stating that something is required of the party receiving the notice.

(v) "Participant" is any party, attorney, witness, or juror who participates in a court proceeding.

(w) "Party" is a person or entity involved in the case that is either suing or being sued, including all plaintiffs, defendants, and third parties that have been joined in the case.

(x) "Petition" is a formal written application stating a party's claims and requesting relief from the court. It is the first document filed with the court to begin a lawsuit.

(y) "Plaintiff" is a party who sues, including a defendant who files a counterclaim.

(z) "Pleading" is a written document filed by a party, including a petition and an answer, that states a claim or defense and outlines the relief sought.

(aa) "Relief" is the remedy a party requests from the court, such as the recovery of money or the return of property.

(bb) "Serve" and "service" are delivery of citation as required by Rule 501.2, or of a document as required by Rule 501.4.

(cc) "Sworn" means signed in front of someone authorized to take oaths, such as a notary, or signed under penalty of perjury. Filing a false sworn document can result in criminal prosecution.

(dd) "Third party claim" is a claim brought by a party being sued against someone who is not yet a party to the case.

RULE 501. CITATION AND SERVICE

RULE 501.2. SERVICE OF CITATION

(a) *Who May Serve.* No person who is a party to or interested in the outcome of the suit may serve citation in that suit, and, unless otherwise authorized by written court order, only a sheriff or constable may serve a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced by the person delivering the process. Citations other than in eviction suits may be served by:

(1) a sheriff or constable;

(2) a process server certified by the Judicial Branch Certification Commission;

(3) the clerk of the court, if the citation is served by registered or certified mail; or

(4) a person authorized by court order who is 18 years of age or older.

(b) *Method of Service*. Citation must be served by:

(1) delivering a copy of the citation with a copy of the petition attached to the defendant in person, after endorsing the date of delivery on the citation; or

(2) mailing a copy of the citation with a copy of the petition attached to the defendant by registered or certified mail, restricted delivery, with return receipt or electronic return receipt requested.

(c) *Service Fees*. A plaintiff must pay all fees for service unless the plaintiff has filed a Statement of Inability to Afford Payment of Court Costs with the court. If the plaintiff has filed a Statement, the plaintiff must arrange for the citation to be served by a sheriff,

constable, or court clerk.

(d) *Service on Sunday*. A citation cannot be served on a Sunday except in attachment, garnishment, sequestration, or distress proceedings.

(e) *Alternative Service of Citation*. If the methods under (b) are insufficient to serve the defendant, the plaintiff, or the constable, sheriff, process server certified by the Judicial Branch Certification Commission, or other person authorized to serve process, may make a request for alternative service. This request must include a sworn statement describing the methods attempted under (b) and stating the defendant's usual place of business or residence, or other place where the defendant can probably be found. The court may authorize the following types of alternative service:

(1) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also leaving a copy of the citation with petition attached at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age; or

(2) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also serving by any other method that the court finds is reasonably likely to provide the defendant with notice of the suit.

(f) *Service by Publication*. In the event that service of citation by publication is necessary, the process is governed by the rules in county and district court.

RULE 503. DEFAULT JUDGMENT; PRE-TRIAL MATTERS; TRIAL

RULE 503.2. SUMMARY DISPOSITION

(a) *Motion*. A party may file a sworn motion for summary disposition of all or part of a claim or defense without a trial. The motion must set out all supporting facts. All documents on which the motion relies must be attached. The motion must be granted if it shows that:

(1) there are no genuinely disputed facts that would prevent a judgment in favor of the party;

(2) there is no evidence of one or more essential elements of a defense which the defendant must prove to defeat the plaintiff's claim; or

(3) there is no evidence of one or more essential elements of the plaintiff's claim.

(b) *Response.* The party opposing the motion may file a sworn written response to the motion.

(c) *Hearing*. The court must not consider a motion for summary disposition until it has been on file for at least 14 days. The judge may consider evidence offered by the parties at the hearing. By agreement of the parties, the judge may decide the motion and response without a hearing.

(d) *Order*. The judge may enter judgment as to the entire case or may specify the facts that are established and direct such further proceedings in the case as are just. A judgment must comply with Rule 505.1.

(e) *Forcible Entry and Detainer Suits*. Summary disposition in a forcible entry and detainer suit must be conducted pursuant to Rule 510.XX.

RULE 503.4. PRETRIAL CONFERENCE

(a) *Conference Set; Issues.* If all parties have appeared in a lawsuit, the court, at any party's request or on its own, may set a case for a pretrial conference. Reasonable notice must be sent to all parties at their addresses of record. Appropriate issues for the pretrial conference include:

(1) discovery;

(2) the amendment or clarification of pleadings;

(3) the admission of facts and documents to streamline the trial process;

(4) a limitation on the number of witnesses at trial;

(5) the identification of facts, if any, which are not in dispute between the parties;

(6) mediation or other alternative dispute resolution services;

(7) the possibility of settlement;

(8) trial setting dates that are amenable to the court and all parties;

(9) the appointment of interpreters, if needed;

(10) the application of a Rule of Civil Procedure not in Part V or a Rule of Evidence; and

(11) any other issue that the court deems appropriate.

(b) *Eviction Cases.* A court may not adopt local rules, forms, or standing orders for eviction suits that require any pretrial conference or other proceeding before trial. The court must not schedule a pretrial conference in an eviction case if it would delay trial.

RULE 503.5. ALTERNATIVE DISPUTE RESOLUTION

(a) *State Policy.* The policy of this state is to encourage the peaceable resolution of disputes through alternative dispute resolution, including mediation, and the early settlement of pending litigation through voluntary settlement procedures. For that purpose, the judge may order any case to mediation or another appropriate and generally accepted alternative dispute resolution process.

(b) *Eviction Cases.* A court may not adopt local rules, forms, or standing orders for eviction suits that require any mediation or other proceeding before trial. The court must not order mediation or any other alternative dispute resolution process in an eviction case if it would delay trial.

RULE 510. EVICTION CASES

RULE 510.1. APPLICATION AND LIMITS ON AUTHORITY TO MODIFY PROCEDURES

(a) Rule 510 applies to a lawsuit to recover possession of real property under Chapter 24 of the Texas Property Code.

(b) Except as provided by Chapter 24 of the Texas Property Code, only the Texas Legislature may modify or suspend procedures in eviction cases.

RULE 510.2. COMPUTATION OF TIME FOR EVICTION CASES

(a) *Computation of Time*. A period of time for eviction cases:

(1) does not include the day of the event that begins the period;

(2) includes Saturdays, Sundays, and state or federal holidays;

(3) includes the last day of the period; and

(4) if the last day of the period is a Saturday, Sunday, or state or federal holiday, is extended so that the last day of the period is the next day that is not a Saturday, Sunday, or state or federal holiday.

(b) *Court Closures*. Additionally, the time period for filing any document with the court is extended to the next day that the court is open if the last day of that time period falls on a day when the court is closed all day for any reason or a day when the court closes before 5:00 PM. The time period for paying rent into the court's registry is extended to the next day that the court is open if the last day of that time period falls on a day when the court is closed all day for any reason or a day that the court closes before the time listed on the notice to pay rent into the registry.

RULE 510.3. PETITION

(a) *Contents*. In addition to the requirements of Rule 502.2, a petition in an eviction case must be sworn to by the plaintiff and must contain:

(1) a description, including the address, if any, of the premises that the plaintiff seeks possession of;

(2) a description of the facts and the grounds for eviction;

(3) a description of when and how pre-suit notice was given, and whether it was a notice to vacate or a notice to pay rent or vacate ;

(4) the total amount of rent due and unpaid at the time of filing, if any, and if the eviction is based solely on nonpayment of rent, whether the tenant was late or delinquent in paying rent before the month in which notice was given, regardless of whether the landlord is joining a claim for back rent;

(5) a statement that attorney fees are being sought, if applicable; and

(6) if the plaintiff is alleging a forcible entry and detainer, whether a sworn motion for summary disposition is included in or attached to the petition.

(b) A court may not adopt local rules, forms, or standing orders that:

(1) require content in or with the petition other than the content required by this rule; or

(2) authorize the dismissal of an eviction suit on the basis that the petition is improper if the petition meets or can be amended to meet the requirements of this rule.

(c) *Where Filed*. The petition must be filed in the precinct where the premises is located. If it is filed elsewhere, the judge must dismiss the case. The plaintiff will not be entitled to a refund of the filing fee, but will be refunded any service fees paid if the case is dismissed before service is attempted.

(d) *Defendants Named*. If the eviction is based on a written residential lease, the plaintiff must name as defendants all tenants obligated under the lease residing at the premises whom plaintiff seeks to evict. No judgment or writ of possession may issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition and served with citation.

(e) *Claim for Rent*. A claim for rent within the justice court's jurisdiction may be asserted in an eviction case.

(f) *Only Issue*. The court must adjudicate the right to actual possession and not title.

Counterclaims and the joinder of suits against third parties are not permitted in eviction cases. A claim that is not asserted because of this rule can be brought in a separate suit in a court of proper jurisdiction.

RULE 510.4. ISSUANCE, SERVICE, AND RETURN OF CITATION

(a) *Issuance of Citation; Contents*. When a petition is filed, the court must immediately issue citation directed to each defendant. The citation must:

(1) be styled "The State of Texas";

(2) be signed by the clerk under seal of court or by the judge;

(3) contain the name, location, and address of the court;

(4) state the date of filing of the petition;

(5) state the date of issuance of the citation;

(6) state the file number and names of parties;

(7) state the plaintiff's cause of action and relief sought;

(8) be directed to the defendant;

(9) state the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff;

(10) state the day the defendant must appear in person for trial at the court issuing citation, which must not be less than 10 days nor more than 21 days after the petition is filed;

(11) notify the defendant that if the defendant fails to appear in person for trial, judgment by default may be rendered for the relief demanded in the petition;

(12) inform the defendant that, upon timely request and payment of a jury fee no later than 3 days before the day set for trial, the case will be heard by a jury;

(13) contain all warnings required by Chapter 24 of the Texas Property Code, including the following notices to the defendant on the first page, in English and Spanish, in conspicuous bold print:

(A) FAILURE TO APPEAR FOR TRIAL MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU; and

(B) SUIT TO EVICT:

THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL RIGHTS OR RELIEF RELATED TO THIS SUIT UNDER FEDERAL LAW, INCLUDING THE SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501 ET SEQ.) OR STATE LAW, INCLUDING SECTION 92.017, TEXAS PROPERTY CODE. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE; and

(14) include the following statement: "For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

(b) *Service and Return of Citation*.

(1) Who May Serve. Except as provided by (b)(5), only a sheriff or constable may serve a citation in an eviction case.

(2) A plaintiff must pay all fees for service unless the plaintiff has filed a Statement of Inability to Afford Payment of Court Costs with the court.

(3) Method of Service. The sheriff or constable receiving the citation shall make a diligent effort to execute it within five business days after the date the petition is filed by delivering a copy with a copy of the petition attached to the defendant, or by leaving a copy with a copy of the petition attached with some person, other than the plaintiff, over the age of 16 years, at the defendant's usual place of residence, at least 4 days before the day set for trial. A citation cannot be served on a Sunday.

(4) Return of Service. At least one day before the day set for trial, the sheriff or constable must complete and file a return of service in accordance with Rule 501.3 with the court that issued the citation. In addition, if service was executed by another law enforcement officer under (b)(5), the return of service must also include an attestation that the officer was qualified to serve the citation under Chapter 24 of the Texas Property Code.

(5) *Service by Other Law Enforcement Officer*. If, after the fifth business day from the date the petition is filed, the sheriff or constable has not served the citation and petition, the plaintiff may file with the court a request for issuance of an alias citation to be served by any other law enforcement officer, including an off-duty officer with appropriate identification, that has received appropriate training in the service of process, eviction procedures, and the execution of writs, as determined by the Texas Commission on Law Enforcement.

(A) When such a request is filed with the court, the clerk shall immediately issue the alias citation.

(B) The plaintiff will not be entitled to a refund of any service fee and is responsible to the other law enforcement officer for payment of a fee for the service, if any.

(c) *Alternative Service by Delivery to the Premises*.

(1) When Allowed. The citation may be served by delivery to the premises if:

(A) the sheriff, constable, or other law enforcement officer is unsuccessful in serving the citation under (b);

(B) the petition lists all home and work addresses of the defendant that are known to the plaintiff and states that the plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located; and

(C) the sheriff, constable, or other law enforcement officer files a sworn statement that it has made diligent efforts to serve such citation on at least two occasions at all addresses of the defendant in the county where the premises are located, stating the times and places of attempted service.

(2) Authorization. The judge must promptly consider a sworn statement filed under (1)(C) and determine whether citation may be served by delivery to the premises. The plaintiff is not required to make a request or motion for alternative service.

(3) Method. If the judge authorizes service by delivery to the premises, the sheriff, constable, or other law enforcement officer must, at least 4 days before the day set for trial:

(A) deliver a copy of the citation with a copy of the petition attached to the premises by placing it through a door mail chute or slipping it under the front door; if neither method is possible, the officer may securely affix the citation to the front door or main entry to the premises; and

(B) deposit in the mail a copy of the citation with a copy of the petition attached, addressed to defendant at the premises and sent by first class mail.

(4) Notation on Return. The sheriff, constable, or other law enforcement officer must note on the return of service the date the citation was delivered and the date it was deposited in the mail.

RULE 510.5. REQUEST FOR IMMEDIATE POSSESSION

(a) *Immediate Possession Bond.* The plaintiff may, at the time of filing the petition or at any time prior to final judgment, file a possession bond to be approved by the judge in the probable amount of costs of suit and damages that may result to defendant in the event that the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages that are adjudged against plaintiff.

(b) *Notice to Defendant*. The court must notify a defendant that the plaintiff has filed a possession bond. The notice must be served in the same manner as service of citation and must inform the defendant that if the defendant does not file an answer or appear for trial, and judgment for possession is granted by default, an officer will place the plaintiff in possession of the property on or after the 7th day after the date defendant is served with the notice.

(c) *Time for Issuance and Execution of Writ*. If judgment for possession is rendered by default and a possession bond has been filed, approved, and served under this rule, a writ of possession must issue immediately upon demand and payment of any required fees. The writ must not be executed before the 7th day after the date defendant is served with notice under (b).

(d) *Effect of Appearance*. If the defendant files an answer or appears at trial, no writ of possession may issue before the 6th day after the date a judgment for possession is signed or the day following the deadline for the defendant to appeal the judgment, whichever is later.

RULE 510.XX. REQUEST FOR SUMMARY DISPOSITION

(a) *Motion for Summary Disposition*. The plaintiff may, at the time of filing a sworn petition alleging a forcible entry and detainer, file a sworn motion for summary disposition without trial. The motion must set out all supporting facts, and all documents on which the motion relies must be attached.

(b) *Notice to Defendant*. The court must notify a defendant that the plaintiff has filed a motion for summary disposition. The notice must be included in the citation, on the first page, in English and Spanish, in conspicuous bold print, and contain the following notice language:

THE PETITION INCLUDES A MOTION FOR SUMMARY DISPOSITION. IF THE MOTION SHOWS THERE ARE NO GENUINELY DISPUTED FACTS THAT WOULD PREVENT A JUDGMENT IN FAVOR OF THE LANDLORD, THE COURT MAY ENTER JUDGMENT IN FAVOR OF THE LANDLORD WITHOUT A TRIAL UNLESS: (1) NOT LATER THAN THE FOURTH DAY AFTER YOU ARE SERVED WITH THE LANDLORD'S SWORN PETITION, YOU FILE A RESPONSE SETTING OUT SUPPORTING FACTS AND ANY APPLICABLE DOCUMENTS ON WHICH YOUR RESPONSE RELIES; AND (2) THE JUSTICE COURT DETERMINES THAT SERVICE ON YOU WAS PROPER AND, BASED

ON THE LANDLORD 'S SWORN PETITION AND YOUR RESPONSE, THERE ARE GENUINELY DISPUTED FACTS THAT WOULD PREVENT A JUDGMENT IN FAVOR OF THE LANDLORD.

(c) *Response*. Not later than the fourth day after the defendant is served with the sworn petition and motion, the defendant may file a response setting out supporting facts and must provide all documents on which the response relies. The court may consider a response filed after the fourth day if the court determines that there are genuinely disputed facts and judgment has not been entered.

(d) *No Disputed Facts*. After proper service and consideration of the sworn petition and defendant's response, if any, the court may enter judgment for the plaintiff if there are no genuinely disputed facts.

(e) *Trial*. If the court determines that there are genuinely disputed facts, and a trial setting is not pending, the court shall set a trial date that is not earlier than the 10th day and not later than the 21st day after the date the sworn petition is filed by the plaintiff. The court may immediately set the case for a trial upon the defendant's request for a trial in response to a motion for summary disposition.

(f) *Judgment*. Judgment entered on a motion for summary disposition has the same effect as any other judgment in an eviction suit.

(g) *Notice of Default*. If a default judgment under this section is signed, the clerk must comply with Rule 503.1(d) and immediately mail written notice of the judgment by first class mail to the defendant at the address provided by the plaintiff and, if different, at the address of the premises. A default judgment must comply with Rule 505.1.

RULE 510.6. TRIAL DATE; ANSWER; DEFAULT JUDGMENT

(a) *Trial Date and Answer*. The defendant must appear for trial on the day set for trial in the citation or subsequent trial notice. The defendant may, but is not required to, file a written answer with the court on or before the day set for trial in the citation.

(b) *Default Judgment*. If the defendant fails to appear at trial and fails to file an answer before the case is called for trial, and proof of service has been filed in accordance with Rule 510.4, the allegations of the petition must be taken as admitted and judgment by default rendered accordingly. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence and render judgment accordingly. Notice of a default judgment, as required by Rule 503.1(d), must be sent to the defendant. A default judgment must comply with Rule 505.1.

(c) *Notice of Default.* When a default judgment is signed, the clerk must comply with Rule 503.1(d) and immediately mail written notice of the judgment by first class mail to the defendant at the address provided by the plaintiff and, if different, at the address of the premises.

RULE 510.7. TRIAL

(a) *Trial*. An eviction case will be docketed and tried as other cases. No eviction trial may be held less than 4 days after service under Rule 510.4 has been obtained.

(b) *Jury Trial Demanded***.** Any party may file a written demand for trial by jury by making a request to the court at least 3 days before the trial date. The demand must be accompanied by payment of a jury fee or by filing a Statement of Inability to Afford Payment of Court Costs. If a jury is demanded by either party, the jury will be impaneled and sworn as in other cases; and after hearing the evidence it will return its verdict in favor of the plaintiff or the defendant. If no jury is timely demanded by either party, the judge will try the case.

(c) *Limit on Postponement*. The court may not postpone the date of a trial for more than 7 days unless the parties agree to the postponement in writing.

RULE 510.YY. ELECTRONIC APPEARANCES AT COURT PROCEEDINGS

Rule 500.10 applies to appearances in an eviction case, except that a party may not be required to appear at a court proceeding by videoconference, teleconference, or other available electronic means without the party's agreement.

RULE 510.8. JUDGMENT; WRIT; NO NEW TRIAL

(a) *Judgment Upon Jury Verdict*. Where a jury has returned a verdict, the judge may render judgment on the verdict or, if the verdict is contrary to the law or the evidence, judgment notwithstanding the verdict.

(b) *Judgment for Plaintiff*. If the judgment is in favor of the plaintiff, the judge must render judgment for plaintiff for possession of the premises, costs, delinquent rent as of the date of entry of judgment, if any, and attorney fees if recoverable by law.

(c) *Judgment for Defendant*. If the judgment is in favor of the defendant, the judge must render judgment for defendant against the plaintiff for costs and attorney fees if recoverable by law.

(d) *Determination of Rent and Rental Pay Period*. If the justice court enters judgment for the landlord in a residential eviction case, the court shall determine the amount of rent to be paid by the defendant each rental pay period during the pendency of any appeal in accordance with the terms of the rental agreement and applicable laws and regulations, and shall note that amount in the judgment. If there is no oral or written rental agreement, the court shall determine: (1) the rental pay period; and (2) the amount of rent to be paid by the defendant in each rental pay period, which must be the greater of: (A) $250; or (B) the fair market rent, if determined by the court.

(e) *Writ*. If the judgment or verdict is in favor of the plaintiff, the judge must award a writ of

possession upon demand of the plaintiff and payment of any required fees. The issuance of a writ of possession upon a proper and timely demand is a ministerial act not subject to review or delay. The writ must be executed by a sheriff or constable, except that if the writ is not served on or before the fifth business day after it is issued, the plaintiff may have the writ served by any other law enforcement officer, including an off-duty officer with appropriate identification who has received training in the service of process, eviction procedures, and the execution of writs as determined by the Texas Commission on Law Enforcement (TCOLE). The plaintiff shall bear the costs of issuing and executing the writ of possession.

(1) Time to Issue. Except as provided by Rule 510.5, no writ of possession may issue before the 6th day after the date a judgment for possession is signed or the day following the deadline for the defendant to appeal the judgment, whichever is later. A writ of possession may not issue more than 60 days after a judgment for possession is signed. For good cause, the court may extend the deadline for issuance to 90 days after a judgment for possession is signed.

(2) Time to Execute. A writ of possession may not be executed after the 90th day after a judgment for possession is signed.

(3) Effect of Appeal. A writ of possession must not issue if an appeal is perfected and, if applicable, rent is paid into the registry, as required by these rules.

(f) *No Motion For New Trial*. No motion for new trial may be filed.

RULE 510.9. APPEAL

(a) *How Taken; Time.* A party may appeal a judgment in an eviction case by filing a bond, making a cash deposit, or filing a Statement of Inability to Afford Payment of Court Costs with the justice court within 5 days after the judgment is signed. A defendant who files an appeal must affirm, under penalty of perjury, the tenant's good faith belief that the tenant has a meritorious defense and that the appeal is not for the purpose of delay. Such affirmation is not reviewable by the justice court. An appeal is perfected when a bond, cash deposit, or Statement of Inability to Afford Payment of Court Costs is timely filed with the justice court.

(b) *Amount of Security; Terms.* The justice court judge will set the amount of the bond or cash deposit to include the items enumerated in Rule 510.11, taking into consideration the money required to be paid into the court registry in a residential eviction appeal. The bond or cash deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(c) *Statement of Inability to Afford Payment of Court Costs*.

(1) Filing. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a Statement of Inability to Afford Payment

of Court Costs. The Statement must be on the form approved by the Supreme Court or include the information required by the Court-approved form. A party who perfects an appeal of a justice court judgment with a Statement of Inability to Afford Payment of Court Costs is not required to pay the county court filing fee or file an additional Statement of Inability in the county court to waive costs on appeal.

(2) Contest. The Statement may be contested as provided in Rule 502.3(d) within 5 days after the opposing party receives notice that the Statement was filed.

(3) Appeal If Contest Sustained. If the contest is sustained, the appellant may appeal that decision by filing notice with the justice court within 5 days of that court's written order. The justice court must then forward all related documents to the county court for resolution. The county court must set the matter for hearing within 5 days and hear the contest de novo, as if there had been no previous hearing, and, if the appeal is granted, must direct the justice court to transmit to the clerk of the county court the transcript, records, and papers of the case, as provided in these rules.

(4) If No Appeal or If Appeal Overruled. If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within one business day, post an appeal bond or make a cash deposit in compliance with this rule.

(d) *Payment of Rent in Appeals*.

(1) Notice. If a defendant appeals a residential eviction, the justice court must provide to the defendant a written notice at the time the appeal is filed that contains the following information in bold or conspicuous type:

(A) the initial rent amount as stated in the judgment that the defendant must pay into the justice court registry;

(i) whether the initial rent payment must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;

(ii) the calendar date by which the initial rent payment must be paid into the justice court registry, which must be within 5 days of the date the appeal is filed;

(iii) for a justice court that closes before 5 p.m. on the date specified in (ii), the time the court closes;

(B) that, after the initial rent payment, the defendant must pay the rent amount stated in the judgment on or before the beginning of each rental pay period

during the pendency of the appeal, into the justice or county court registry, according to the court in which the case is pending at the time of payment;

(i) whether the rent that must be paid on or before the beginning of each rental pay period must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;

(ii) the calendar dates by when the rent must be paid on or before the beginning of each rental pay period during the pendency of the appeal into the justice court or county court registry, as applicable, according to the court in which the case is pending at the time of payment;

(iii) for a justice court or county clerk's office that closes before 5 p.m. on the dates specified in (ii), the time the court or office closes; and

(C) a statement that failure to pay the required amount into the justice court or county court registry by the required dates may result in the court issuing a writ of possession without hearing.

(2) Defendant May Remain in Possession. A defendant who appeals a residential eviction is entitled to stay in possession of the premises during the pendency of the appeal by complying with the following procedure:

(A) Within 5 days of the date that the defendant files an appeal, they must pay into the justice court registry the amount in the notice provided at the time the defendant filed the appeal.

(B) During the appeal process the defendant must pay the rental amount on or before the beginning of each rental pay period, as designated in the notice provided at the time the defendant filed the appeal, into the justice court or county court registry, depending on the court in which the case is pending at the time of payment .

(C) If a government agency is responsible for all or a portion of the rent, the defendant must pay only that portion of the rent determined by the justice court to be paid during appeal. Either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by filing a contest within 5 days after the judgment is signed. If a contest is filed, the justice court must notify the parties and hold a hearing on the contest within 5 days.

(D) If the defendant fails to pay the designated amount into the justice or county court registry within the time limits prescribed by these rules and the justice court provided notice required by Rule 510.9(d)(1), the plaintiff may request a writ of possession from the court in which the case is pending, and upon

determining that the defendant has failed to pay the designated amount, the court shall issue the writ without a hearing.

(E) The justice court or county court, as applicable, shall disburse rent paid into the justice court or county court registry to the landlord on request at any time during or after the pendency of the appeal.

(F) A defendant's payment of rent into a court registry relieves them of the obligation to pay rent to the landlord for the rental pay period for which the payment is made.

(G) All requests and motions under this subparagraph are entitled to precedence in the county court.

(e) *Notice to Other Parties Required.* If a Statement of Inability to Afford Payment of Court Costs is filed, the court must provide notice to all other parties that the Statement was filed no later than the next business day. Within 5 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(f) *No Default on Appeal Without Compliance With Rule.* No judgment may be taken by default against the adverse party in the court to which the case has been appealed without first showing substantial compliance with this rule.

RULE 510.10. RECORD ON APPEAL; DOCKETING; TRIAL DE NOVO

(a) *Preparation and Transmission of Record*. Unless otherwise provided by law or these rules, when an appeal has been perfected, the judge must stay all further proceedings on the judgment and the court shall forward to the county court, by electronic means or otherwise, not earlier than 4 p.m. on the sixth day or later than 4 p.m. on the 10th day after the date the tenant files the appeal, the transcript and the original papers of the case, together with any money in the court registry. If the court confirms that the tenant has timely paid the initial rent payment into the justice court registry in accordance with Rule 510.9(d)(2)(A), the court may forward the transcript and original papers immediately.

(b) *Docketing; Notice*. The county clerk must docket the case and must immediately notify the parties of the date of receipt of the transcript and the docket number of the case.

(c) *Trial De Novo*. The county court shall hold a trial not later than the 21st day after the date the transcript and original papers are delivered to the county court. The case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. The trial, as well as any hearings and motions, is entitled to precedence in the county court.

(d) *Nonlawyer Representation*. In an appeal of an eviction suit for nonpayment of rent, an owner of a multifamily residential property may be represented by the owner's authorized agent, who need not be an attorney.

RULE 510.11. DAMAGES ON APPEAL

On the trial of the case in the county court the appellant or appellee will be permitted to plead, prove and recover his damages, if any, suffered for withholding or defending possession of the premises during the pendency of the appeal. Damages may include but are not limited to loss of rentals during the pendency of the appeal and attorney fees in the justice and county courts provided, as to attorney fees, that the requirements of Section 24.006 of the Texas Property Code have been met. Only the party prevailing in the county court will be entitled to recover damages against the adverse party. The prevailing party will also be entitled to recover court costs and to recover against the sureties on the appeal bond in cases where the adverse party has executed an appeal bond.

RULE 510.12. JUDGMENT ON APPEAL

A judgment issued by the county court must set the amount of the supersedeas bond that an appellant must pay to stay the execution of the judgment, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate.

RULE 510.13. WRIT OF POSSESSION ON APPEAL

The writ of possession, or execution, or both, will be issued by the clerk of the county court according to the judgment rendered, and the same will be executed by the sheriff or constable, as in other cases. The judgment of the county court may not be stayed unless within 10 days from the judgment the appellant files a supersedeas bond in an amount set by the county court pursuant to Rule 510.12.

Tab II- Summary Judgment

TO: Supreme Court Advisory Committee
FROM: Richard Orsinger & Giana Ortiz
DATE: October 1, 2025
RE: Draft revisions to TRCP 166a based on SB 293 and HB 16

I. Summary of Statutory Changes

- SB 293 (effective September 1, 2025) created Texas Government Code § 23.303, requiring courts to hear or submit a motion for summary judgment by the 45th day after the Response was filed, and to issue a ruling within 90 days of hearing/submission date. The statute also requires courts to record the hearing/submission date and date of ruling, and to report that information to the Office of Court Administration no less than quarterly.
- HB 16 (passed in Special Session and effective December 4, 2025) amended § 23.303 to trigger the court's deadline upon *filing of the motion for summary judgment*. Courts must now set the hearing or submission within 60 days of when the motion is filed (extendable to 90 days for docket necessity, good cause, or with the movant's consent). The 90-day deadline to rule remains in place, along with quarterly compliance reporting to the Office of Court Administration.

II. Overview of Proposed Drafts

In light of this statutory framework, we have created three alternative versions of revised Rule 166a. Each incorporates the legislative requirements, but with differing degrees of structural revision and procedural detail.

<u>Version 1: Simple Addition of SB 293 and HB 16 Requirements</u>

- Minimalist revision to conform Rule 166a to new statutory deadlines.
- Otherwise retains the current rule's language and organization.
- Provides the statutory mandate that courts set hearing or submission not later than 60 days after filing of the motion (extendable to 90 days).
- This version calculates the deadline to file a response backwards from the date set for hearing or submission.

- Version 1 Typical Scenario: Motion Filed on "Day 1"

    - Day 1 – Motion filed.
    - Response deadline – At least 7 days before hearing → Day 14.
    - Reply deadline – Not expressly provided; only with leave or by local practice.
    - Day 21 – Hearing or submission. Earliest permissible hearing date after motion is filed under the rule—same as current TRCP 166a.

- Version 1 Problematic Scenario: Motion Filed on "Day 1"

    - Day 1 – Motion filed (satisfies requirement that it be filed at least 21 days before any hearing).
    - Day 58 – Court sets hearing for Day 59.
    - Response deadline: 7 days before the hearing (Day 52).
    - Problem: Parties are not told until Day 58 that the hearing will occur on Day 59 — but their response was due six days earlier on Day 52.

Practical Effect: Parties may lose their right to respond through no fault of their own, because the court waited to set the hearing date until after the response deadline had already passed. This is the "trap" Version 1 creates: responses are tied to a hearing date that may be set late in the statutory 60-day window, potentially after the response deadline has already expired.

Recommendation: SB 293 started the hearing deadline .with the response date, which would allow courts/parties to continue to have all the flexibility so long as a response was not on file. That model would work/could work without imposing any extra default deadlines (i.e., response/reply). However now, given that everyone will be under a ticking timetable upon filing of the *motion* with HB 16, it would actually protect parties to have a . response deadline and reply deadline date triggered by the filing of the motion for summary judgment. If the rule provided these response/reply timelines, courts would have to wait some minimum number of days before setting hearing/submission. (*See* Version 2, *infra*.) We would not have concerns that courts would set the hearing to trigger a response the next day, or with insufficient time to respond.

<u>Version 2: Simple Addition of SB 293 and HB 16 Requirements and Shifting Response Trigger</u>

- Retains the "Simple" statutory update in Version 1 but establishes internal deadlines to file a response, reply, and evidence, triggered by filing of the motion for summary judgment:

    - Response and evidence due 21 days (in the current draft) after the motion is filed.
    - Reply and permitted evidence due 7 days after the Response.

- Ensures parties cannot be forced to respond on unreasonably short notice if a hearing is set immediately after filing.

- Requires more lead-time before a hearing can be held—45 days in the current draft.

- Specifies that a withdrawal of the motion must be in writing, filed, and set forth the filing date of the motion being withdrawn.
- Updates subpart d) of the rule consistent with the new default response and reply timelines.
- Adjusts the language of subpart g) to make clear that a court may not indefinitely continue an MSJ for lack of evidence in light of the new timelines. This will make clear that a no-evidence summary judgment is not excepted from the statutory deadlines.
- Version 2 Typical Scenario: Motion filed on "Day 1"

    - Day 1 – Motion filed.
    - Day 21– Response due.
    - Day 28– Reply due.
    - Day 45 – Earliest permissible hearing according to this draft (because motion must be filed 45 days before hearing). This date could be adjusted to 30 or 40 days.

Practical effect: The parties and the court will always have adequate time after the motion is filed to file and read briefs before the hearing. Response and reply deadlines are fixed, predictable, and not dependent on when the court sets the hearing. Even if the court waits until Day 58 to set a hearing on Day 59, there's no trap — the response/reply deadlines have already run in a known, orderly way.

Version 3: Updated "Restructured" from the August 29, 2025 SCAC Meeting

- Incorporates the organizational and stylistic revisions considered at prior SCAC meetings, presenting the rule in subsections (a)–(i). *See* Subcommittee Memo (Tab I 8-29-25 SCAC Meeting Binder). Three substantive revisions from the last meeting were made:

    - Integrating HB 16 timelines.
    - Incorporating the internal deadlines and withdrawal requirement changes in Version 2, *supra*, to parts c), d), and g) of the Rule.
    - Adding a requirement that the clerk of the court shall immediately call the filing of a MSJ to the attention of the court (reference TRCP 296) and a requirement that the movant must file a reminder if a hearing/submission is not held within 60 days (reference TRCP 297).

Attachments:

Version 1: Simple Addition of SB 293 and HB 16 Requirements

Version 2: Simple Addition of SB 293 and HB 16 Requirements and Shifting Response Trigger

Version 3: Updated "Restructured" from the August 29, 2025 SCAC Meeting

166a Revision - Version 1

Version 1: Simple Addition of SB 293 and HB 16 Requirements

RULE 166a. SUMMARY JUDGMENT[1]

a) **For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the adverse party has appeared or answered, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.

b) **For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

c) **Motion and Proceedings Thereon.** The motion for summary judgment shall state the specific grounds therefor. Unless a withdrawal of the motion is filed, the court shall set the motion for oral hearing or written submission not later than the sixtieth day after the motion was filed. The oral hearing or written submission date may be set after the sixtieth day, but not later than the ninetieth day, after the motion was filed a) if the court's docket requires a hearing on a date later than the sixtieth day after the date the motion was filed, b) upon a showing of good cause, or c) if the movant consents. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response. No oral testimony shall be received at the hearing. The court shall record in the docket the date the motion was heard or considered. The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. The court shall file with the clerk of the court and provide to the parties a written ruling on the motion not later than the ninetieth day after the date the motion was heard or considered. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal. A summary judgment may be based on uncontroverted testimonial evidence of an

[1] Note to Draft: This version incorporates the timelines set forth in SB 293 and HB16, maintaining current procedure and timelines.

interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

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

e) **Case Not Fully Adjudicated on Motion.** If summary judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the judge may at the hearing examine the pleadings and the evidence on file, interrogate counsel, ascertain what material fact issues exist and make an order specifying the facts that are established as a matter of law, and directing such further proceedings in the action as are just.

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

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

h) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits

caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

i) **No-Evidence Motion.** After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

166a Revision - Version 2

Version 2: SB 293 and HB 16 Requirements and Shifting Response Trigger

RULE 166a. SUMMARY JUDGMENT[1]

a) **For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the adverse party has appeared or answered, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.

b) **For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

c) **Motion and Proceedings Thereon.** The motion for summary judgment shall state the specific grounds therefor. ~~-~~Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least ~~twenty-one~~[forty-five] days before the time specified for hearing. Except on leave of court, the adverse party, not later than ~~seven days prior to the day of hearing may file and serve opposing affidavits or other written response.~~ [twenty-one] days after the motion is filed may file and serve opposing affidavits or other written response. Any reply to the adverse party's response may be filed not later than seven days after the response is filed. No oral testimony shall be received at the hearing. Any withdrawal of the motion by the movant shall i) be in writing, ii) identify the date the motion was filed, and iii) be filed with the court. Unless the motion is withdrawn, the court shall set the motion for oral hearing or written submission not later than the sixtieth day after the motion was filed. The oral hearing or written submission date may be set after the sixtieth day, but not later than the ninetieth day, after the motion was filed i) if the court's docket requires a hearing on a date later than the sixtieth day after the date the motion was filed, ii) upon a showing of good cause, or

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[1] Note to Draft: This version:

- incorporates the timelines set forth in HB16,
- adds default response and reply deadlines, triggered based on the motion filing date (rather than the hearing date),
- adjusts the timeline from motion to hearing from 21 days to 45, which provides ample time for response and reply to be on file for 15+ days before the hearing date;
- requires that any withdrawal of the motion must be in writing, identify the date the motion was filed, and be filed with the court;
- makes clear in subpart (d) that allowable evidence must be filed with the motion or response; and
- adjusts the language of subpart g) to make clear that a court may not simply continue an MSJ for lack of evidence in light of the new timelines.

iii) if the movant consents. The court shall record in the docket the date the motion was heard or considered. The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. The court shall file with the clerk of the court and provide to the parties a written ruling on the motion not later than the ninetieth day after the date the motion was heard or considered. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

d) **Appendices, References and Other Use of Discovery Not Otherwise on File.** Discovery products not on file with the clerk may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary judgment proofs: (i) at ~~least twenty-one days before~~ the ~~hearing~~time the motion is filed if such proofs are to be used to support the summary judgment; ~~or~~ (ii) at ~~least seven days before the hearing~~the time the response is filed if such proofs are to be used to oppose the summary judgment; or (iii) at the time the reply is filed if such proofs are permissible to be used to support the summary judgment.

e) **Case Not Fully Adjudicated on Motion.** If summary judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the judge may at the hearing examine the pleadings and the evidence on file, interrogate counsel, ascertain what material fact issues exist and make an order specifying the facts that are established as a matter of law, and directing such further proceedings in the action as are just.

f) **Form of Affidavits; Further Testimony.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be

supplemented or opposed by depositions or by further affidavits. Defects in the form of affidavits or attachments will not be grounds for reversal unless specifically pointed out by objection by an opposing party with opportunity, but refusal, to amend.

g) **When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may ~~refuse~~deny the ~~application~~motion for summary judgment ~~or may order~~without prejudice and reset the motion for a ~~continuance~~new date to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just~~.~~, consistent with the deadlines provided in section (c) of this rule.

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

i) **No-Evidence Motion.** After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

166a Revision - Version 3

RULE 166a. SUMMARY JUDGMENT[1]

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may~~, at any time after the adverse party has appeared or answered,~~ move with or without supporting affidavits for a summary judgment in ~~h~~its favor upon all or any part thereof. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may~~, at any time,~~ move with or without supporting affidavits for a summary judgment in ~~h~~its favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. ~~The~~

1. Contents of the Motion. A traditional motion for summary judgment shall state the specific grounds ~~therefor.~~ in support of the motion. A no-evidence motion for summary judgment must state the elements as to which there is no evidence.

2. Time to File a Motion. Unless a different deadline is set by local rule or court order, a party may move for a traditional motion for summary judgment at any time after the adverse party has appeared or answered. After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial.

3. Setting of Oral Hearing or Written Submission. A motion for summary judgment shall be entitled "Motion for Summary Judgment" and shall be filed with the clerk of the court, who shall immediately call such motion to the attention of the court in which the motion is filed. The moving party shall immediately make a written request for oral hearing or written submission of the motion, and shall serve the request on all other parties in accordance with Rule 21a. Any withdrawal of the motion by the movant shall i) be in writing, ii) identify the date the motion was

[1] Note to Draft: This version:

- restructures the Rule per subcommittee recommendations discussed at the August 28, 2025 SCAC meeting (including adjustments to response and reply timelines);
- incorporates the timelines set forth in HB16;
- provides that the clerk of the court shall immediately call the filing of an MSJ to the attention of the court (like in Rule 296);
- requires the movant to file a reminder if a hearing/submission is not held within 60 days (similar to Rule 297); and
- creates internal deadlines for a response and a reply triggered by filing of the MSJ;
- adds specificity to withdrawal of a motion.

filed, and iii) be filed with the court. Unless the motion is withdrawn, the court shall set the motion for oral hearing or written submission not later than the sixtieth day after the motion was filed. The oral hearing or written submission date may be set after the sixtieth day, but not later than the ninetieth day, after the motion was filed a) if the court's docket requires a hearing on a date later than the sixtieth day after the date the motion was filed, b) upon a showing of good cause, or c) if the movant consents. The oral hearing or written submission date shall be set no earlier than the thirty-fifth day after the motion was filed. If the court fails to set the hearing within sixty days after the motion was filed, the party making the request for hearing must, within sixty days after filing the original request, file with the clerk and serve on all other parties in accordance with Rule 21a, a "Notice of Past Due Summary Judgment Setting" which must be immediately called to the attention of the court by the clerk. Such notice must state the date the original request for hearing was filed and the date the hearing or submission is due.

4. Response. Except on leave of court, ~~with notice~~a non-movant shall file and serve its written response to ~~opposing counsel,~~ the motion and any evidence in support of the response and objections to the evidence supporting ~~affidavits shall be filed and served at least~~ the motion not later than [twenty-one ~~days before the time specified for hearing. Except on leave of court, the adverse party,~~] days after the motion is filed.

5. Reply. The movant may file and serve a reply with responsive arguments or objections to a responding party's response or evidence not later than seven days ~~prior to~~after the ~~day of hearing may file and serve opposing affidavits or other written~~oral response is filed. A reply may not raise new or independent summary judgment grounds.

6. The Hearing. No oral testimony shall be received at ~~the hearing. The judgment sought shall be rendered forthwith~~a hearing on a summary judgment motion. The court shall hear oral argument on the motion or consider the motion on written submission without oral argument on the day originally set under subsection (c)(3) unless the movant withdraws the motion. The court shall record in the docket the date the motion was heard or considered.

7. The Merits of the Motion. No judgment shall be granted except on the grounds stated pursuant to subsection (c)(1). The court shall grant a traditional motion for summary judgment if (i) the deposition transcripts, interrogatory answers, admissions, documents, electronically stored information, and other discovery responses specifically referenced or set forth in the motion or response, and (ii) the pleadings, ~~admissions,~~ affidavits, declarations, stipulations of the parties~~,~~ (including those made for purposes of the motion only), and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. ~~Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal.~~ A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted. The court must grant a no-evidence motion for summary judgment

unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

8. The Ruling. The movants and responding parties shall each submit a proposed order before the oral hearing or written submission date. The court shall sign a written ruling on the motion, file it with the clerk, and provide the ruling to the parties not later than ninety days after the oral hearing or written submission date. A motion for summary judgment is denied *[by operation of law*], without prejudice to being reset for hearing, if: (1) the movant passes the hearing by filing a written notice with the clerk of the court; or (2) the court grants a continuance of the oral hearing or written submission on motion of a party; or (3) the court rules that there was not adequate time for discovery; or (4) the movant files summary judgment evidence later than the deadline provided by Rule 166a(c), Texas Rules of Civil Procedure, without leave of court.

9. The Appeal. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal.

(d) Appendices, References and Other Use of Discovery Not Otherwise on File. Discovery products not on file with the clerk may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary judgment proofs: (i) at ~~least twenty-one days before~~ the ~~hearing~~time the motion is filed if such proofs are to be used to support the summary judgment; ~~or~~ (ii) at ~~least seven days before the hearing~~the time the response is filed if such proofs are to be used to oppose the summary judgment~~.~~; or (iii) at the time the reply is filed if such proofs are permissible to be used to support the summary judgment..

(e) Case Not Fully Adjudicated on Motion. If summary judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the judge may at the oral hearing or written submission examine the pleadings and the evidence on file~~, interrogate counsel~~, ascertain what material fact issues exist and make an order specifying the facts that are established as a matter of law, and directing such further proceedings in the action as are just.

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

(g) When Affidavits or Declarations Are Unavailable. ~~-~~Should it appear from the affidavits or declarations of a party opposing the motion that he cannot for reasons stated present by affidavit or declaration facts essential to justify ~~hi~~ts opposition, the court may ~~refused~~deny the ~~application for judgment or may order a continuance~~motion without prejudice to permit affidavits or declarations to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

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

~~**No-Evidence Motion.** After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.~~

AN ACT

relating to the discipline of judges by the State Commission on Judicial Conduct, notice of certain reprimands, judicial compensation and related retirement benefits, and the reporting of certain judicial transparency information; authorizing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 22.302(a), Government Code, is amended to read as follows:

(a) At the discretion of its chief justice or presiding judge, the supreme court, the court of criminal appeals, or a court of appeals may order that oral argument be presented through the use of teleconferencing technology. The [~~court and the~~] parties or their attorneys may participate in oral argument from any location through the use of teleconferencing technology. Unless exigent circumstances require otherwise, the court shall participate in oral argument presented through teleconferencing technology from a courtroom or other facility provided to the court by this state.

SECTION 2. Subchapter D, Chapter 23, Government Code, is amended by adding Section 23.303 to read as follows:

Sec. 23.303. PROCEDURES RELATED TO MOTIONS FOR SUMMARY JUDGMENT; ANNUAL REPORT. (a) The business court, a district court, or a statutory county court shall, with respect to a motion for summary judgment:

(1) hear oral argument on the motion or consider the motion without oral argument not later than the 45th day after the date the response to the motion was filed; and

(2) file with the clerk of the court and provide to the parties a written ruling on the motion not later than the 90th day after the date the motion was argued or considered.

(b) If a motion for summary judgment is considered by a court described by Subsection (a) without oral argument, the court shall record in the docket the date the motion was considered without argument.

(c) A clerk of a court described by Subsection (a) shall report the court's compliance with the times prescribed by this section to the Office of Court Administration of the Texas Judicial System not less than once per quarter using the procedure the office prescribes for the submission of reports under this subsection.

(d) The Office of Court Administration of the Texas Judicial System shall prepare an annual report regarding compliance of courts and clerks with the requirements of this section during the preceding state fiscal year. Not later than December 31 of each year, the office shall submit the report prepared under this section to the governor, lieutenant governor, and speaker of the house of representatives and make the report publicly available.

(e) Notwithstanding Section 22.004, Subsection (a) or (b) may not be modified or repealed by supreme court rule.

SECTION 3. Section 33.001(a), Government Code, is amended by amending Subdivisions (8) and (9) and adding Subdivision (8-a) to read as follows:

(8) "Judge" means a justice, judge, master, magistrate, justice of the peace, or retired or former judge as described by Section 1-a, Article V, Texas Constitution, or other person who performs the functions of the justice, judge, master, magistrate, justice of the peace, or retired or former judge.

(8-a) "Official misconduct" has the meaning assigned by Article 3.04, Code of Criminal Procedure.

(9) "Review tribunal" means a panel of seven justices of the courts of appeal selected [~~by lot~~] by the chief justice of the supreme court to review a recommendation of the commission for the removal or retirement of a judge under Section 1-a(9), Article V, Texas Constitution.

SECTION 4. Section 33.001(b), Government Code, is amended to read as follows:

(b) For purposes of Section 1-a, Article V, Texas Constitution, "wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" includes:

(1) wilful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business, including failure to meet deadlines, performance measures or standards, or clearance rate requirements set by statute, administrative rule, or binding court order;

(2) wilful violation of a provision of the Texas penal statutes or the Code of Judicial Conduct;

(3) persistent or wilful violation of the rules

promulgated by the supreme court;

(4) incompetence in the performance of the duties of the office;

(5) failure to cooperate with the commission; [~~or~~]

(6) violation of any provision of a voluntary agreement to resign from judicial office in lieu of disciplinary action by the commission;

(7) persistent or wilful violation of Article 17.15, Code of Criminal Procedure; or

(8) persistent or wilful violation of Section 22.302(a).

SECTION 5. Section 33.0211, Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) additional documentation supporting the complaint submitted under Subsection (a-1);

(5) the name of each person contacted in relation to the complaint;

(6) [~~(5)~~] a summary of the results of the review or investigation of the complaint; and

(7) [~~(6)~~] an explanation of the reason the file was

closed, if the commission closed the file without taking action other than to investigate the complaint.

(a-1) Not later than the 45th day after the date a person files a complaint with the commission, the person may submit to the commission additional documentation to support the complaint.

SECTION 6. Subchapter B, Chapter 33, Government Code, is amended by adding Sections 33.02111 and 33.02115 to read as follows:

Sec. 33.02111. STATUTE OF LIMITATIONS. (a) Except as provided by Subsection (b), the commission may not investigate and shall dismiss a complaint filed on or after the seventh anniversary of the date:

(1) the alleged misconduct occurred; or

(2) the complainant knew, or with the exercise of reasonable diligence should have known, of the alleged misconduct.

(b) The commission may investigate and not dismiss a complaint described by Subsection (a) if the commission determines good cause exists for investigating the complaint.

Sec. 33.02115. FALSE COMPLAINT; ADMINISTRATIVE PENALTY. (a) The commission may impose administrative sanctions, including an administrative penalty under Subsection (b), against a person who knowingly files a false complaint with the commission under this subchapter.

(b) The commission may impose on a person described by Subsection (a) an administrative penalty in the amount of:

(1) not more than $500 for the first false complaint;

(2) not more than $2,500 for the second false

complaint; and

(3) not less than $5,000 but not more than $10,000 for each false complaint filed subsequent to the second.

(c) An order imposing an administrative penalty or other sanction under this section is a public record. The commission shall publish notice of the penalty or other sanction on the commission's Internet website.

SECTION 7. Section 33.0212, Government Code, is amended to read as follows:

Sec. 33.0212. REPORT AND RECOMMENDATIONS ON FILED COMPLAINTS. (a) As soon as practicable after a complaint is filed with the commission, commission staff shall conduct a preliminary investigation of the filed complaint and draft recommendations for commission action.

(a-1) If, after completing a preliminary investigation under Subsection (a), commission staff determines that given the content of a complaint a full investigation is necessary before the next commission meeting, commission staff may commence the investigation. Not less than seven business days after the date commission staff commences a full investigation under this subsection, the staff shall provide written notice of the full investigation to the judge who is the subject of the complaint. Notice provided under this subsection shall comply with the requirements of Section 33.022(c)(1)(B).

(a-2) Not later than the 10th day before a scheduled commission meeting [~~120th day after the date a complaint is filed with the commission~~], commission staff shall prepare and file with

each member of the commission a report detailing:

(1) each complaint for which a preliminary investigation has been conducted under Subsection (a) but for which the investigation report has not been finalized under Subsection (b);

(2) the results of the preliminary investigation of the complaint, including whether commission staff commenced a full investigation under Subsection (a-1); and

(3) the commission staff's recommendations for commission action regarding the complaint, including any recommendation for further investigation or termination of the investigation and dismissal of the complaint.

(b) Not later than the 120th [~~90th~~] day following the date of the first commission meeting at which a complaint is included in the report filed with the commission under Subsection (a-2) [~~staff files with the commission the report required by Subsection (a)~~], the commission shall finalize the investigation report and determine any action to be taken regarding the complaint, including:

(1) a public sanction;

(2) a private sanction;

(3) a suspension;

(4) an order of education;

(5) an acceptance of resignation in lieu of discipline;

(6) a dismissal; or

(7) an initiation of formal proceedings.

(b-1) After the commission meeting at which an investigation report is finalized and an action is determined under Subsection (b), the commission shall provide to the judge who is the subject of a complaint:

(1) written notice of the action to be taken regarding the complaint not more than:

(A) five business days after the commission meeting if the commission determines no further action will be taken on the complaint; or

(B) seven business days after the commission meeting if the commission determines to take any further action on the complaint, including by pursuing further investigation; and

(2) as the commission determines appropriate, published notice of the action to be taken by posting the notice on the commission's Internet website not less than five business days after notice is provided under Subdivision (1).

(c) If, because of extenuating circumstances, the commission [~~staff~~] is unable to finalize an investigation report and determine the action to be taken regarding a complaint under Subsection (b) [~~provide an investigation report and recommendation to the commission~~] before the 120th day following the date of the first [~~the complaint was filed with the~~] commission meeting at which a complaint is included in the report filed with the commission under Subsection (a-2), the commission may order an extension [~~the staff shall notify the commission and propose the number of days required for the commission and commission staff to complete the investigation report and recommendations and finalize~~

~~the complaint. The staff may request an extension~~] of not more than 240 [~~270~~] days from the date of the first [~~the complaint was filed with the~~] commission meeting at which a complaint is included in the report filed with the commission under Subsection (a-2). [~~The commission shall finalize the complaint not later than the 270th day following the date the complaint was filed with the commission.~~]

(c-1) If a complaint against a judge alleges multiple instances of misconduct or the commission determines multiple complaints have been submitted against the judge, the commission may order an additional extension of not more than 90 days after the date the extension under Subsection (c) expires.

(c-2) Each member of the commission shall certify an investigation report finalized in accordance with this section by signing the report. The signature required under this subsection may be electronic.

(d) [~~The executive director may request that the chairperson grant an additional 120 days to the time provided under Subsection (c) for the commission and commission staff to complete the investigation report and recommendations and finalize the complaint.~~

[~~(e)~~] If the commission orders an extension of time under Subsection (c) or (c-1) [~~chairperson grants additional time under Subsection (d)~~], the commission must timely inform the following [~~legislature~~] of the extension:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the presiding officer of each legislative standing committee with primary jurisdiction over the judiciary;

(5) the chief justice of the supreme court;

(6) the Office of Court Administration of the Texas Judicial System; and

(7) the presiding judge of the administrative judicial region in which is located the court the judge who is the subject of the complaint serves.

(e) The commission may not disclose to a person informed under Subsection (d) [~~the legislature~~] any confidential information regarding the complaint.

SECTION 8. Section 33.0213, Government Code, is amended to read as follows:

Sec. 33.0213. NOTIFICATION OF LAW ENFORCEMENT AGENCY INVESTIGATION. On notice by any law enforcement agency investigating an action for which a complaint has been filed with the commission, the commission:

(1) may place the commission's complaint file on hold and decline any further investigation that would jeopardize the law enforcement agency's investigation; or

(2) shall[~~. The commission may~~] continue an investigation that would not jeopardize a law enforcement investigation regarding the conduct subject to the complaint and may issue a censure or sanction based on the complaint.

SECTION 9. Section 33.022, Government Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1) and

(b-2) to read as follows:

(b) If, after conducting a preliminary investigation under this section, [~~the~~] commission staff determine [~~determines~~] that an allegation or appearance of misconduct or disability is unfounded or frivolous, [~~the~~] commission staff shall recommend the commission [~~shall~~] terminate the investigation and dismiss the complaint.

(b-1) If, after conducting a preliminary investigation under this section, commission staff determine administrative deficiencies in the complaint preclude further investigation, commission staff may terminate the investigation and dismiss the complaint without action by the commission.

(b-2) If a complaint is dismissed under Subsection (b) or (b-1), the commission shall notify the judge in writing of the dismissal not more than five business days after the dismissal date.

(c) If, after conducting a preliminary investigation under this section, the commission does not determine that an allegation or appearance of misconduct or disability is unfounded or frivolous, the commission:

(1) shall:

(A) conduct a full investigation of the circumstances surrounding the allegation or appearance of misconduct or disability; and

(B) not more than seven business days after the commission staff commences a full investigation under this subsection, notify the judge in writing of:

(i) the commencement of the investigation;

[~~and~~]

(ii) the nature of the allegation or appearance of misconduct or disability being investigated; and

(iii) the judge's right to attend each commission meeting at which the complaint is included in the report filed with commission members under Section 33.0212(a-2); and

(2) may:

(A) order the judge to:

(i) submit a written response to the allegation or appearance of misconduct or disability; or

(ii) appear informally before the commission;

(B) order the deposition of any person; or

(C) request the complainant to appear informally before the commission.

SECTION 10. Section 33.023, Government Code, is amended to read as follows:

Sec. 33.023. SUBSTANCE ABUSE; PHYSICAL OR MENTAL INCAPACITY OF JUDGE; SUSPENSION. (a) For each filed complaint alleging substance abuse by, or the physical or mental incapacity of, a judge and questioning the judge's ability to perform the judge's official duties, the commission shall conduct a preliminary investigation of the complaint and present the results of the preliminary investigation to each member of the commission not later than the 30th day after the date the complaint is filed.

(b) If, after reviewing the results of the preliminary investigation, the commission determines the judge's alleged

substance abuse or physical or mental incapacity brings into question the judge's ability to perform the judge's official duties, the commission shall provide the judge written notice of the complaint and subpoena the judge to appear before the commission at the commission's next regularly scheduled meeting.

(c) If, following the judge's appearance before the commission at the next regularly scheduled meeting, the commission decides to require the judge to submit to a physical or mental examination, the commission shall:

(1) suspend the judge from office with pay for a period not to exceed 90 days;

(2) provide the judge written notice of the suspension;

(3) [~~In any investigation or proceeding that involves the physical or mental incapacity of a judge, the commission may~~] order the judge to submit to a physical or mental examination by one or more qualified physicians or a mental examination by one or more qualified psychologists selected and paid for by the commission; and

(4) provide[~~.~~

[~~(b) The commission shall give~~] the judge written notice of the examination not later than 10 days before the date of the examination.

(d) The notice provided under Subsection (c)(4) must include the physician's name and the date, time, and place of the examination.

(e) [~~(c)~~] Each examining physician shall file a written

report of the examination with the commission and the report shall be received as evidence without further formality. On request of the judge or the judge's attorney, the commission shall give the judge a copy of the report. The physician's oral or deposition testimony concerning the report may be required by the commission or by written demand of the judge.

(f) If, after receiving the written report of an examining physician or the physician's deposition testimony concerning the report, the commission determines the judge is unable to perform the judge's official duties because of substance abuse or physical or mental incapacity, the commission shall:

(1) recommend to the supreme court suspension of the judge from office; or

(2) enter into an indefinite voluntary agreement with the judge for suspension of the judge with pay until the commission determines the judge is physically and mentally competent to resume the judge's official duties.

(g) [~~(d)~~] If a judge refuses to submit to a physical or mental examination ordered by the commission under this section, the commission may petition a district court for an order compelling the judge to submit to the physical or mental examination and recommend to the supreme court suspension of the judge from office.

SECTION 11. Section 33.034, Government Code, is amended by amending Subsection (a) and adding Subsection (j) to read as follows:

(a) A judge who receives from the commission a sanction or

censure issued by the commission under Section 1-a(8), Article V, Texas Constitution, may request [~~or any other type of sanction is entitled to~~] a review of the commission's decision as provided by this section. This section does not apply to a decision by the commission to institute formal proceedings.

(j) If the commission issues a public reprimand of a judge based on the judge's persistent or wilful violation of Article 17.15, Code of Criminal Procedure, the commission shall send notice of the reprimand to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the presiding officer of each legislative standing committee with primary jurisdiction over the judiciary;

(5) the chief justice of the supreme court;

(6) the Office of Court Administration of the Texas Judicial System;

(7) the presiding judge of the administrative judicial region in which is located the court the reprimanded judge serves; and

(8) each judge of a constitutional county court in the geographic region in which the reprimanded judge serves.

SECTION 12. Section 33.037, Government Code, is amended to read as follows:

Sec. 33.037. SUSPENSION FROM OFFICE [~~PENDING APPEAL~~]. (a) If a judge who is convicted of a felony or a misdemeanor involving official misconduct appeals the conviction, the commission shall

suspend the judge from office without pay pending final disposition of the appeal.

(b) Not later than the 21st day after the date the commission initiates formal proceedings against a judge based on the judge's persistent or wilful violation of Article 17.15, Code of Criminal Procedure, the commission shall recommend to the supreme court that the judge be suspended from office pursuant to Section 1-a, Article V, Texas Constitution.

SECTION 13. Subchapter B, Chapter 33, Government Code, is amended by adding Section 33.041 to read as follows:

Sec. 33.041. JUDICIAL DIRECTORY; NOTICE. (a) The Office of Court Administration of the Texas Judicial System shall:

(1) establish a judicial directory that contains the contact information, including the e-mail address, for each judge in this state; and

(2) provide the commission with access to the directory for the purpose of providing to a judge written notice required by this subchapter.

(b) Written notice required by this subchapter may be provided to a judge by e-mail.

SECTION 14. Subchapter C, Chapter 72, Government Code, is amended by adding Section 72.0396 to read as follows:

Sec. 72.0396. JUDICIAL TRANSPARENCY INFORMATION. (a) Each district court judge shall submit to the presiding judge of the administrative judicial region in which the judge's court sits not later than July 20 or January 20, as applicable, information for the preceding six-month period in which the judge attests to:

(1) the number of hours the judge presided over the judge's court at the courthouse or another court facility; and

(2) the number of hours the judge performed judicial duties other than those described by Subdivision (1), including the number of hours the judge:

(A) performed case-related duties;

(B) performed administrative tasks; and

(C) completed continuing education.

(b) The presiding judge of each administrative judicial region shall submit the information submitted under Subsection (a) to the office in the manner prescribed by the supreme court.

(c) The office shall provide administrative support for the submission and collection of information under Subsection (a), including providing a system for electronic submission of the information.

(d) Not later than December 1 of each year, the office shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, and each presiding officer of a legislative standing committee with primary jurisdiction over the judiciary a written report compiling the information submitted under Subsection (b).

(e) The supreme court shall adopt rules establishing guidelines and providing instructions regarding the submission of information under Subsection (a), including rules:

(1) establishing a penalty for the submission of false information under that subsection; and

(2) providing guidance on the form and manner of

submitting information under that subsection.

SECTION 15. Section 73.003(e), Government Code, is amended to read as follows:

(e) At the discretion of its chief justice, a court to which a case is transferred may hear oral argument through the use of teleconferencing technology as provided by Section 22.302. [~~The court and the parties or their attorneys may participate in oral argument from any location through the use of teleconferencing technology.~~] The actual and necessary expenses of the court in hearing an oral argument through the use of teleconferencing technology shall be paid by the state from funds appropriated for the transfer of case, as specified in Subsection (d).

SECTION 16. Section 74.055(c), Government Code, is amended to read as follows:

(c) To be eligible to be named on the list, a retired or former judge must:

(1) have served as an active judge for at least 96 months in a district, statutory probate, statutory county, or appellate court;

(2) have developed substantial experience in the judge's area of specialty;

(3) not have been removed from office;

(4) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges, that:

(A) the judge has never been publicly reprimanded or censured by the State Commission on Judicial Conduct, excluding any reprimand or censure reviewed and rescinded by a special court

of review under Section 33.034;

(B) the judge has not received more than one of any other type of public sanction, excluding any sanction reviewed and rescinded by a special court of review under Section 33.034; and

(C) [~~(B)~~] the judge:

(i) did not resign or retire from office after the State Commission on Judicial Conduct notified the judge of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the judge as provided in Section 33.022 and before the final disposition of that investigation; or

(ii) if the judge did resign from office under circumstances described by Subparagraph (i), was not publicly reprimanded or censured as a result of the investigation;

(5) annually demonstrate that the judge has completed in the past state fiscal year the educational requirements for active district, statutory probate, and statutory county court judges; and

(6) certify to the presiding judge a willingness not to appear and plead as an attorney in any court in this state for a period of two years.

SECTION 17. Section 659.012, Government Code, is amended by amending Subsections (a) and (d) and adding Subsections (b-2) and (d-1) to read as follows:

(a) Notwithstanding Section 659.011 and subject to Subsections (b) and (b-1):

(1) a judge of a district court or a division of the

business court is entitled to an annual base salary from the state as set by the General Appropriations Act in an amount equal to at least $175,000 [~~$140,000~~], except that the combined base salary of a district judge or judge of a division of the business court from all state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is $5,000 less than the maximum combined base salary from all state and county sources for a justice of a court of appeals other than a chief justice as determined under this subsection;

(2) except as provided by Subdivision (3), a justice of a court of appeals [~~other than the chief justice~~] is entitled to an annual base salary from the state in the amount equal to 110 percent of the state base salary of a district judge as set by the General Appropriations Act, except that the combined base salary of a justice of the court of appeals [~~other than the chief justice~~] from all state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is $5,000 less than the base salary for a justice of the supreme court as determined under this subsection;

(3) a justice of the Court of Appeals for the Fifteenth Court of Appeals District [~~other than the chief justice~~] is entitled to an annual base salary from the state in the amount equal to $5,000 less than 120 percent of the state base salary of a district judge as set by the General Appropriations Act;

(4) a justice of the supreme court [~~other than the chief justice~~] or a judge of the court of criminal appeals [~~other~~

~~than the presiding judge~~] is entitled to an annual base salary from the state in the amount equal to 120 percent of the state base salary of a district judge as set by the General Appropriations Act; and

(5) the chief justice or presiding judge of an appellate court is entitled to additional compensation [~~an annual base salary~~] from the state in the amount equal to seven percent of [~~$2,500 more than~~] the state base salary provided for the other justices or judges of the court[~~, except that the combined base salary of the chief justice of a court of appeals from all state and county sources may not exceed the amount equal to $2,500 less than the base salary for a justice of the supreme court as determined under this subsection~~].

(b-2) Notwithstanding any other provision of this section, the additional compensation from the state paid to a chief justice or presiding judge of an appellate court in accordance with Subsection (a)(5) is not included as part of the judge's or justice's combined base salary from all state and county sources for purposes of determining whether the judge's or justice's salary exceeds the limitation.

(d) Notwithstanding any other provision in this section or other law, [~~in a county with more than five district courts,~~] a district judge who serves as a local administrative district judge under Section 74.091 is entitled to an annual base salary from the state in the amount provided under Subsection (a) or (b) and an additional annual [~~in the~~] amount from the state equal to:

(1) in a county with three or four district courts,

three percent of the annual base [~~$5,000 more than the maximum~~] salary for a judge of a district court [~~from the state to which the judge is otherwise entitled~~] under Subsection (a);

(2) in a county with more than four but fewer than 10 district courts, five percent of the annual base salary for a judge of a district court under Subsection (a); or

(3) in a county with 10 or more district courts, seven percent of the annual base salary for a judge of a district court under Subsection (a) [~~or (b)~~].

(d-1) Notwithstanding any other provision in this section or other law, a judge of a division of the business court who serves as administrative presiding judge under Section 25A.009 is entitled to an annual base salary from the state in the amount provided under Subsection (a) or (b) and an additional annual amount equal to the amount provided under Subsection (d)(3).

SECTION 18. Section 665.052(b), Government Code, is amended to read as follows:

(b) In this section, "incompetency" means:

(1) gross ignorance of official duties;

(2) gross carelessness in the discharge of official duties; [~~or~~]

(3) inability or unfitness to discharge promptly and properly official duties because of a serious physical or mental defect that did not exist at the time of the officer's election; or

(4) persistent or wilful violation of Article 17.15, Code of Criminal Procedure.

SECTION 19. Section 814.103, Government Code, is amended by

amending Subsections (a), (a-1), and (b) and adding Subsections (a-2) and (a-3) to read as follows:

(a) Except as provided by Subsection (a-1) or (b) and subject to Subsection (a-2), the standard service retirement annuity for service credited in the elected class of membership is an amount equal to the number of years of service credit in that class, times 2.3 percent of $175,000 [~~the state base salary, excluding longevity pay payable under Section 659.0445 and as adjusted from time to time, being paid to a district judge as set by the General Appropriations Act in accordance with Section 659.012(a)~~].

(a-1) Except as provided by Subsection (b), the standard service retirement annuity for service credited in the elected class of membership for a member of the class under Section 812.002(a)(3) whose effective date of retirement is on or after September 1, 2019, is an amount equal to the number of years of service credit in that class, times 2.3 percent of the state salary, excluding longevity pay payable under Section 659.0445 [~~and as adjusted from time to time~~], being paid in accordance with Section 659.012 to a district judge who has the same number of years of contributing service credit as the member on the member's last day of service as a district or criminal district attorney, as applicable.

(a-2) Beginning August 31, 2030, and every fifth anniversary of that date, the Texas Ethics Commission shall consider an equitable increase in the dollar amount on which the standard service retirement annuity is based under Subsection (a)

and increase the dollar amount as the commission considers appropriate. When determining an equitable increase in the dollar amount, the Texas Ethics Commission may consider any increase in compensation for elected officials and officers for salaries included in the General Appropriations Act.

(a-3) The Texas Ethics Commission shall develop, adopt, and make public a methodology for adjusting the dollar amount on which the standard service retirement annuity is computed under Subsection (a) not later than September 1, 2026, and apply the methodology for each equitable adjustment under Subsection (a-2).

(b) The standard service retirement annuity for service credited in the elected class may not exceed at any time 100 percent of, as applicable:

(1) the dollar amount on which the annuity is based under Subsection (a), subject to adjustment under Subsection (a-2); or

(2) the state salary of a district judge on which the annuity is based under Subsection [~~(a) or~~] (a-1) [~~, as applicable~~].

SECTION 20. Section 820.053(c), Government Code, is amended to read as follows:

(c) For purposes of this section, a member of the elected class of membership under Section 812.002(a)(2) shall have the member's accumulated account balance computed as if the contributions to the account were based on the dollar amount on which the standard service retirement annuity is based under Section 814.103(a), subject to adjustment under Section 814.103(a-2) [~~the state base salary, excluding longevity pay~~

~~payable under Section 659.0445, being paid a district judge as set by the General Appropriations Act in accordance with Sections 659.012(a)~~].

SECTION 21. Section 834.102, Government Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Notwithstanding Subsection (a) or (d) or any other law:

(1) any increase in the state base salary being paid to a district judge as set by the General Appropriations Act in accordance with Section 659.012 by the 89th Legislature, Regular Session, 2025, does not apply to a service retirement annuity computed under this section of a retiree or beneficiary if the retiree on whose service the annuity is based retired before September 1, 2025; and

(2) the amount of the state base salary being paid to a district judge as set by Chapter 1170 (H.B. 1), Acts of the 88th Legislature, Regular Session, 2023 (the General Appropriations Act), for the fiscal year ending August 31, 2025, in accordance with Section 659.012 continues to apply to the annuities described by Subdivision (1) until the effective date of legislation the 90th Legislature or a later legislature enacts that increases the state base salary paid to a district judge as set by the General Appropriations Act in accordance with Section 659.012.

(f) On the effective date of legislation the 90th Legislature or a later legislature enacts that increases the state base salary paid to a district judge, as described by Subsection (e), this subsection and Subsection (e) expire.

SECTION 22. Section 837.102(a), Government Code, is amended

to read as follows:

(a) A retiree who resumes service as a judicial officer other than by assignment described in Section 837.101 may not rejoin or receive credit in the retirement system for the resumed service, except [~~unless an election is made~~] as provided by Section 837.103.

SECTION 23. Section 837.103, Government Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1), (b-2), (c-1), and (c-2) to read as follows:

(b) Notwithstanding Sections 837.001(c) and 837.002(2) and subject to the requirements of this section [~~Subsection (d)~~], a retiree who resumes full-time service as a judicial officer other than by assignment described in Section 837.101 [~~described by Section 837.102(a)~~] may elect to rejoin the retirement system as a member [~~and receive service credit in the system for resuming service as a judicial officer~~] if, before taking the oath of office, the retiree has been separated from judicial service for at least six full consecutive months.

(b-1) The retiree shall provide notice of an [~~the~~] election to rejoin the retirement system under this section:

(1) not later than the 60th day after the date the retiree takes the oath of office; and

(2) in the form and manner prescribed by the system.

(b-2) A person who rejoins the retirement system under this section shall resume making member contributions at the rate of 9.5 percent of the person's state compensation.

(c) For a person who rejoins the retirement system [~~makes an~~

~~election~~] under this section and completes at least 24 months of resumed judicial service, on the person's subsequent retirement from resumed service [~~the resumption of annuity payments that have been suspended under Section 837.102~~], the retirement system shall recompute the annuity selected at the time of the person's original retirement to reflect:

(1) the highest annual state salary earned by the person while holding a judicial office included within the membership of the retirement system; and

(2) [~~to include~~] the [~~person's~~] additional service credit established during the person's period of resumed service [~~membership under this section~~].

(c-1) For a person who rejoins the retirement system under this section but who does not complete at least 24 months of resumed service, on the person's subsequent retirement from resumed service, the retirement system shall:

(1) resume annuity payments suspended under Section 837.102; and

(2) issue the person a refund of the person's accumulated member contributions made during the person's period of resumed service.

(c-2) If, at the time of the person's original retirement, a [~~the~~] person described by Subsection (c) or (c-1) selected an optional retirement annuity payable under Section 839.103(a)(3) or (4), the retirement system shall reduce the number of months of payments by the number of months for which the annuity was paid before the person resumed service.

SECTION 24. Section 840.1025(b), Government Code, is amended to read as follows:

(b) A member who elects to make contributions under Subsection (a) shall contribute 9.5 [~~six~~] percent of the member's state compensation for each payroll period in the manner provided by Sections 840.102(b)-(f).

SECTION 25. Section 840.1027(b), Government Code, is amended to read as follows:

(b) A member who elects to make contributions under Subsection (a) shall contribute 9.5 [~~six~~] percent of the member's state compensation for each payroll period in the manner provided by Sections 840.102(b)-(f).

SECTION 26. Section 837.103(e), Government Code, is repealed.

SECTION 27. Section 23.303, Government Code, as added by this Act, applies only to a motion for summary judgment filed on or after the effective date of this Act. A motion for summary judgment filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and that law is continued in effect for that purpose.

SECTION 28. Not later than March 1, 2026, the Texas Supreme Court and the Texas Court of Criminal Appeals shall adopt rules necessary to implement Section 22.302(a), Government Code, as amended by this Act, and Section 23.303, Government Code, as added by this Act.

SECTION 29. As soon as practicable after September 1, 2025, the State Commission on Judicial Conduct shall adopt rules to

implement Section 33.001(b), Government Code, as amended by this Act.

SECTION 30. Sections 33.001(b) and 665.052(b), Government Code, as amended by this Act, apply only to an allegation of judicial misconduct received by the State Commission on Judicial Conduct on or after September 1, 2025, regardless of whether the conduct or act that is the subject of the allegation occurred or was committed before, on, or after September 1, 2025.

SECTION 31. Section 33.02111, Government Code, as added by this Act, and Section 33.023, Government Code, as amended by this Act, apply only to a complaint filed with the State Commission on Judicial Conduct on or after September 1, 2025.

SECTION 32. As soon as practicable after the effective date of this Act, the Office of Court Administration of the Texas Judicial System shall:

(1) prescribe procedures as required by Section 23.303(c), Government Code, as added by this Act; and

(2) establish the judicial directory required by Section 33.041, Government Code, as added by this Act.

SECTION 33. As soon as practicable after September 1, 2025, the Texas Supreme Court shall adopt rules for purposes of Section 72.0396, Government Code, as added by this Act.

SECTION 34. A former or retired judge on a list maintained by a presiding judge under Section 74.055(a), Government Code, who is ineligible to be named on the list under Section 74.055(c), Government Code, as amended by this Act, shall be struck from the list on September 1, 2025, and may not be assigned to any court on or

after September 1, 2025.

SECTION 35. (a) Except as provided by Subsection (c) of this section, Sections 837.102 and 837.103, Government Code, as amended by this Act, apply only to:

(1) a former retiree of the Judicial Retirement System of Texas Plan Two who, on the effective date of this Act, holds a judicial office and has resumed membership in the retirement system; or

(2) a retiree who, on or after the effective date of this Act, resumes service as a judicial officer holding a judicial office included in the membership of the retirement system.

(b) A person described by Subsection (a)(1) of this section may purchase service credit for resumed judicial service performed before the effective date of this Act, including service performed before June 18, 2023, by depositing with the Judicial Retirement System of Texas Plan Two, for each month of service credit, member contributions calculated by multiplying 9.5 percent by the person's monthly judicial state salary on the effective date of this Act. Not later than September 1, 2027, the person must purchase service credit under this subsection and make the required deposits.

(c) Section 837.103(b-1)(1), Government Code, as added by this Act, applies only to an election to rejoin the Judicial Retirement System of Texas Plan Two under Section 837.103, Government Code, made on or after the effective date of this Act.

SECTION 36. Section 30 of this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas

Constitution. If this Act does not receive the vote necessary for immediate effect, Section 30 of this Act has no effect.

SECTION 37. Except as otherwise provided by this Act, this Act takes effect September 1, 2025.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 293 passed the Senate on March 12, 2025, by the following vote: Yeas 30, Nays 1; May 30, 2025, Senate concurred in part and refused to concur in part in House amendments; June 1, 2025, Senate requested appointment of Conference Committee; June 1, 2025, House granted request of the Senate; June 2, 2025, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 293 passed the House, with amendments, on May 27, 2025, by the following vote: Yeas 128, Nays 4, one present not voting; June 1, 2025, House granted request of the Senate for appointment of Conference Committee; June 2, 2025, House adopted Conference Committee Report by the following vote: Yeas 114, Nays 26, four present not voting.

Chief Clerk of the House

Approved:

Date

Governor

SECTION 9.15. (a) Section 23.303, Government Code, as added by S.B. 293, Acts of the 89th Legislature, Regular Session, 2025, and effective September 1, 2025, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) The business court, a district court, or a statutory county court shall, with respect to a motion for summary judgment:

(1) set the motion for a hearing by [~~hear~~] oral argument [~~on the motion~~] or by submission on a date [~~consider the motion without oral argument~~] not later than:

(A) the 60th [~~45th~~] day after the date [~~the response to~~] the motion was filed; or

(B) the 90th day after the date the motion was filed:

(i) if the court's docket requires a hearing on a date later than the 60th day after the date the motion was filed;

(ii) on a showing of good cause; or

(iii) if the movant consents; and

(2) file with the clerk of the court and provide to the parties a written ruling on the motion not later than the 90th day after the date the motion was heard [~~argued~~] or considered.

(b) The [~~If a motion for summary judgment is considered by~~

~~a court described by Subsection (a) without oral argument, the~~] court shall record in the docket the date the motion was heard or considered [~~without argument~~].

(b-1) Subsections (a) and (b) do not apply to a motion for summary judgment that is withdrawn.

(b) Section 23.303, Government Code, as amended by this section, applies only to a motion for summary judgment filed on or after the effective date of this Act. A motion for summary judgment filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and that law is continued in effect for that purpose.

Tab III- Business Court

MEMORANDUM

TO: **Supreme Court Advisory Committee**

FROM: **Business Court Subcommittee**

RE: **Proposed Revised Amendments to the TRCP and Rules of Judicial Administration for the Business Court (HB 40) and June 5, 2025, Referral Letter**

DATE: **October 6, 2025**

This memo follows up on our June 24, 2025, Memo on *Proposed Amendments to the TRCP and Rules of Judicial Administration for the Business Court (HB 40) and June 5, 2025, Referral Letter*, a copy of which is attached as Exhibit A.

At the August 29, 2025, meeting of the Supreme Court Advisory Committee, we discussed additional suggested revisions to our June 24 proposal based on comments from Presiding Judge Grant Dorfman and Judge Jerry Bullard of the Business Court. This memo and the attached Proposed Revised Amendments (Exhibit B) show the additional change we are suggesting to the Texas Rules of Civil Procedure governing the Business Court. To facilitate the Court's review, we have highlighted the additional changes since our June 24 proposal in yellow in Exhibit B.

Additional Recommendations

1. **Agreed transfers to Business Court of cases pending before September 1, 2024.** The Subcommittee had originally proposed a new Rule 363 to implement the Legislature's directive in HB 40, § 56 to adopt rules to transfer "a civil action commenced before September 1, 2024, that is within the jurisdiction of the business court … on an agreed motion of a party and permission of the business court." After further review, we determined that this language would be more appropriately incorporated into existing Rule 356, which outlines the procedure for judge-initiated requests to transfer cases to the Business Court. This approach made sense to us because Rule 356 already includes a referral process to the Regional Presiding Judge, aligning with the agreed-transfer mechanism established by the Legislature in HB 40.

Proposed Amended Rule 356 outlines two methods for case transfers: (i) judge-initiated transfers, and (ii) transfers of cases filed before September 1, 2024, initiated by agreed motion. The agreed-motion process allows the motion to be filed with the judge of the court where the case is pending, who then refers it to the Regional Presiding Judge ("RPJ") for that court.. RPJ Evans also suggested a minor change to subpart (a)(i) to reference an "order of referral" because referrals to the RPJ are typically effected by that process. We also suggest deleting the definition of "regional presiding judge" in this rule.

We also suggest that the Presiding Judge of the Business Court be given discretion to either issue a written opinion or sign an order stating his or her reasons for the decision on a transfer request through our proposed language in Rule 356(c)(ii).

2. We are also suggesting a few tweaks in the other rules that should be self-explanatory and are also highlighted in yellow in Exhibit B. As to the change in Rule 361(a)(6) regarding interlocutory appeals, we are suggesting adding language to clarify that the rule is authorizing a permissive appeal to the Fifteenth Court of Appeals.

3. As indicated at the last SCAC meeting, we are recommending deleting our previously proposed new Rule 362 regarding Inaccessibility of a Business Court Judge because Section 16 of H.B. 40 is codified in Texas Civil Practice and Remedies Code Section 65.022(e) and mirrors section 65.022(d) applicable to district courts. Consequently, including the proposed Rule 362 is duplicative of the Texas Civil Practice and Remedies Code.

EXHIBIT B

Proposed Revised Rules Changes to Accommodate HB 40, 89Th Texas Legislature

Texas Supreme Court Advisory Committee Business Court Subcommittee

Proposed Amendments to Texas Rules of Civil Procedure

RULE 18a. RECUSAL AND DISQUALIFICATION OF JUDGES

Notes and Comments

Comment 2025: Additional procedures for business court judges who determine on their own motion that they should not hear a particular case are in § 25A.0129(c) & (d) of the Government Code. *See* H.B. 40, § 51, 89th Legislative Session.

RULE 354. ACTION ORIGINALLY FILED IN THE BUSINESS COURT

(a) *Pleading Requirements*. For an action originally filed in the business court, an original pleading that sets forth a claim for relief—whether an original petition, counterclaim, cross-claim, or third party claim—must, in addition to the pleading requirements specified in Part II of these rules, plead facts to establish the business court's authority to hear the action. An original petition must also plead facts to establish venue in a county in an operating division of the business court.

(b) *Clerk Duties*. The business court clerk must assign the action to a division of the business court. If the division has more than one judge, then the clerk must randomly assign the action to a specific judge within that division.

~~(c) *Challenges*.~~

~~(1) To Venue. A motion challenging venue must comply with Rules 86 and 87.~~

~~(2) To Authority. A motion challenging the business court's authority to hear an action must be filed within 30 days of the movant's appearance.~~

~~(d) *Transfer or Dismissal*.~~

~~(1) Venue Transfer. If the business court determines, on a party's motion, that the division's geographic territory does not include a county of proper venue for the action, the business court must:~~

~~(A) if an operating division of the business court includes a county of proper venue, transfer the action to that division; or~~

~~(B) if there is not an operating division of the business court that includes a county of proper venue, at the request of the party filing the action, transfer the action to a district court or county court at law in a county of proper venue.~~

~~(2) Authority. If the business court determines, on a party's motion or its own initiative, that it does not have the authority to hear the action, the business court must:~~

~~(A) if the determination was made on its own initiative, provide at least 10 days' notice of the intent to transfer or dismiss and an opportunity to be heard on any objection; and~~

~~(B) at the request of the party filing the action:~~

~~(i) transfer the action to a district court or county court at law in a county of proper venue; or~~

~~(ii) dismiss the action without prejudice to the parties' claims.~~

Notes and Comments

Comment to 2025 change: Removed Venue and Authority provisions of this rule and moved to new Rule 361.

RULE 355. ACTION REMOVED TO THE BUSINESS COURT

(a) *Notice of Removal Required*. A party to an action originally filed in a district court or county court at law may remove the action to the business court by filing a notice of removal with:

(1) the court from which removal is sought; and

(2) the business court.

(b) *Notice Contents*. The notice must:

(1) state whether all parties agree to the removal;

(2) plead facts to establish:

(A) the business court's authority to hear the action; and

(B) venue in a county in an operating division of the business court; and

(3) contain a copy of the district court's or county court at law's docket sheet and all process, pleadings, and orders in the action.

(c) *Notice Deadline*.

(1) When Agreed. A party may file a notice of removal reflecting the agreement of all parties at any time during the pendency of the action.

(2) When Not Agreed. If all parties have not agreed to remove the action~~the notice of removal must be filed~~:

(A) ~~within 30 days after the date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the business court's authority to hear the action; or~~The notice of removal must be filed not later than the 30th day of the later of:

1. The date the party requesting removal of the action was served with process in accordance with these rules; or

2. The date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the business court's authority to hear the action or

(B) if an application for temporary injunction is pending on the date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the business court's authority to hear the action, within 30 days after the date the application is granted, denied, or denied by operation of law.

(d) *Effect of Notice*. A notice of removal to the business court is not subject to due order of pleading rules. Filing a notice of removal does not waive a defect in venue or constitute an appearance waiving a challenge to personal jurisdiction.

(e) *Clerk Duties*. On receipt of a notice of removal, the clerk of the court from which removal is sought must immediately transfer the action to the business court. The business court clerk must assign the action to the appropriate operating division of the business court. If the division has more than one judge, then the clerk must randomly assign the action to a specific judge within that division.

~~(f) *Remand*.~~

~~(1) When Required. If the business court determines, on motion or its own initiative, that removal was improper, the business court must remand the action to the court from which the action was removed.~~

~~(2) Motion to Remand.~~

~~(A) A party may file a motion to remand the action in the business court based on improper removal. Except as provided in (B), the motion must be filed within 30 days after the notice of removal is filed.~~

~~(B) If a party is served with process after the notice of removal is filed, the party seeking remand must file a motion to remand within 30 days after the party enters an appearance.~~

~~(3) On Business Court's Own Initiative. The business court must provide the parties 10 days' notice of its intent to remand on its own initiative and an opportunity to be heard on any objection.~~

Notes and Comments

Comments to 2025 change: The added provision is to comply with H.B. 40, § 47(f)(1), 89th Legislative Session. Removed Venue and Authority provisions of this rule and moved to new Rule 361.

RULE 356. ACTION TRANSFERRED TO THE BUSINESS COURT AND TRANSFER OF CASES PENDING BEFORE SEPTEMBER 1, 2024, TO BUSINESS COURT.

(a) *Transfer Request*.

(i) On its own initiative, a court may, by order of referral, request the regional presiding judge for the administrative judicial region in which the court is located to transfer an action pending in the court to the business court if the business court has the authority to hear the action. The court must notify all parties of the transfer request. ~~In this rule, the "regional presiding judge" means the presiding judge for the administrative judicial region in which the court is located~~.

(ii) For any case pending before September 1, 2024, the parties may, by agreed motion, request transfer of the action to the business court, by filing the motion in the court where the action is pending. Upon such filing, the court where the action is pending must, by order of referral, promptly notify the regional presiding judge of the request.

(b) ~~*Notice and Hearing*. The court must notify all parties of the transfer request and, if any party objects, must set a hearing on the transfer request in consultation with the regional presiding judge.~~ If any party objects, the regional presiding judge must set a hearing on the transfer request ~~self-assign to the court, conduct a hearing on the request~~ and promptly rule on the order of referral ~~request~~. The regional presiding judge should ensure the facilitation of the fair and efficient administration of justice and prioritizing complex civil actions of longer duration that have proven difficult for a district court to resolve because of the other demands on the district court's caseload in determining whether to return the case to the district court where it is pending or assigning it to a different district court.

(c) *Transfer*. The regional presiding judge may transfer the action to the business court if the regional presiding judge finds the transfer will facilitate the fair and efficient administration of justice. The regional presiding judge should consult with the presiding judge of the business court as to the business court's capacity to accept the transfer of the action without impairing its efficiency and effectiveness.

(i) In evaluating whether to grant or deny permission for the transfer of the proceeding, the presiding judge of the business court:

(a) shall determine whether it appears that the proceeding is within the authority of the business court;

(b) may require that the parties provide any portions of the record of the action it considers relevant to the decision; and

(c) may schedule a telephone or in-person conference with counsel, order a further motion and responses, or provide further instruction.

(ii) Upon reaching a decision to grant or deny permission for the transfer, the presiding judge of the business court may issue a written opinion or sign an order that includes a brief statement of the basis for the decision.

(d) A party may challenge the regional presiding judge's denial of a motion to transfer by filing a petition for writ of mandamus in the court of appeals district for the requesting court's county.

(d) ~~*Remand*. A party may seek remand from the business court under Rule 355 within 30 days after transfer of the case.~~

(e) *Clerk Duties*. The business court clerk must assign the action to the appropriate operating division of the business court. If the division has more than one judge, then the clerk must randomly assign the action to a specific judge within that division.

Notes and Comments

Comment to 2025 change: Removed Venue provision of this rule and moved to new Rule 361 and added subsection (e) permitting agreed motions to transfer cases pending before September 1, 2024. The authority for transfers under Section (e) expires on September 1, 2035.

RULE 360. WRITTEN OPINIONS IN BUSINESS COURT ACTIONS

(a) *When Required*. A business court judge must issue a written opinion:

(1) in connection with a dispositive ruling, on the request of a party; ~~and~~

(2) on an issue important to the jurisprudence of the state, regardless of request; and

(3) as necessary to provide guidance on the evolving usage of and practice before the business court, including precedent from the Fifteenth Court of Appeals and the Supreme Court of Texas, regardless of request.

(b) *When Permitted*. A business court judge may issue a written opinion in connection with any order.

Notes and Comments

Comment to 2025 change: To incorporate H.B. 40, § 46(a)(4), 89th Legislative Session.

New Rules:

RULE 361. RULES RELATED TO AUTHORITY AND VENUE DETERMINATIONS BY THE BUSINESS COURT

(a) Challenges to Authority.

1. A motion challenging the business court's subject-matter jurisdiction should be filed within 30 days of the later of (a) the initial pleading invoking the business court's jurisdiction or (b) date the party challenging removal was served with process in accordance with these rules if the movant is served with process after a notice of removal is filed.

2. A motion challenging other aspects of the business court's authority must be filed within 30 days of the later of (a) the initial pleading invoking the business court's jurisdiction or (b) the date the party challenging removal was served with process in accordance with these rules if the movant is served with process after a notice of removal is filed.

3. The business court may allow limited discovery on the question of its authority.

4. If the business court determines, on a party's motion or its own initiative, that it does not have the authority to hear the action, the business court must:

    a. if the determination was made on its own initiative, provide at least 10 days' notice of the intent to transfer, remand, or dismiss and afford the parties an opportunity to be heard; or

    b. at the request of the party filing the action:

        1. transfer the action to a district court or county court at law in a county of proper venue;

        2. remand a case that was improperly removed; or

        3. dismiss the action without prejudice to the parties' claims.

c. Challenges relating to the business court's authority will be resolved on the pleadings or by summary proceedings. A party challenging the business court's authority has the burden of proof.

5. The business court shall make a prompt determination of its authority over the matter and may consider:

   a. Issues of fundamental fairness or the preservation of constitutionally or statutorily protected rights of the parties;

   b. Any applicable rules, precedent, and authorities pertaining to the operation of district courts in this state; and

   c. Any applicable authority from business and commercial courts operating in other states.

6. Interlocutory Appeal.

   a. A party that did not prevail on a challenge to the business court's authority may pursue an interlocutory appeal to the Fifteenth Court of Appeals. ***OR***

   a. The party that did not prevail on a challenge to the business court's authority ~~the jurisdiction motion~~ may file a petition to appeal with the Fifteenth Court of Appeals within 15 days after the order is signed in accordance with Texas Rule of Appellate Procedure 28.3.

   b. Appeals under this rule will be accelerated.

(b) Challenges to Venue of Actions Commenced or Removed to the Business Court.

1. A motion challenging venue must comply with Rules 86 and 87.

2. If the business court determines that the division's geographic territory does not include a county of proper venue for the action, the business court must:

a. if an operating division of the business court includes a county of proper venue, transfer the action to that division; or

b. If there is not an operating division of the business court that includes a county of proper venue, at the request of the party filing the action, transfer the action to a district court or county court at law in a county of proper venue.

Notes and Comments

Comment to 2025 change: To incorporate Section 46 of HB 40, 89th Legislative Session. Special appearances are governed by Texas Rule of Civil Procedure 120a.

~~(a) RULE 362. INACCESSIBILITY OF BUSINESS COURT JUDGE~~*Note. Section 16 of H.B. 40 is now codified in Texas Civil Practice and Remedies Code Section 65.022(e) and mirrors section 65.022(d) applicable to district courts. Consequently, including the proposed Rule 362 is duplicative of the Tex. Civ. P. Rem. Code.* ~~A business court judge may grant a writ returnable to another business court judge if that judge cannot be reached by the ordinary and available means of travel and communication in sufficient time to implement the purpose sought for the writ.~~

~~(b) In seeking a writ under this subsection, the applicant or attorney for the applicant shall attach to the application an affidavit that fully states the facts of the inaccessibility and the efforts made to reach and communicate with the other business court judge.~~

~~(c) The business court judge to whom the application is made shall refuse to hear the application unless the judge determines the applicant made fair and reasonable efforts to reach and communicate with the other business court judge.~~

~~(d) The injunction may be dissolved on a showing the applicant did not first make reasonable efforts to procure a hearing on the application before the other business court judge.~~

~~Notes and Comments~~

~~Comment to 2025 change: To incorporate Section 16 of H.B. 40, 89th Legislative Session.~~

~~RULE 363. TRANSFER OF CASES PENDING BEFORE SEPTEMBER 1, 2024, TO BUSINESS COURT.~~

(a) *Agreed motion.* On agreed motion of the parties, the presiding judge for the administrative judicial region in which a case is pending may order transfer of a suit filed before September 1, 2024, that is within the business court's jurisdiction to the business court.

(i) The motion should be filed with the court in which the case is pending.

(ii) The judge should sign and file with the clerk an order indicating whether the judge agrees to transfer to the business and referring the motion to the regional presiding judge..

(b) *Notice and Hearing.* The regional presiding judge shall notify all parties of the transfer request and set a hearing on the transfer request, and a record should be made of the hearing.

(c) *Transfer decision.*

(i) The regional presiding judge should consult with the presiding judge of the business court as to the business court's capacity to accept the transfer of the action without impairing its efficiency and effectiveness.

(ii) Both the judge in which the case is pending and the regional presiding judge should consider:

(a) whether the case involves complex civil issues, has been pending for some length of time without resolution, or involves issues that have proven difficult for a district court to resolve because of the other demands on the district court's caseload; and

(b) whether the transfer will ensure the facilitation of the fair and efficient administration of justice.

(d) e:

(a) shall determine whether the proceeding is within the jurisdiction of the business court;

(b) may require that the parties provide any portions of the record of the action it considers relevant to the decision; and

(c) may schedule a telephone or in-person conference with counsel, order a further motion and responses, or provide further instruction.

Proposed Amendments to Texas Rules of Judicial Administration

Rule 11. Pretrial Proceedings in Certain Cases.

* * *

11.2 Definitions.

(a) *Presiding judge* means the presiding judge of an administrative judicial region in which a case is pending;

(b) *Regular judge* means the regular judge of a court in which a case is pending.

(c) *Pretrial judge* means a judge assigned under this rule, including a business court judge.

(d) *Related* means that cases involve common material issues of fact and law.

Notes and Comments

Comments to 2025 change: The added provision is to comply with H.B. 40, § 67, 89th Legislative Session.

Rule 13. Multidistrict Litigation

13.1 Authority and Applicability.

(a) *Authority*. This rule is promulgated under sections 74.161-74.164 of the Texas Government Code and chapter 90 of the Texas Civil Practices and Remedies Code.

(b) *Applicability*. This rule applies to:

(1) civil actions that involve one or more common questions of fact and that were filed in a constitutional county court, county court at law, probate court, ~~or~~ district court, or the business court on or after September 1, 2003;

(2) civil actions filed before September 1, 2003, that involve claims for asbestos- or silica-related injuries, to the extent permitted by chapter 90 of the Texas Civil Practice and remedies Code.

(c) *Other Cases*. Cases to which this rule does not apply are governed by Rule 11 of these rules.

13.2 Definitions. As used in this rule:

(a) *MDL Panel* means the judicial panel on multidistrict litigation designated pursuant to section 74.161 of the Texas Government Code, including any temporary members designated by the Chief Justice of the Supreme Court of Texas in his or her discretion when regular members are unable to sit for any reason.

(b) *Chair* means the chair of the MDL Panel, who is designated by the Chief Justice of the Supreme Court of Texas.

(c) *MDL Panel Clerk* means the Clerk of the Supreme Court of Texas.

(d) *Trial court* means the court in which a case is filed.

(e) *Pretrial court* means the district court or the business court to which related cases are transferred for consolidated or coordinated pretrial proceedings under this rule.

(f) *Related* means that cases involve one or more common questions of fact.

(g) *Tag-along case* means a case related to cases in an MDL transfer order but not itself the subject of an initial MDL motion or order.

13.3 Procedure for Requesting Transfer.

* * *

(l) *Decision*. The MDL Panel may order transfer if three members concur in a written order finding that related cases involve one or more common questions of fact, and that transfer to a specified ~~district~~ pretrial court will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of the related cases.

* * *

13.6 Proceedings in Pretrial Court.

(a) *Judges Who May Preside*. The MDL Panel may assign as judge of the pretrial court any active district or businTheess court judge, or any former or retired district, business court, or appellate judge who is approved by the Chief Justice of the Supreme Court of Texas. An assignment under this rule is not subject to objection under chapter 74 of the Government Code. The judge assigned as judge of the pretrial court has exclusive jurisdiction over each related case transferred pursuant to this rule unless a case is retransferred by the MDL Panel or is finally resolved or remanded to the trial court for trial.

* * *

Notes and Comments

Comments to 2025 changes: The additions are to comply with H.B. 40 §§ 53, 67, 89th Legislative Session.

MEMORANDUM

TO: **Supreme Court Advisory Committee**

FROM: **Business Court Subcommittee**

RE: **Proposed Amendments to the TRCP and Rules of Judicial Administration for the Business Court (HB 40) and June 5, 2025, Referral Letter**

DATE: **June 24, 2025**

Matters referred to subcommittee

The Court's June 5, 2025, Referral Letter instructed:

> **Business Court**. HB 40[1] adds Section 25A.0041 of the Government Code to direct the Court to adopt rules that "establish procedures for the prompt, efficient, and final determination of business court jurisdiction on the filing of an action in the business court." HB 40 also adds Section 25A.021 to provide for Court rules governing the transfer of certain civil actions commenced before September 1, 2024, to the business court. HB 40 may also necessitate conforming changes to Part III of the Texas Rules of Civil Procedure, including changes to address writs and disqualification or recusal and changes to the pleading requirements and removal process.

Per this request, we have extensively analyzed HB 40 and submit the attached Exhibit A as proposed amendments to the Texas Rules of Civil Procedure and the Rules of Judicial Administration.

Process

The Subcommittee consists of: Marcy Greer, Chair, Robert Levy, Vice Chair, Justice Emily Miskel, Judge Jerry Bullard,[2] Justice Peter Kelly, Justice Harvey Brown, Chris Porter, and John Warren. We asked Judge David Evans to continue his involvement with the subcommittee, and he has added valuable insights and opinions to the process. We also invited Jack DiSorbo, who has been following and reporting on the business court, to join our discussions, and he has also provided significant input.

[1] HB 40 was signed by Governor Abbott on June 20, 2025, and becomes effective September 1, 2025.

[2] Judge Bullard's insights as a member of the Business Court have been invaluable.

We first analyzed HB 40 to determine which provisions mandated, suggested, or implicated a rule or comment. The subcommittee concluded that, consistent with the Court's adoption of rules for the Business Court, certain provisions of the statute that are incorporated into the Texas Civil Practice and Remedies Code or the Government Code need not be implemented through rules or should be addressed in the local rules of the business court. The subcommittee focused on proposing rules that we believe will aid the courts and practitioners with respect to business court proceedings and the interplay between the business court and other Texas courts.

We then began drafting provisions and had extensive and robust discussions as a group in multiple Zoom meetings. We have vetted and exchanged multiple drafts of the proposed rules and believe the process has greatly enhanced the final product.

Recommendations

1. **Recusal.** HB 40, § 51, prescribes a procedure for recusal raised sua sponte by a business court judge. We had a vigorous debate over a proposed amendment to Texas Rule of Civil Procedure 18a[3] or a new rule in the business court rules and ultimately concluded that putting § 51 into a procedural rule could create more problems than would be solved because 18a is already applicable to business court judges and adding a provision relating solely to business court judges would add complexity and potential confusion to an already challenging recusal process. Further, a rule is not necessary because the § 51 procedures only apply to situations when a business court judge *sua sponte* decides to recuse; the business court judges and staff are already very familiar with the statute. We recommend adding a comment to Rule 18a directing attention to § 25A.0129(c) & (d) of the Government Code, which implements § 51.

2. **Time limits on notice of removal when not agreed.** The Legislature specifically amended § 25A.006(f) of the Government Code to change the language on the timing of removals when the parties do not agree. *See* HB 40, § 47(f)(1). Our proposed changes to corresponding Rule 355(c)(2) match the Legislature's directive.

3. **Written opinions to provide guidance on business court practice.** HB 40, § 46(a)(4) provides that "[t]he supreme court by rule shall establish procedures for the prompt, efficient, and final determination of business court jurisdiction on the filing of an action in the business court. In adopting rules under this section, the supreme court must consider: … the need for guidance on evolving usage of the business court and the Fifteenth Court of Appeals over time by business litigants and their counsel as the courts develop a body of precedent and practice." Following this directive, we propose amending Rule 360(a) to require the business court to issue written opinions:

> (3) as necessary to provide guidance on the evolving usage of and practice before the business court, including precedent from the Fifteenth Court of Appeals and the Supreme Court of Texas, regardless of the request.

[3] References to "Rule" or "Rules" in this memo are to the Texas Rules of Civil Procedure unless otherwise indicated.

We believe this provision is needed in light of § 46(a)(4) and that this placement makes the most sense. We added to the statutory language "the Supreme Court of Texas" to make clear that the Fifteenth Court is not the only source of precedent. We also added "regardless of request" to this alternative for consistency with Rule 360(a)(2), which also is independent of a party's request.

4. **Moving authority and venue challenges to proposed new Rule 361.** The Legislature specifically directed the Supreme Court to create rules to speed up and streamline the process for the business court to determine its authority[4] to hear disputes with the following objectives in mind:

> (a) The supreme court by rule shall establish procedures for the prompt, efficient, and final determination of business court jurisdiction on the filing of an action in the business court. In adopting rules under this section, the supreme court must consider:
>
> > (1) the business court's purpose of efficiently addressing complex business litigation in a manner comparable to or more effective than the business and commercial courts operating in other states;
> >
> > (2) the commonalities of law and procedure existing between the business court and district courts as trial courts functioning under the Texas Constitution and within the judicial branch of this state;
> >
> > (3) the limited potential for the movement of an action between a district court and the business court as it relates to issues of fundamental fairness or the preservation of constitutionally or statutorily protected rights of the parties; and
> >
> > (4) the need for guidance on evolving usage of the business court and the Fifteenth Court of Appeals over time by business litigants and their counsel as the courts develop a body of precedent and practice.

HB 40, § 46(a). The Legislature also gave the Supreme Court authority to adopt rules to:

- "provide for jurisdictional determinations to be made on pleadings or summary proceedings" and "establish appropriate standards of proof," *id.* § 46(b)(1) & (2);
- "establish limited periods during which issues or rights must be asserted, considered agreed to, or waived," *id.* § 46(b)(3); and

[4] We previously addressed the nuances of the Legislature's use of "jurisdiction" in HB 19 (continued in HB 40) to cover both core subject-matter jurisdiction and other forms of statutory authority in our November 6, 2023, memo, when proposing rules for the business court. We continue to recommend using the term "authority" in rules and allowing the courts to develop the distinction between subject-matter jurisdiction and other forms of authority in individual cases.

- "adopt, require, or prohibit interlocutory appeals" and provide procedures for the review of authority determinations by another business court judge or panel of business court judges and for accelerating those appeals, *id.* § 46(b)(4)–(7).

With the benefit of some experience with a now-active business court and the Legislature's guidance on how initial authority and venue determinations are and should be made, we propose moving all of the provisions governing determinations as to authority and venue from current Rules 354, 355, and 356 to a single rule, proposed Rule 361.

Part (a) of proposed Rule 361 deals with challenges to a business court's authority, whether to an initial filing in business court or a removal. Rule 361(a)(1) & (2) address the timing of making such a challenge. We attempted to strike a balance between the Legislature's directive to "establish limited periods during which rights must be asserted, considered agreed to, or waived," HB 40, § 46(b)(3), and the bedrock principle that subject-matter jurisdiction can be raised at any time. As a result, proposed Rule 361(a)(1) is permissive, encouraging filing within 30 days of the inception of the action in business court. For Rule 361(a)(2), dealing with all other authority challenges, the 30-day deadline is mandatory. We considered—but do not recommend—defining the distinction between subject-matter jurisdiction and other matters of business court authority by rule because we believe the business court, Fifteenth Court of Appeals, and Supreme Court should explore and develop that distinction through judicial decision-making in individual cases. Even though Rule 361(a)(1) is a permissive deadline, we believe that practitioners will be encouraged to file challenges to both subject-matter jurisdiction and other forms of authority within 30 days of inception to avoid any chance of waiver, thus fulfilling the Legislature's objective that litigants do not delay in making such challenges for strategic reasons.

We also took into account the concern that a party not joined to the suit until a later point should not be held to forego rights to challenge authority, which is consistent with federal constitutional law that a party named in a lawsuit does not have an obligation to take action until that party is served with process. *See Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

Proposed Rule 261(a)(3) suggests the ability to request limited discovery on the issue of the court's authority, subject to the court's discretion. Although we understand that the business court is already permitting some limited discovery in connection with challenges to its authority, we believe that it is important to specify by rule that it is not automatic and confirm to litigants that such discovery may be available in certain cases.

Proposed Rule 261(a)(4)(A) and (B) carries over the options for a business court to dispose of a case if it determines it lacks authority to hear it, keeping in place the requirement that it afford the parties an opportunity to be heard if the determination is made on the business court's initiative. Rule 261(a)(4)(C) takes up the Legislature's invitation to permit these authority decisions to be made based on the pleadings or summary proceedings, much like a more general plea to the jurisdiction. Considering that the law governing procedures for resolving a plea to the jurisdiction are complex and nuanced, we recommend providing explicit guidance by way of this proposed rule.

Proposed Rule 261(a)(5) codifies the Legislature's directive in HB 40, § 46(a)(1)–(3) that authority decisions be made promptly and take into account the specified factors of fundamental fairness and protection of rights, applicable rules, precedent, and authorities pertaining to the operation of district courts in Texas, and applicable authority from business and other commercial courts in other states. As noted above, we recommend that the directive to develop "guidance on the evolving usage of the business court and the Fifteenth Court over time" to "develop a body of precedent and practice," HB 40, § 46(a)(4), makes more sense as an addition to Rule 360 governing written opinions, as proposed above in ¶ 3.

5. **Interlocutory appeal.** As noted above, in HB 40, the Legislature expressly authorized the Court to decide whether to permit interlocutory appeals of business court decisions on its authority. We note that this provision appears to be a departure from the Legislature's historic practice to specify by statute when interlocutory appeals are permitted. We took this mandate seriously and debated all of the suggested forms of appellate review set out in HB 40, § 46(b)(4)–(6) and reached the following recommendations:

> *Business Court Presiding Judge or Panel Review of authority decisions.* We considered but rejected this possibility, as it will likely add layers of delay and additional workload to an already very busy court and presiding judge. The business court judges are currently issuing, circulating, and discussing written opinions on their authority decisions, and so already have an opportunity to address these issues internally to ensure consistency of approach. An interim appellate process in the business court would not materially advance the Legislature's goal.
>
> *Interlocutory appeal as of right*. We also considered a proposed rule that permitted any "party that did not prevail on a challenge to the business court's authority issue [to] pursue an interlocutory appeal to the Fifteenth Court of Appeals." The subcommittee (and the business court judges) had a lot of concern about the number of appeals that might be filed with the Fifteenth Court that would present repetitive issues that would not necessarily advance the development of the law on business court authority. Plus, the appeals would be time-consuming, expensive, and result in delay—contrary to the Legislature's directives. If the Court were to adopt an automatic-appeal rule, the subcommittee believes it should indicate that such appeals may be decided by summary disposition either in the rule or a comment.
>
> *Permissive interlocutory appeal.* The subcommittee also considered making the interlocutory appeal discretionary, meaning either (1) in accordance with § 51.014(d) (requiring permission of both the business court and the Fifteenth Court); or (2) by application to the Fifteenth Court (requiring only the Fifteenth Court's permission). As to the first option, that power is already available in § 51.014(d)—as recently amended to encourage the intermediate courts to take jurisdiction of certified orders—and the

certification process would further delay these appeals, so the subcommittee was more inclined to go with the second option.

Accelerated. Whether permissive or as of right, these interlocutory appeals should be accelerated per the Legislature's directive.

Procedures governing interlocutory appeals. The appeal should be governed by Texas Rules of Appellate Procedure 28 and 29.

6. **Venue challenges.** Proposed Rule 361(b) carries over the venue provisions from current Rule 354. The subcommittee believes that having these provisions in the same rule furthers the Legislative objection of resolving these threshold challenges promptly and efficiently.

7. **Inaccessibility of business court judge.** Proposed new rule 362 codifies HB 40, § 16, which amends § 65.022 of the Civil Practice and Remedies Code.

8. **Agreed transfers of cases pending before September 1, 2024, to business court.** Proposed Rule 363 implements the Legislature's directive in HB 40, § 56 to adopt rules to transfer "a civil action commenced before September 1, 2024, that is within the jurisdiction of the business court … on an agreed motion of a party and permission of the business court." Proposed Rule 363 provides for an agreed-motion process first to the judge of the court in which the case is pending and ultimately referred to the regional presiding judge for that court. It includes the legislative considerations for deciding whether to transfer the case, and provides a procedure for effecting the transfer if the motion is granted. It is similar to the process for recusal and disqualification in Rule 18a but is more streamlined for this particular situation. We considered including these provisions in current Rule 356, which may be preferable, but would require a restructuring of that rule, which is currently designed for transfers initiated by a court rather than the parties. The subcommittee points out that HB 40 uses the term "district court" in the factors to be considered but does not limit this transfer provision to district courts. If the intention is to limit this provision to district courts, the rule can be further simplified by changing references to the "court in which the action is pending" to "district judge."

9. **Amendments to the Texas Rules of Judicial Administration**. The Legislature has empowered the business court to serve as a pretrial court for multidistrict proceedings transferred by the MDL Panel. HB 40, § 67. This change necessitates several amendments to the Rules of Judicial Proceedings to incorporate the business court and business court judges into the MDL process.

Other considerations—jury fee in business court.

In connection with the work we have done on the business court rules, we have identified another change that we believe would be beneficial, although it is beyond the scope of our assignment. We offer the following suggestion regarding the business court's authority to set a jury fee for the Court and other subcommittees to consider.

The Legislature included a rider in the 2025-2026 budget bill (SB1) budget that states its intention to clarify the authority of the business court and clerk to collect a jury fee and disburse

the collected fees, as appropriate, to the county or other governmental entity that incurs the expenses for jury trials.

The current fee schedule (Misc-Docket-24-9047-fees-sc-coas-civil-mdl-business-court.pdf) includes the following footnote 5:

> The business court will set the jury fee in an order. The fee will include a $300 fee for staff time in summonsing jurors and the use of a jury summons system; a fee for any needed security; a fee for juror pay pursuant to Gov't Code §§ 61.001, 61.002, and 61.0015; and a fee for actual processing costs related to summonsing jurors, including postage, printing costs, and copy costs. The jurisdiction providing the jury services must submit an invoice so that the business court will have the information necessary to issue the jury fee order. The business court will allocate these fees between the parties, and the fees will be paid directly to the jurisdiction providing the services.

The Court may want to consider changes to this footnote in light of the 2025 rider. This subcommittee would be happy to analyze and recommend changes to implement the rider if the Court requests it.

Tab IV- Code of Judicial Conduct

MEMORANDUM

TO: Supreme Court Advisory Committee

FROM: JCC Rules Task Force

DATE: October 6, 2025

RE: Revisions to Code of Judicial Conduct Based on SB 293

Background

Under Article V, Section 1-a(6)(A) of the Texas Constitution, a judge may be removed from office for "wilful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, wilful violation of the Code of Judicial Conduct, or wilful or persistent conduct that is clearly inconsistent with the proper performance of [a judge's] … duties or casts public discredit upon the judiciary or administration of justice."

The Government Code further defines "wilful or persistent conduct that is clearly inconsistent with the performance of a judge's duties." *See* Tex. Gov't Code § 33.001(b). Among other things, this term is defined as "wilful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business …." *Id.* at § 33.001(b)(1).

Effective September 1, 2025, SB 293 amends subsection (b)(1)'s definition to add the underlined text so that it reads as follows: "wilful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business***, including failure to meet deadlines, performance measures or standards, or clearance rate requirements set by statute, administrative rule, or binding court order.***" SB 293 also amends Chapter 23 of the Government Code to create specific deadlines for ruling on summary judgment motions (among other requirements applied to courts).

As currently drafted, Canon 3B(9) of the Code of Judicial Conduct states: "A judge should dispose of all judicial matters promptly, efficiently, and fairly." The Code itself does not define or use the statutory term "wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties."

The Texas Supreme Court made the following referral on June 25, 2025:

> **Code of Judicial Conduct.** SB 293 amends Section 33.001(b) of the Government Code to define more specifically "wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties," as that term is used in the Texas Constitution. The Conduct Commission Procedural Rules Task Force should study whether the Court should amend the Code of Judicial Conduct in response and draft any recommended amendments. The Committee should review the Task Force's recommendations and proposed rules and should conclude its work at the August 29, 2025 meeting.

A copy of the Code is attached as **Exhibit A**.

This referral and the Task Force's recommendations were presented to the full Supreme Court Advisory Committee at the August 29, 2025 meeting. The Task Force was directed to draft the following revisions to the Code of Judicial Conduct for consideration by the full Committee at the October 10, 2025 meeting.

Revisions for Consideration

- Amend the Code's Preamble to add the following underlined text: "The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards ***and the standards set forth in Section 1-a, Article V, Texas Constitution and in Chapters 22, 23, and 33, Texas Government Code.***"

- Amend Canon 3B(9) to add the following underlined text: "A judge should dispose of all judicial matters promptly, efficiently, and fairly. ***A judge shall meet deadlines, performance measures and standards, and clearance rate requirements set by statute, administrative rule, or binding court order. A judge is subject to discipline for wilful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business, including failure to meet deadlines, performance measures or standards, or clearance rate requirements.***

- Alternatively, amend Canon 8A as follows by adding the following underlined text:

Canon 8: Construction and Terminology of the Code

A. Construction.

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. It consists of specific rules set forth in Sections under broad captions called Canons.

The Sections are rules of reason, which should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through the State Commission on Judicial Conduct. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

A judge is subject to discipline for wilful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business, including failure to meet deadlines, performance measures or standards, or clearance rate requirements set by statute, administrative rule, or binding court order.

It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

TEXAS CODE OF JUDICIAL CONDUCT

(As amended by the Supreme Court of Texas through September 1, 2024)

Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Canon 1: Upholding the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective.

Canon 2: Avoiding Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

COMMENT

Consistent with section 253.1612 of the Texas Election Code, the Code of Judicial Conduct does not prohibit a joint campaign activity conducted by two or more judicial candidates.

Canon 3: Performing the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

(2) A judge should be faithful to the law and shall maintain professional competence in it, including by meeting all judicial-education requirements set forth in governing statutes or rules. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice.

(6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

(7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

(8) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control. This subsection does not prohibit:

(a) communications concerning uncontested administrative or uncontested procedural matters;

(b) conferring separately with the parties and/or their lawyers in an effort to mediate or settle matters, provided, however, that the judge shall first give notice to all parties and not thereafter

hear any contested matters between the parties except with the consent of all parties;

(c) obtaining the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;

(d) consulting with other judges or with court personnel;

(e) considering an *ex parte* communication expressly authorized by law.

(9) A judge should dispose of all judicial matters promptly, efficiently and fairly.

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. A judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge or judicial candidate is a litigant in a personal capacity.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion or in accordance with Supreme Court guidelines for a court approved history project.

C. Administrative Responsibilities.

(1) A judge should diligently and promptly discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration,

knowing that the failure to comply is in violation of the rule.

D. Disciplinary Responsibilities.

(1) A judge who receives information clearly establishing that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

(2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

COMMENT

It is not a violation of Canon 3B(8) for a judge presiding in a statutory specialty court, as defined in Texas Government Code section 121.001, to initiate, permit, or consider any ex parte communications in a matter pending in that court.

Canon 4: Conducting the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations

A. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or

(2) interfere with the proper performance of judicial duties.

B. Activities to Improve the Law. A judge may:

(1) speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code; and,

(2) serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system and the administration of justice.

C. Civic or Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the

performance of judicial duties. A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, but may be listed as an officer, director, delegate, or trustee of such an organization, and may be a speaker or a guest of honor at an organization's fund raising events.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

D. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or officeholder expenses as permitted by state law.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business. A judge shall not be an officer, director or manager of a publicly owned business. For purposes of this Canon, a "publicly owned business" is a business having more than ten owners who are not related to the judge by consanguinity or affinity within the third degree of relationship.

(3) A judge should manage any investments and other economic interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other economic interests that might require frequent disqualification. A judge shall be informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to be informed about the personal economic interests of any family member residing in the judge's household.

(4) Neither a judge nor a family member residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a family member residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or person whose interests have come or are likely to come before the judge;

(d) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator. An active full-time judge shall not act as an arbitrator or mediator for compensation outside the judicial system, but a judge may encourage settlement in the performance of official duties.

G. Practice of Law. A judge shall not practice law except as permitted by statute or this Code. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

H. Extra-Judicial Appointments. Except as otherwise provided by constitution and statute, a judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

COMMENT TO 2000 CHANGE

This change is to clarify that a judge may serve on the Texas Board of Criminal Justice.

I. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall file financial and other reports as required by law.

Canon 5: Refraining from Inappropriate Political Activity

(1) A judge or judicial candidate shall not:

(i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge;

(ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent; or

(iii) make a statement that would violate Canon 3B(10).

(2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).

(3) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

(4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code §253.151, *et seq.* (the "Act"), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

(5) A judge or judicial candidate shall not knowingly make a false declaration on a statutorily required application for a place on the ballot for any of the courts listed in Canon 6A(1).

COMMENT

A statement made during a campaign for judicial office, whether or not prohibited by this Canon, may cause a judge's impartiality to be reasonably questioned in the context of a particular case and may result in recusal.

Consistent with section 253.1612 of the Texas Election Code, the Code of Judicial Conduct does not prohibit a joint campaign activity conducted by two or more judicial candidates.

Subpart (5) Canon 5 is added to reflect new statutory requirements relating to applications for judicial office. See Tex. Elec. Code § 141.0311; Tex. Gov't Code § 33.032(i).

Canon 6: Compliance with the Code of Judicial Conduct

A. The following persons shall comply with all provisions of this Code:

(1) An active, full-time justice or judge of one of the following courts:

(a) the Supreme Court,

(b) the Court of Criminal Appeals,

(c) courts of appeals,

(d) district courts,

(e) criminal district courts,

(f) statutory county courts,

(g) statutory probate courts, and

(h) the business court.

(2) A full-time commissioner, master, magistrate, or referee of a court listed in (1) above.

B. A County Judge who performs judicial functions shall comply with all provisions of this Code except the judge is not required to comply:

(1) when engaged in duties which relate to the judge's role in the administration of the county;

(2) with Canons 4D(2), 4D(3), or 4H;

(3) with Canon 4F, unless the court on which the judge serves may have jurisdiction of the

matter or parties involved in the arbitration or mediation;

(4) with Canon 4G, except practicing law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the county court, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

(5) with Canon 5(3).

C. Justices of the Peace and Municipal Court Judges.

(1) A justice of the peace or municipal court judge shall comply with all provisions of this Code, except the judge is not required to comply:

(a) with Canon 3B(8) pertaining to *ex parte* communications; in lieu thereof a justice of the peace or municipal court judge shall comply with 6C(2) below;

(b) with Canons 4D(2), 4D(3), 4E, or 4H;

(c) with Canon 4F, unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation; or

(d) if an attorney, with Canon 4G, except practicing law in the court on which he or she serves, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

(e) with Canons 5(3).

(2) A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding. This subsection does not prohibit communications concerning:

(a) uncontested administrative matters,
(b) uncontested procedural matters,

(c) magistrate duties and functions,

(d) determining where jurisdiction of an impending claim or dispute may lie,

(e) determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum,

(f) mitigating circumstances following a plea of nolo contendere or guilty for a fine- only offense, or

(g) any other matters where *ex parte* communications are contemplated or authorized by law.

D. A Part-time commissioner, master, magistrate, or referee of a court listed in Canon 6A(1) above:

(1) shall comply with all provisions of this Code, except he or she is not required to comply with Canons 4D(2), 4E, 4F, 4G or 4H, and

(2) should not practice law in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a commissioner, master, magistrate, or referee, or in any other proceeding related thereto.

E. A Judge Pro Tempore, while acting as such:

(1) shall comply with all provisions of this Code applicable to the court on which he or she is serving, except he or she is not required to comply with Canons 4D(2), 4D(3), 4E, 4F, 4G or 4H, and

(2) after serving as a judge pro tempore, should not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

F. Any Senior Judge, or a former appellate or district judge, or a retired or former statutory county court judge who has consented to be subject to assignment as a judicial officer:

(1) shall comply with all the provisions of this Code except he or she is not required to comply with Canon 4D(2), 4E, 4F, 4G, or 4H, but

(2) should refrain from judicial service during the period of an extra-judicial appointment permitted by Canon 4H.

G. Candidates for Judicial Office.

(1) Any person seeking elective judicial office listed in Canon 6A(1) shall be subject to the same standards of Canon 5 that are required of members of the judiciary.

(2) Any judge or person seeking elective judicial office listed in Canon 6A(1) who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct.

(3) Any lawyer who is a candidate seeking judicial office who violates Canon 5 or other relevant provisions of this Code is subject to disciplinary action by the State Bar of Texas.

(4) The conduct of any judge or person seeking elective judicial office may be subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action, as authorized by other statute or rule.

H. Attorneys.

Any lawyer who contributes to the violation of Canons 3B(7), 3B(10), 4D(4), 5, or

6C(2), or other relevant provisions of this Code, is subject to disciplinary action by the State Bar of Texas.

Canon 7: Effective Date of Compliance

A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

Canon 8: Construction and Terminology of the Code

A. Construction.

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. It consists of specific rules set forth in Sections under broad captions called Canons.

The Sections are rules of reason, which should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through the State Commission on Judicial Conduct. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

B. Terminology.

(1) "Shall" or "shall not" denotes binding obligations the violation of which can result in disciplinary action.

(2) "Should" or "should not" relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.

(3) "May" denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

(4) "De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.

(5) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a

party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant, in an educational, religious, charitable, fraternal, or civic organization or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest; and

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

(6) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.
(7) "Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(8) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

(9) "Member of the judge's (or the candidate's) family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

(10) "Family member residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides at the judge's household.

(11) "Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(12) "Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

(13) "Retired Judge" means a person who receives from the Texas Judicial Retirement System, Plan One or Plan Two, an annuity based on service that was credited to the system. (Secs. 831.001 and 836.001, V.T.C.A. Government Code [Ch. 179, Sec. 1, 71st Legislature (1989)]

(14) "Senior Judge" means a retired appellate or district judge who has consented to be subject to assignment pursuant to Section 75.001, Government Code. [Ch. 359, 69th Legislature, Reg. Session (1985)]

(15) "Statutory County Court Judge" means the judge of a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, statutory probate courts, county criminal courts, county criminal courts of appeals, and county civil courts at law. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 16.01(18), 71st Legislature (1989)])

(16) "County Judge" means the judge of the county court created in each county by Article V, Section 15, of the Texas Constitution. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 16.01(18), 71st Legislature (1989)])

(17) "Part-time" means service on a continuing or periodic basis, but with permission by law to devote time to some other profession or occupation and for which the compensation for that reason is less than that for full-time service.

(18) "Judge Pro Tempore" means a person who is appointed to act temporarily as a judge.

Tab V- Confidential Identity in Court Proceedings

From: Legislative Mandates Subcommittee
To: Supreme Court Advisory Committee

Re: Pseudonyms and Sensitive Information

Introduction

The Court seeks SCAC input on potential amendments to rules and comments addressing claimants' use of pseudonyms in litigation. This request follows 2025 enactment of three statutes that create new causes of action and expressly permit claimants to proceed under confidential identities, requiring protection of their true names and related information.

The Subcommittee offers for discussion amendments responsive to these statutes, in light of broader issues.

First, other Texas and federal statutes and regulations authorize use of confidential identities and/or require protection of sensitive information for other specified categories of litigants.

Second, when no statute or regulation creates a categorical right or imposes a categorical ban, courts decide, case-by-case, who may proceed under a pseudonym, under what protections and subject to what limits.

Leading and/or illustrative cases and related scholarship are discussed beginning at p. 16 of this memo. Here is a summary.

Courts describe the analysis as a balancing test: whether, "in the totality of the circumstances," privacy interests, both public and private, outweigh other public and private interests served by a presumption against pseudonymity.

The presumption against anonymity is itself a judge-made principle or policy, with common law and constitutional overtones.

No specific balancing test has been adopted by United States or Texas Supreme Court decisions. The wording of various appellate courts' tests

vary. The outcomes turn more on the specific facts of the public and private interests involved. As with balancing generally, disparate decisions create uncertainty but avoid categorical over- and underinclusion.

Third, issues of pseudonymity are not limited to claimants.

- Texas family law statutes require aliases for minors and for other litigants to protect the privacy of minors in parental termination and juvenile delinquency cases. In practice, Texas courts apply aliases in other cases involving minors.
- Some plaintiffs sue Doe defendants.
- Non-party participants such as witnesses may need confidential identity protection.
- Non-parties such as media, public policy researchers and advocacy groups often have the greatest stakes in knowing a litigant's identity.

Finally, court decisions note that litigating under a pseudonym is rare and should remain so, but it already seems to be more common than in the past, and likely to become even more common in the future.

Divorce cases are often filed pseudonymously. See the San Antonio Express-News editorial board opinion "D-i-v-o-r-c-e sometimes becomes a letters game," and the Lufkin Daily News article "Initial decision: Couples begin hiding names in divorce filings", attached at the end of this memo.

As the new Texas statutes illustrate, technology and changing cultural norms threaten privacy in new ways and to unprecedented degrees. In response, more litigants are likely to seek to proceed anonymously, many of them pro se or nearly so, against businesses and governments.

The internet and artificial intelligence now enable the near-instantaneous, global, and permanent dissemination of a person's identity and sensitive information through social media. This capability allows users of online platforms to quickly intrude on individuals' privacy and expose them to public scrutiny, distress, or even harm. This phenomenon is commonly referred to as "doxing"—publicly disclosing personal information, often with the intent to intimidate, harass, or damage someone's reputation.

These developments significantly alter the balance between interests in open access to court proceedings and such individuals' privacy interests. They must consider the heightened risk of public exposure and ridicule if they must disclose their identities to seek justice through the courts.

The dilemma many such litigants face is aggravated by the fact that they must proceed *pro se*, without legal representation, making it even more difficult to navigate the risks and secure protections against them.

As a result, the substantive law of use of pseudonyms and protection of sensitive information is quickly evolving, as indicated by the Texas Legislature's passage of three statutes in the last session.

We recommend against a substantive Court rule determining categories of litigants and other judicial system participants who must or may, and who must not, proceed under a pseudonym under what circumstances. The important competing interests are best addressed by the Texas Legislature.

We recommend that the Court should provide guidance on a Texas balancing test by opinion in a future case or controversy.

We offer for discussion narrowly focused but important procedural rule change recommendations, with explanatory comments following:

- TRCP 79 (and/or 47) should reflect the reality that litigants may be entitled to proceed under pseudonyms, by statute or regulation or subject in the event of dispute to a court balancing test order.
- TRCP 79 (and/or 47) should also provide for prompt resolution of disputes over pseudonymity and its scope.
- TRCP 21c and TRAP 9 should reflect the broader scope of sensitive information that may be protected by statutes or regulations.

Finally, we strongly urge that Texas Legal Help provide a tab for non-lawyers specifically addressing the statutory rights to proceed pseudonymously in some circumstances and the right to file pseudonymously, subject to possible dispute, in other circumstances.

The new Texas statutes

SB 441 added CPRC sec. 98B.0021. It imposes civil liability for production, solicitation, disclosure or promotion of artificial intimate visual material.

SB 441 also added sec. 98B.0022 that imposes civil liability on a website or app owner who, knowing the person depicted did not consent, recklessly facilitates production, disclosure, or processing or facilitation of payment for production or disclosure of such material. It also makes it a DTPA violation for such an owner to fail to remove or fail to provide and give notice of an easily accessible system for removal of, such material upon request.

SB 2373 added CPRC ch. 100B that creates a cause of action for knowing or intentional dissemination of artificially generated media or a phishing communication for the purpose of financial exploitation.

Each statute allows a claimant to use a confidential identity, defined as:

- "the use of a pseudonym" and
- "the absence of any other identifying information, including address, telephone number and social security number."

Each imposes duties on the court to

- make the claimant aware he or she may use a pseudonym,
- allow the claimant to use it in all filings and other documents presented to the court,
- use pseudonym in all court proceedings and records, and
- maintain the records in ways that protect the confidential identity.

Each statute protects the claimant's true identity, by limiting who knows "the true identifying information about the claimant," requiring the court to

- order them not to divulge the true identifying information, and
- hold a person who violates the order in contempt.

See, SB 441 at pp 8-10, adding CPRC 98B.008. See SB 2373 at pp. 3-5, adding CPRC 100B.004.

Other laws enabling confidential identity/protection of sensitive information

Many other statutes, court rules, and administrative agency regulations, state and federal, allow or require confidential identities and/or protect sensitive information. Here are just a few examples.

- The confidential identity and sensitive information provisions of SB 441 and 2373 closely track existing CPRC sections 30.013 (sexual abuse of a minor)
- CPRC sec. 98.007, adopted by HB 1540, 87th Legislature and amended by HB 16, 89th Legislature 2nd called session, (deleting 98.007(e)) allows claimant in suit involving trafficking of persons to use a pseudonym.
- Family Code section 109.002(d) (minors in appellate court opinions in suits affecting the parent-child relationship (SAPCR), including suits to terminate parental rights)
- Family Code section 56.01(j) (minor or minor's family in appellate court opinions related to juvenile court proceedings)
- The Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. sec. 1232g, bars educational institutions from unilaterally disclosing sensitive information about students, subject to enumerated exceptions.
- Federal Title IX regulations require universities to "keep confidential the identity of any individual who has made a report or complaint of sex discrimination," including "any individual who has been reported to be the perpetrator of sex discrimination." 34 C.F.R. sec 106.71

Proposed Amendments to Texas Rules

Proposed amended Rule 79(a) requires that a claimant for relief put his/her/its true name in the first filing, where it is a matter of public record, except as provided under Rule 79(b).

This is consistent with prevalent Texas and federal practice: plaintiffs file using a pseudonym when they choose to do so. Other litigants, including third party-intervenors, can move the court to require that the identity be disclosed, or the court can raise the issue *sua sponte*.

For instances in which circumstances may justify anonymity, filing with the true name and sealing after-the-fact is inadequate. The first filing may be picked up by the media or by internet trolls and be disseminated worldwide before a hearing can be had for permission to file anonymously.

Proposed Rule 79(b)(1) requires simultaneous filing enabling the court to evaluate recusal. Proposed 79(b)(2) and (3) require simultaneous filing of either a notice of the statutory or rule giving the right to proceed under a pseudonym or a motion giving notice of the basis under other law to do so.

The SCAC should discuss whether to recommend instead that the rule require the petition or other claim for relief itself state the authority relied upon in filing anonymously.

The SCAC should also discuss whether to discuss more specifically the nature of the "other law" basis – balancing of asserted privacy interests against other interests.

Query whether and if so where and how to extend this rule of pleading to all pleadings, motions, responses, etc.--not just the first claim for relief – and to situations where a defendant seeks to proceed under a pseudonym.

TRCP 79. The Petition and other Claims for Relief

~~The petition shall state the names of the parties and their residences, if known, together with the contents prescribed in Rule 47 above.~~

(a) Except as required or authorized under subsection (b), the petition or any other claim for relief shall state the true names of each party and their residences, if known, together with the contents prescribed in Rule 47 above.

(b) A claimant using a pseudonym and an address other than the residence for claimant, or for any other person named in the petition, must, upon filing the claim for relief, also

(1) provide the clerk under seal the true name and residential address, if known, of each such person, for the court's review of recusal;

(2) if relying on a Texas or federal statute or agency rule authorizing use of a pseudonym, file a notice identifying the statute or rule;

(3) if not relying on a statute or rule, file a motion giving fair notice of the facts and other law warranting use of a pseudonym.

(c) Any party, including an intervenor, may challenge use of the pseudonym. The court shall hold a hearing *in camera* to rule on the challenge. If the court orders the claimant to replead without anonymity, the claimant may elect not to replead and the action automatically dismissed without disclosure of the claimant's identity.

Notes and Comments

Comment to 2025 Change: In many circumstances, state and federal statutes and administrative agency rules authorize or require use of pseudonyms (also known as aliases or fictitious identities) and prohibit or limit disclosure of information revealing the true identities of parties, witnesses, judicial system personnel and other persons. In other circumstances, claimants may file using pseudonyms subject to case-specific court order if disputed. Pro se litigants wishing to file using a pseudonym are encouraged to access [Texas Law Help link]

RULE 47. CLAIMS FOR RELIEF

An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain:

(a) a short statement of the cause of action sufficient to give fair notice of the claim involved;

(b) a statement that the damages sought are within the jurisdictional limits of the court;

(c) except in suits governed by the Family Code, a statement that the party seeks:

(1) only monetary relief of $250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney fees and costs;
(2) monetary relief of $250,000 or less and non-monetary relief;

(3) monetary relief over $250,000 but not more than $1,000,000;

(4) monetary relief over $1,000,000; or

(5) only non-monetary relief; and

(d) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

Notes and Comments

Comment to 2013 change: Rule 47 is amended to require a more specific statement of the relief sought by a party. The amendment requires parties to plead into or out of the expedited actions process governed by Rule 169, added to implement section 22.004(h) of the Texas Government Code. Except in a suit governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code, a suit in which

the original petition contains the statement in paragraph (c)(1) is governed by the expedited actions process. The further specificity in paragraphs (c)(2)-(5) is to provide information regarding the nature of cases filed and does not affect a party's substantive rights. Comment to 2021 change: Rule 47 is amended to implement section 22.004(h-1) of the Texas Government Code. A suit in which the original petition contains the statement in paragraph (c)(1) is governed by the expedited actions process in Rule 169.

RULE 21c. PRIVACY PROTECTION FOR FILED DOCUMENTS.

(a) Sensitive Data Defined. Sensitive data consists of:

(1) identifying information made confidential by statute, administrative regulation, court rule or court order;

(2) a driver's license number, passport number, social security number, tax identification number, or similar government-issued personal identification number;

(3) a bank account number, credit card number, or other financial account number; and

(4) a birth date, a home address, and the name of any person who was a minor when the underlying suit was filed.

(b) Filing of Documents Containing Sensitive Data Prohibited. Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document, except for wills and documents filed under seal, containing sensitive data may not be filed with a court unless the sensitive data is redacted.

(c) Redaction of Sensitive Data; Retention Requirement. Sensitive data must be redacted by using the letter "X" in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the case and any related appellate proceedings filed within six months of the date the judgment is signed.

(d) Notice to Clerk. If a document must contain sensitive data, the filing party must notify the clerk by:

(1) designating the document as containing sensitive data when the document is electronically filed; or

(2) if the document is not electronically filed, by including, on the upper left-hand side of the first page, the phrase: "NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA."

(e) Non-Conforming Documents. The clerk may not refuse to file a document that contains sensitive data in violation of this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit a redacted, substitute document.

(f) Restriction on Remote Access. Documents that contain sensitive data in violation of this rule must not be posted on the Internet.

Notes and Comments

Comment to 2025 Change: New 21c (a)(1) is added to reflect that state and federal statutes and agency rules and court orders in specific cases often require protection of data in addition to the types listed in renumbered (a)(2), (3) and (4).

Comment to 2013 Change: Rule 21c is added to provide privacy protection for documents filed in civil cases.

Texas Rules of Appellate Procedure

9.8. Protection of Minor's Identity in Parental-Rights Termination Cases and Juvenile Court Case

(a) Alias Defined. For purposes of this rule, an alias means one or more of a person's initials or a fictitious name, used to refer to the person.

(b) Parental-Rights Termination Cases. In an appeal or an original proceeding in an appellate court, arising out of a case in which the termination of parental rights was at issue:

(1) except for a docketing statement, in all papers submitted to the court, including all appendix items submitted with a brief, petition, or motion:

(A) a minor must be identified only by an alias unless the court orders otherwise;

(B) the court may order that a minor's parent or other family member or other custodial adult be identified only by an alias if necessary to protect a minor's identity; and

(C) all documents must be redacted accordingly;

(2) the court must, in its opinion, use an alias to refer to a minor, and if necessary to protect the minor's identity, to the minor's parent or other family member.

(c) *Juvenile Court Cases.* In an appeal or an original proceeding in an appellate court, arising out of a case under Title 3 of the Family Code:

(1) except for a docketing statement, in all papers submitted to the court, including all appendix items submitted with a brief, petition, or motion:

(A) a minor must be identified only by an alias;

(B) a minor's parent or other family member must be identified only by an alias; and

(C) all documents must be redacted accordingly;

(2) the court must, in its opinion, use an alias to refer to a minor and to the minor's parent or other family member.

(d) *No Alteration of Appellate Record.* Nothing in this rule permits alteration of the original appellate record except as specifically authorized by court order.

9.9 Privacy Protection for Documents Filed in Civil Cases.

(a) *Sensitive Data Defined*. Sensitive data consists of:

(1) information made confidential by statute, administrative regulation, court rule or court order;

(2) a driver's license number, passport number, social security number, tax identification number or similar government-issued personal identification number;

(3) a bank account number, credit card number, or other financial account number; and

(4) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed.

(b) *Filing of Documents Containing Sensitive Data Prohibited*. Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document containing sensitive data may not be filed with a court unless the sensitive data is redacted, except for the record in an appeal under Section Two.

(c) *Redaction of Sensitive Data; Retention Requirement*. Sensitive data must be redacted by using the letter “X” in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the appeal and any related proceedings filed within six months of the date the judgment is signed.

(d) *Notice to Clerk*. If a document must contain sensitive data, the filing party must notify the clerk by:

> (1) designating the document as containing sensitive data when the document is electronically filed; or if the document is not electronically filed, by including, on the upper left-hand side of the first page, the phrase: "NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA."

(e) *Restriction on Remote Access*. Documents that contain unredacted sensitive data in violation of this rule must not be posted on the Internet.

Notes and Comments

Comment to 2025 Change: Rule 9.9(a)(1) is added to reflect that statutes, administrative agency regulations, court rules and court orders make confidential many different types of information, in addition to those set out in Rule 9.9(a) (2), (3) and (4).

Case-specific balancing of whether to allow use of a pseudonym

Federal pseudonymity caselaw

Most court opinions addressing the right to use a pseudonym are federal. The best summary is ***Doe v. Massachusetts Institute of Technology*, 46 F.4th 61 (1st Cir. 2022)**.

The First Circuit first joined nine other federal courts of appeal in holding that an order denying a motion to proceed by pseudonym is immediately appealable under the collateral order doctrine.

Federal appellate review standard is abuse of discretion – in the First Circuit, "when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them."

The presumption against the use of pseudonyms has no specific federal constitutional, statutory or rule foundation. It is best viewed as common procedural law fashioned by federal courts from custom, tradition, legal community norms, and common law and constitutional values. That foundation is a sturdy one.

The court considered "elaborate multi-factor tests" involving "non-exhaustive lists of up to ten factors." "Regrettably," it concluded, "these multi-factor tests do not establish a clear standard."

Amicus curiae Eugene Volokh, a prominent academic on pseudonymous litigation and a strong advocate for First Amendment access to court records, urged the Court in *Doe* to adopt "narrow categorical limitations or exceptions … tailored to unusual categories of cases that sufficiently distinguish themselves from the norm."

The court declined. As a practical matter, the "appropriate test" in any given case "must center on the totality of the circumstances." "In the last analysis," therefore, "district courts enjoy broad discretion to identify the relevant circumstances in each case and to strike the appropriate balance between the public and private interests."

The First Circuit nevertheless proceeded to offer, as "general guidelines" for a "workable methodology," "four general categories of exceptional cases in which party anonymity ordinarily will be warranted":

(1) a would-be Doe reasonably fears coming out of the shadows will cause him unusually severe harm (physical or psychological);
(2) identifying the would-be Doe would harm innocent non-parties;
(3) anonymity is necessary to forestall a chilling effect on future similarly situated litigants, deterring them from litigating important kinds of claims (e.g., involving intimate personal issues, or in which a potential party may be risking criminal prosecution, or in which the injury litigated against would be incurred by disclosure of the litigant's identity);
(4) suits bound up with a prior proceeding made confidential by law, where denying anonymity in the new suit would undermine the confidentiality in the prior proceeding.

The court emphasized two things about these general categories. First, they are rough cuts, not rigid pigeonholes – some cases that fall in one or more of them may not qualify. Second, the four categories do not capture the entire universe of cases in which pseudonymity may be appropriate.

It held that courts in the First Circuit "should insist upon these best practices when confronted with a motion to proceed by pseudonym."

Two Texas federal district court pseudonymity opinions illustrate some of the points made by the First Circuit.

In ***Doe v. University of the Incarnate Word*, 2019 WL 6727875 (W.D. Tex.—San Antonio 12/10/2019)**, plaintiff Jane Doe had been enrolled in UIW's School of Osteopathic Medicine. She alleged its failure to accommodate her ADHD and temporary aggravation of a nerve condition in her hand from a car wreck, instead requiring her to repeat her first year, among other causes of action.

Judge Xavier Rodriguez set out Fifth Circuit pseudonymity law. "Parties must generally identify themselves in their pleadings," citing *Southern Methodist*

University Association of Woman Law Students v. Wynne & Jaffe, 599 F.2d 707, 712 (5th Cir. 1979). "No federal rule or statute allows a plaintiff to unilaterally use a pseudonym in federal court, and doing so is seen as contrary to the spirit of the Federal Rules," discussing Rules 10(a) (disclose name in complaint) and 17(a) (prosecute in the name of the real party in interest). "First Amendment guarantees are implicated when a court decides to restrict public scrutiny of judicial proceedings."

"Nonetheless," he recognized, "under exceptional circumstances, courts have allowed plaintiffs to conceal their true identities when pursuing a lawsuit. *Wynne & Jaffe*, 599 F.2d at 712 (collecting cases)." "Though there is no 'hard and fast' formula for determining whether a party may proceed anonymously," the Fifth Circuit had "'isolated three characteristics common to cases in which courts allowed a party to proceed anonymously," setting out all three. "But a court need not look solely at those three factors; indeed, courts must consider the entirely of the circumstances, all while balancing 'considerations calling for maintenance of a party's privacy against the customary and constitutionally embedded presumption of openness in judicial proceedings.'" He then identified three "additional factors" also recognized in *Doe v. Stegall*, 653 F.2d 180 (5th Cir. Unit A 1981).

Judge Rodriquez held that the plaintiff had "not demonstrated a need for anonymity that outweighs the presumption of openness mandated by procedural custom and constitutional considerations." Several factors were inapplicable, and her disabilities "do not rise to the level of 'utmost intimacy' seen in the few cases that have allowed anonymity."

***John Doe Corporation v. Public Company Accounting Oversight Board*, 2024 WL 5275034 (S.D. Tex – Houston)**, by Southern District of Texas Judge Lee Rosenthal, illustrates the application of pseudonymity law to a business plaintiff in the general category of "suits that are bound up with a prior proceeding made confidential by law."

John Doe Corporation sued to prevent the PCAOB from enforcing an investigative demand under the Sarbanes-Oxley Act. Documents prepared or received by or for the PCAOB are exempt from disclosure "unless and

until" its disciplinary proceedings have run their course and the SEC has determined that disclosure is appropriate.

Judge Rosenthal applied the Fifth Circuit *Doe v. Stegall* version of the test for balancing "the need for anonymity against the general presumption that parties' identities are public information and against the risk of unfairness to the opposing party."

"Courts rarely allow corporations to litigate pseudonymously," but disclosure of its name would chill future litigants' suits about PCAOB actions that are themselves confidential. She therefore allowed John Doe Corporation to proceed until the defendant enters an appearance and can take a position, to be decided on a fuller record.

For comprehensive and detailed analysis of federal caselaw, see **Volokh, "The Law of Pseudonymous Litigation," 73 Hastings L. J. 1353 (2022)**. https://www.hastingslawjournal.org/wp-content/uploads/7.-Volokh_Final.pdf

Professor Volokh "aims to lay out the legal rules (such as they are) and the key policy arguments, in a way intended to be helpful to judges, lawyers, pro se litigants, and academics."

He analyzes the federal caselaw over 72 pages under three main headings: The Presumption Against Pseudonymity, Rebutting the Presumption of Non-Pseudonymity: Generally, and Rebutting the Presumption of Non-Pseudonymity: Specific Justifications. He then collects the cases, circuit by circuit, in 33 pages of appendices.

Texas pseudonymity case law

Few Texas opinions address the issue. They rely on federal precedent.

In ***Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471 (Tex. 1995)**, the Supreme Court held that a newspaper and its reporter could not be held liable for publishing information that might lead to the identification of a rape victim featured in their reporting. The court did not address the plaintiff's use of a pseudonym, but in a concurring opinion, Justice Gonzalez noted that "[a]lthough Texas law permits a rape victim to elect to have a pseudonym

used in place of her true name in all records of the case, Doe did not make such an election until" after the indictment of the rapist, which used her true name.

The Third Court of Appeals in *Topheavy Studios, Inc. v. Jane Doe*, 2005 WL 1940159 (Tex. App.—Austin 2005), found that the district court had not abused its discretion in issuing a temporary injunction preventing any further manufacturing, online marketing and distribution of defendant's video game, which used film it had taken in a South Padre Island spring break trivia contest of the plaintiff exposing her breasts. In signing up for the contest, she had misrepresented herself as an adult, but her evidence raised fact issues whether defendant had justifiably relied on the misrepresentation.

In two paragraphs, the court of appeals turned to defendant's challenge to the district court's granting of plaintiff's motion to proceed under a pseudonym. In one, it held that to be a non-appealable interlocutory order. In the other, in dicta, it rejected defendant's argument that her proceeding pseudonymously "would hinder [its] ability to prepare an adequate defense":

> The order specifically allows for full discovery and states that Doe's true name may be used in depositions and in the investigation of the case as long as her name is given to only those individuals who must know her name in order to fully participate in the investigation. Essentially, the order only prevents the disclosure of Doe's true name to the media or in any public forum.

In ***UIW-De Doe v. University of the Incarnate Word*, 2020 WL 3260080 (Tex. App.—San Antonio 2020)**, UIW-De Doe had been expelled from UIW's School of Osteopathic Medicine. He sued under a pseudonym and did not disclose his name or current residence, asserting without citing authority that he had a right to do so because he feared retaliation from the defendants.

Defendants specially excepted, arguing that failure to disclose his true name denied them fair notice of his claims under Rule 47. He amended his claims,

but again asserted, in the words of the court of appeals, that fear of retaliation "allowed him to proceed anonymously under unspecified Texas law."

The district court granted the exceptions, ordering Doe to amend to state his name and place of residence or face dismissal with prejudice. When he did not, the defendants so moved. Doe moved for reconsideration of the order granting exceptions. The district court dismissed with prejudice.

The court of appeals affirmed. It said Doe had made three arguments: "an unpublished federal district court opinion" supported allowing him to proceed under a pseudonym; his amended petition contained sufficient facts to give appellees fair notice of his claims; he sought a protective order, which he contended would allow defendants to proceed.

The court of appeals held that Doe had waived error:

> While his petition referred to—but did not identify—'applicable tests (created by Texas jurisprudence)' that purportedly authorize him to keep his name private, he has not raised any argument or cited any authority regarding the proper application of those tests in this court.
>
> Furthermore, although Texas courts occasionally permit plaintiffs to proceed under a pseudonym, Doe's brief presents no argument and cites no authority showing the trial court was required to do so under these facts.

Xavier Rodriguez's *Doe v. University of the Incarnate Word* seems highly likely to have been the unpublished opinion. If so, holding UIW-De Doe waived error by not provide Texas argument and authorities seems harsh.

***Texas Voices for Reason and Justice, Inc. v. City of Argyle, et al.*, No. 02-16-00052-CV (Tex. App..–Fort Worth March 30, 2017, no pet.) (memo. op.)**, held plaintiff not required to obtain a court order to use pseudonyms for its members. Citing three federal court cases, then *Topheavy Studios* and *Mother & Unborn Baby Care of N. Tex., Inc. v. Doe*, 689 S.W.2d 336, 337 (Tex. App.-Fort Worth 1985, writ dism'd), it explained that "even a named plaintiff … may proceed under a pseudonym in certain circumstances."

Texas Rules of Appellate Procedure

9.8. Protection of Minor's Identity in Parental-Rights Termination Cases and Juvenile Court Case

(a) Alias Defined. For purposes of this rule, an alias means one or more of a person's initials or a fictitious name, used to refer to the person.

(b) Parental-Rights Termination Cases. In an appeal or an original proceeding in an appellate court, arising out of a case in which the termination of parental rights was at issue:

(1) except for a docketing statement, in all papers submitted to the court, including all appendix items submitted with a brief, petition, or motion:

(A) a minor must be identified only by an alias unless the court orders otherwise;

(B) the court may order that a minor's parent or other family member or other custodial adult be identified only by an alias if necessary to protect a minor's identity; and

(C) all documents must be redacted accordingly;

(2) the court must, in its opinion, use an alias to refer to a minor, and if necessary to protect the minor's identity, to the minor's parent or other family member.

(c) *Juvenile Court Cases.* In an appeal or an original proceeding in an appellate court, arising out of a case under Title 3 of the Family Code:

(1) except for a docketing statement, in all papers submitted to the court, including all appendix items submitted with a brief, petition, or motion:

~~(A) a minor must be identified only by an alias;~~

~~(B) a minor's parent or other family member must be identified only by an alias; and~~

~~(C) all documents must be redacted accordingly;~~

~~(2) the court must, in its opinion, use an alias to refer to a minor and to the minor's parent or other family member.~~

~~(d) *No Alteration of Appellate Record.* Nothing in this rule permits alteration of the original appellate record except as specifically authorized by court order.~~

9.9 Privacy Protection for Documents Filed in Civil Cases.

(a) *Sensitive Data Defined*. Sensitive data consists of:

(1) information made confidential by statute, administrative regulation, court rule or court order;

(5) a driver's license number, passport number, social security number, tax identification number or similar government-issued personal identification number;

(6) (2) a bank account number, credit card number, or other financial account number; and

(3) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed.

(b) *Filing of Documents Containing Sensitive Data Prohibited*. Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document containing

~~sensitive data may not be filed with a court unless the sensitive data is redacted, except for the record in an appeal under Section Two.~~

~~(c) *Redaction of Sensitive Data; Retention Requirement*. Sensitive data must be redacted by using the letter "X" in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the appeal and any related proceedings filed within six months of the date the judgment is signed.~~

~~(d) *Notice to Clerk*. If a document must contain sensitive data, the filing party must notify the clerk by:~~

~~(1) designating the document as containing sensitive data when the document is electronically filed; or if the document is not electronically filed, by including, on the upper left-hand side of the first page, the phrase: "NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA."~~

~~(e) *Restriction on Remote Access*. Documents that contain unredacted sensitive data in violation of this rule must not be posted on the Internet.~~

~~**Notes and Comments**~~

~~Comment to 1997 change: This is former Rule 4. Subdivision 9.4, prescribing the form of documents filed in the appellate courts, is changed~~

~~and the form to be used is stated in significantly more detail. Former subdivisions (f) and (g), regarding service of documents, are merged into subdivision 9.5. Former Rule 6 is included as subdivision 9.6, but no substantive change is made. Other changes are made throughout the rule. Electronic filing is authorized by §§ 51.801-.807 of the Government Code.~~

~~Comment to 2002 change: The change [to Rule 9.5(a)] clarifies that the filing party must serve a copy of the document filed on all other parties, not only in an appeal or review, but in original proceedings as well. The rule applies only to filing *parties.* Thus, when the clerk or court reporter is responsible for filing the record, as in cases on appeal, a copy need not be served on the parties. The rule for original civil proceedings, in which a party is responsible for filing the record, is stated in subdivision 52.7.~~

~~Subdivision 9.7 is added to provide express authorization for the practice of adopting by reference all or part of another party's filing.~~

~~Comment to 2008 change: Subdivision 9.3 is amended to reduce the number of copies of a motion for extension of time or response filed in the Supreme Court. Subdivision 9.8 is new. To protect the privacy of minors in suits affecting the parent-child relationship (SAPCR), including suits to terminate parental rights, Section 109.002(d) of the Family Code authorizes appellate courts, in their opinions, to identify parties only by fictitious names or by initials. Similarly, Section 56.01(j) of the Family Code prohibits identification of a minor or a minor's family in an appellate opinion related to~~

~~juvenile court proceedings. But as appellate briefing becomes more widely available through electronic media sources, appellate courts' efforts to protect minors' privacy by disguising their identities in appellate opinions may be defeated if the same children are fully identified in briefs and other court papers available to the public. The rule provides protection from such disclosures. Any fictitious name should not be pejorative or suggest the person's true identity. The rule does not limit an appellate court's authority to disguise parties' identities in appropriate circumstances in other cases. Although appellate courts are authorized to enforce the rule's provisions requiring redaction, parties and amici curiae are responsible for ensuring that briefs and other papers submitted to the court fully comply with the rule.~~

~~Comment to 2012 Change: Rule 9 is revised to consolidate all length limits and establish word limits for documents produced on a computer. All documents produced on a computer must comply with the word limits. Page limits are retained for documents that are typewritten or otherwise not produced on a computer.~~

~~Comment to 2025 Change: Rule 9.9(a)(1) is added to reflect that statutes, administrative agency regulations, court rules and court orders make confidential many different types of information, in addition to those set out in Rule 9.9(a) (2), (3) and (4).~~

OPINION

D-i-v-o-r-c-e sometimes becomes a letters game

By **Express-News Editorial Board**

Sep 13, 2019

Lady Justice might be blind, but transparency is a hallmark of our court system. The use of initials in divorce filings subverts open records.
Billy Calzada /Staff file photo

Should couples filing for divorce be allowed to use their initials instead of their legal names on court documents?

There is a strong argument to be made for keeping the voyeurism to a minimum, and allowing divorcing couples to slip in and out of the judicial system quietly as they legally dissolve their unions. Divorces can be messy and emotional affairs, and in most instances they shouldn't be made into spectator events.

However, the need for personal privacy should not undermine the openness and

transparency of our tax-supported justice system. Allowing for shades of anonymity with the use of initials when filing a civil case distorts the public record. This isn't about airing dirty laundry; it's about addressing a tactic that potentially cloaks public records.

Marriage is a private matter, but the filing of a divorce can extend beyond the couple. It is the end of a partnership and has legal implications when there is joint debt and community property. Maintaining transparency in such matters is especially important if the divorces involve individuals connected to publicly traded companies or businesses with private investors.

Besides, it's *still* a public record.

Filing a divorce using only the initials of the parties involved does not make the divorce a secret — it just makes it more difficult for anyone searching public databases to locate. A public records search usually begins with a person's legal name. But if a divorce is filed under initials, then the actual names are embedded in the court records and require a manual search. It also means filings won't necessarily link to other court records under a person's last name. And those filings might have relevance.

The uses of initials only when filing a divorce has been a matter of great debate over the years, and because there is no law explicitly prohibiting the practice, judges across Texas allow it. Bexar County judges at one point considered adopting a local rule curtailing the use of initials in filings, but it never came to a vote. The practice continues today.

Several high profile Bexar County couples have filed for divorce using only their initials. Included in that group are a former NBA basketball player and his wife, a

former state senator, a prominent businessman, a state district judge and, most recently, a former federal judge who went on to become director of the FBI.

For a few years under a previous administration, the Bexar County district clerk's office would send letters to lawyers filing divorces under the litigants' initials citing Section 30.015 of the Civil Practice & Remedies Code, which states "each party or the party's attorney must provide the clerk of the court with written notice of the party's name and current residence or business address."

That practice has officially stopped under District Clerk Mary Angie Garcia.

We can't blame her, as it was a waste of paper. No one was being charged for violating the code. Even if they had been charged, the penalty was only $50, a small price to pay for those who value their privacy.

But we can say the matter merits more clarity, and we urge state lawmakers to revisit the issue. This isn't about snooping into the private affairs of others. It's a matter of maintaining accurate, searchable public records and keeping government transparent.

Sep 13, 2019

Express-News Editorial Board

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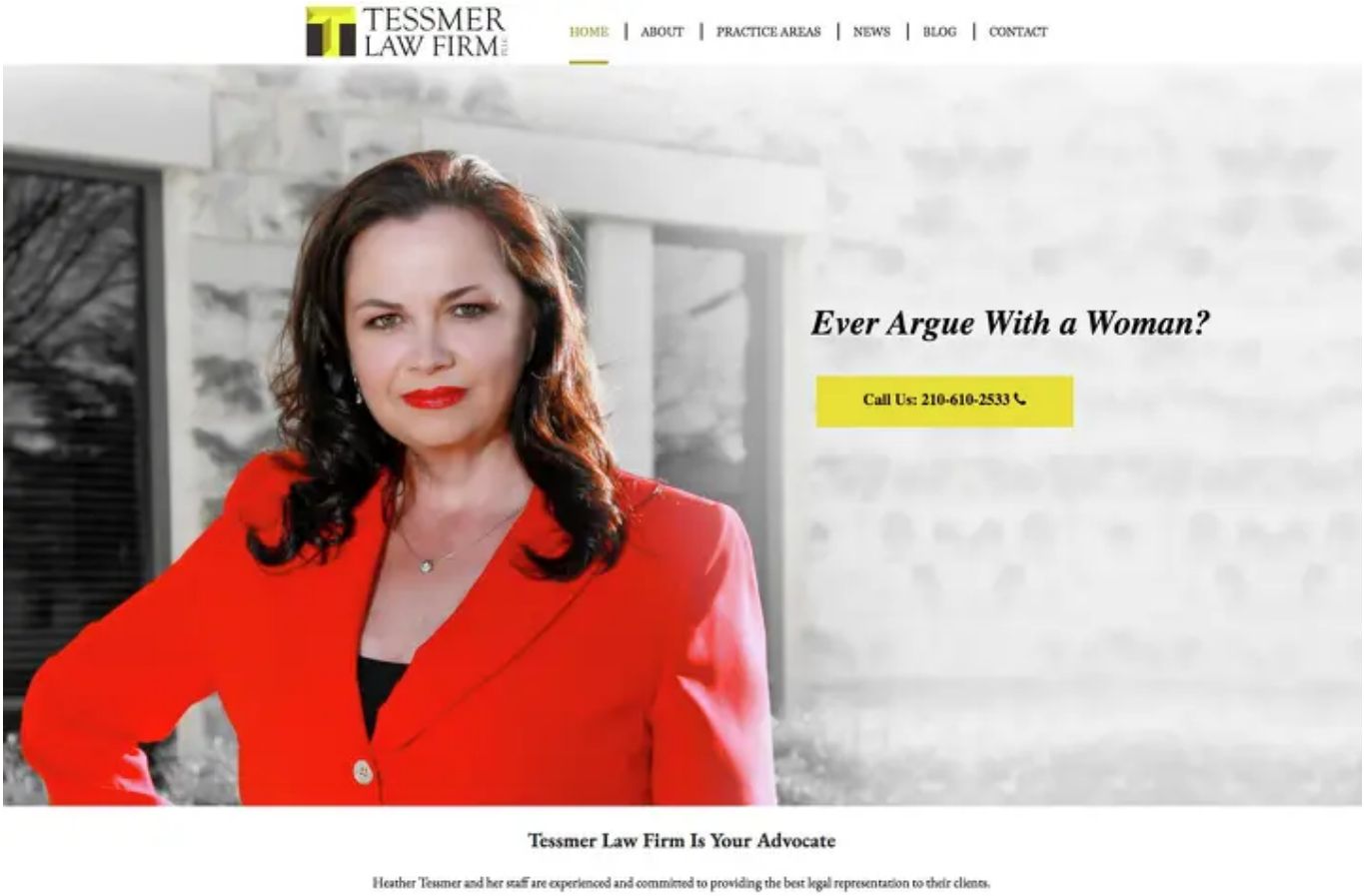

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Initial decision: Couples begin hiding names in divorce filings

By JESSICA COOLEY/The Lufkin Daily News
Apr 3, 2011

Following in the footsteps of Hollywood divorcees Eva Longoria and Tony Parker and Sandra Bullock and Jesse James, some Angelina County couples are filing their divorce decrees by initials.

The Lufkin Daily News in January began including divorces filed using initials in its "On the Record" collection of public records, which run each Sunday. Since Jan. 1, there have been nine divorces filed using initials, out of 194 total.

"In the past, we didn't run them because, frankly, they didn't reveal who was filing for divorce in those cases, and we hoped that at some point we could get the complete names. We have begun including them to let our readers know that people have been using this practice more often when they file for divorce," Publisher Greg Shrader said.

"We do believe that the public has a right to know when people are married or divorced in Angelina County, and we intend to continue pursuing the full names."

Section 6.401 of the Texas Family Code makes the practice of using initials legal, as the code does not specifically prohibit the practice, according to local attorney Jimmy Cassels.

The code, as it relates to divorce, states: "Pleadings in a suit for divorce or annulment shall be styled 'In the Matter of the Marriage of _____ and _____.'"

Cassels said there are instances in which he advises his clients to file by initials — the No. 1 reason being to save kids embarrassment in the classroom.

“It is tough on kids, especially junior high and high school age, if parents have kept the fighting behind closed doors. Sometimes the parents haven’t even sat down with the kids to talk to them about it yet,” Cassels said. “The divorce filing comes out in the paper on Sunday, and then everyone is in the know but them.”

The secondary reason Cassels advises his clients to file by initial is due to asset protection, he said. From the time a divorce petition is filed, it takes the judge about four to five days to sign an order freezing the assets. In that window of time, one party can make off with the money, the property or even the kids.

“If a couple is married, it’s community property, meaning I have as much right to everything as you do. Most accounts are joint, as is most property,” Cassels said. “If I know we’re getting a divorce and you don’t, I can go down and get all the money out of the bank or take the kids. Possession is nine-tenths of the law.”

For those looking to learn the identities of “initial” divorcees, there is a potential loophole once the divorce is finalized. Angelina County District Clerk Reba Squyres said that once the case is resolved, the public can view the file, which usually includes full names and signatures.

“The full name usually isn’t changed in the style of the case, but you’re able to see it in the body,” she said. “The full names are mentioned and the signatures are there. Some attorneys will amend the initial filing to then reflect the full name in the styling.”

For cases originally filed using initials, Squyres said she’s not required to obtain or release the couple’s full names.

“The way it’s styled when it comes in, I’m legally bound to,” she said. “When the initials are on the petition, that’s the way it has to be.”

Jessica Cooley’s email address is jcooley@lufkindailynews.com.

Tab VI- Texas Rule of Evidence 404 and 405

TO: SCAC
FM: Evidence Subcommittee, Roger W. Hughes
Date: August 18, 2025

Re: Impact of HB 1778, on TRE 404 and 405.

Recommendation

1. The subcommittee's recommendation is that HB 1778 does not require amendments to TRE 404 (Evidence of character, crimes, or other acts) or TRE 405 (methods of proving character). HB 1778 amends Code of Criminal Procedure article 38.072 (admission of a minor victim's first outcry in sex crimes) and 38.37 (admission of other wrongs by the accused in sex crimes against minors). Previously, the statutory provisions co-existed in criminal cases; the committee's view is that HB1778's changes will not change that. Article 38.37(b) provides that it controls over TRE 404 and 405.

How the Legislature changes CCP art. 38.37 and 38.072

2. The text of TRE 404/405, former Code of Criminal Procedure art. 38.37 and art. 37.072, and pertinent parts of HB 1778 are attached as App. A, B, C, and D respectively.

3. Former CCP art. 38.37 provided that in certain sex crimes against minors, evidence of other crimes, wrongs, or acts committed by the defendant against the child was admissible for relevant matters, including (1) the defendant's or the child's state of mind, and (2) a previous or subsequent relationship between the defendant and the child. CCP art. 38.37, §1(a, b), §2(b). Such evidence was admissible notwithstanding TRE 404 or 405. CCP art. 38.37, §1(b), §2(b). However, CCP art. 38.37 did not limit the admissibility of evidence of extraneous crimes, wrongs, or acts under any other applicable law. CCP art. 38.37, §4.

   The state had to give notice of intent to use evidence admissible under art. 38.37, §§1 or 2, at least thirty (30) days before trial. CCP art. 38.37, §3. The judge then must find the evidence showed the evidence offered under §2 will be adequate to support a finding by the jury that the defendant committed the separate offense beyond a reasonable doubt. CCP art. 38.37, §2-a.

4. HB 1778 §4.05 amended CCP art. 38.37 to:
   a. Expand the list of crime to sexual offenses involving adults and minors.
   b. Change references from "child" to "victim."

c. If evidence is admitted, the court upon request of either party give a limiting instruction orally and in writing.
d. Remove requirements for notice or specific judicial findings.

5. Former CCP art. 37.072 made admissible the hearsay statements by minors or disabled persons in the listed sexual offenses against minors and disabled persons. It applied to statements made by the child to the first adult other than the defendant to whom the child made a statement about the offense. CCP art. 37.072, §2(a). Statements were not inadmissible if the court found the statement was reliable and the victim is available to testify in court or in any other manner provided by law. CCP art. 37.072, §2(b).

   To be admissible the victim's statement had to be (1) about the alleged offense, or (2) if offered during the punishment phase, about a crime, wrong, or other offense against the child who is the victim or another child under age 14, and also be admissible under art. 38.37, TRE 404, TRE 405, or other law. CCP art. 38.072, §2(a).

6. HB 1778 §4.02, §4.03:
   a. Amended §2(a) to apply CCP art 38.072 only to statements by the child or disabled person (1) describing the offense, or (2) if offered during punishment phase, describing a separate crime, wrong, or other act committed against the child, disabled person, or another child under age 18, which statement is admissible under art. 38.37, TRE 404, TRE 405, or other law.
   b. To be admissible, the statements must be made by the minor or disabled person against whom the charged or extraneous offense were allegedly committed and be made to the first adult to whom the child or disabled person made a statement about the charged or extraneous, crime, wrong or act.
   c. The court shall admit more than one statement if each statement describes different conduct by the defendant.

Discussion

7. The subcommittee concludes the changes to CCP art. 38.072 do not require changes to TRE 404 or 405. Article 38.072 is a hearsay exception that requires the statement also be admissible under TRE 404 and 405. It does not override them.

8. Because TRE 404(a)(3)(A) [admissibility of victim's traits] refers to TRE 412 for criminal cases, we may want to consider a change to conform to SB 535 and the new CCP art. 38.372. TRE 404(a)(3)(B) applies only to the victim's trait in homicide cases; that does not require a change. Art. 38.37 applies only to specific sex crimes.

9. The subcommittee concludes there is no reason to amend TRE 404 or 405. CCP art. 38.37 has always provided that it controls notwithstanding TRE 404 and 405. CCP art. 38.27 and TRE 404/405 coexisted peacefully and without confusion. One could argue the amendments to art. 38.37 will not cause confusion in criminal cases.

10. TRE 404(a)(5) defines "victim" as the alleged victim. We do not think that conflicts with HB 1778's changes.

11. TRE 404(b)(1) provides evidence of crimes, wrongs, or other acts is admissible to prove a person's character to show the person would have acted in accordance with that character on a specific occasion. Art. 38.37 changes that in specified sex crime cases. The subcommittee concludes a change to limit TRE 404(b)(1) to civil cases and criminal cases not within CCP art. 38.37 is necessary.

12. TRE 404(b)(2) provides such evidence may be admissible for specific purposes (e.g., motive, intent, preparation, absence of mistake, etc.). This does not conflict with CCP art. 38.37.

13. TRE 404(b)(2) requires the prosecutor give reasonable notice before trial of intent to use such evidence. That conflicted with the former CCP art. 38.37, §3, which required thirty days' notice pre-trial. HB 1778 no longer requires notice for cases commenced after 9/1/25. Arguably TRE 404(b)(2)'s reasonable notice rule is not pre-empted because the phrase "Notwithstanding Rules 404 and 405, Texas Rules of Evidence" applies only to the admissibility of evidence. CCP art. 38.37, §2(b); HB 1778, §4.05 §1(c). The subcommittee does not think trial judges will have a problem with this in criminal cases.

APPENDIX A – TRE 404, 405

Rule 404. Character Evidence; Crimes or Other Acts.

(a) Character Evidence.

(1) *Prohibited Uses.* Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) *Exceptions for an Accused.*

(A) In a criminal case, a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.

(B) In a civil case, a party accused of conduct involving moral turpitude may offer evidence of the party's pertinent trait, and if the evidence is admitted, the accusing party may offer evidence to rebut it.

(3) Exceptions for a Victim.

(A) In a criminal case, subject to the limitations in Rule 412, a defendant may offer evidence of a victim's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.

(B) In a homicide case, the prosecutor may offer evidence of the victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(C) In a civil case, a party accused of assaultive conduct may offer evidence of the victim's trait of violence to prove self-defense, and if the evidence is admitted, the accusing party may offer evidence of the victim's trait of peacefulness.

(4) *Exceptions for a Witness.* Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(5) *Definition of "Victim."* In this rule, "victim" includes an alleged victim.

(b) Crimes, Wrongs, or Other Acts.

(1) *Prohibited Uses.* Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses; Notice in Criminal Case.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On timely request by a defendant in a criminal case, the prosecutor must provide reasonable notice before trial that the prosecution intends to introduce such evidence — other than that arising in the same transaction — in its case-in-chief.

Rule 405. Methods of Proving Character.

(a) By Reputation or Opinion.

(1) *In General.* When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, inquiry may be made into relevant specific instances of the person's conduct.

(2) *Accused's Character in a Criminal Case.* In the guilt stage of a criminal case, a witness may testify to the defendant's character or character trait only if, before the day of the offense, the witness was familiar with the defendant's reputation or the facts or information that form the basis of the witness's opinion.

(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

APPENDIX B – Former Tex. Code Crim. Proc. Art 38.37

Art. 38.37. Evidence of Extraneous Offenses or Acts.

Sec. 1.

(a) Subsection (b) applies to a proceeding in the prosecution of a defendant for an offense, or an attempt or conspiracy to commit an offense, under the following provisions of the Penal Code:

(1) if committed against a child under 17 years of age:

(A) Chapter 21 (Sexual Offenses);

(B) Chapter 22 (Assaultive Offenses); or

(C) Section 25.02 (Prohibited Sexual Conduct); or

(2) if committed against a person younger than 18 years of age:

(A) Section 43.25 (Sexual Performance by a Child);

(B) Section 20A.02(a)(5), (6), (7), or (8) (Trafficking of Persons);

(C) Section 20A.03 (Continuous Trafficking of Persons), if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(5), (6), (7), or (8); or

(D) Section 43.05(a)(2) (Compelling Prostitution).

(b) Notwithstanding Rules 404 and 405, Texas Rules of Evidence, evidence of other crimes, wrongs, or acts committed by the defendant against the child who is the victim of the alleged offense shall be admitted for its bearing on relevant matters, including:

(1) the state of mind of the defendant and the child; and

(2) the previous and subsequent relationship between the defendant and the child.

Sec. 2.

(a) Subsection (b) applies only to the trial of a defendant for:

(1) an offense under any of the following provisions of the Penal Code:

(A) Section 20A.02, if punishable as a felony of the first degree under Section 20A.02(b)(1) (Labor or Sex Trafficking of a Child or Disabled Individual);

(B) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);

(C) Section 21.11 (Indecency With a Child);

(D) Section 22.011(a)(2) (Sexual Assault of a Child);

(E) Sections 22.021(a)(1)(B) and (2) (Aggravated Sexual Assault of a Child);

(F) Section 33.021 (Online Solicitation of a Minor);

(G) Section 43.25 (Sexual Performance by a Child); or

(H) Section 43.26 (Possession or Promotion of Child Pornography), Penal Code; or

(2) an attempt or conspiracy to commit an offense described by Subdivision (1).

(b) Notwithstanding Rules 404 and 405, Texas Rules of Evidence, and subject to Section 2-a, evidence that the defendant has committed a separate offense described by Subsection (a)(1) or (2) may be admitted in the trial of an alleged offense described by Subsection (a)(1) or (2) for any bearing the evidence has on relevant matters, including the character of the defendant and acts performed in conformity with the character of the defendant.

Sec. 2-a. Before evidence described by Section 2 may be introduced, the trial judge must:

(1) determine that the evidence likely to be admitted at trial will be adequate to support a finding by the jury that the defendant committed the separate offense beyond a reasonable doubt; and

(2) conduct a hearing out of the presence of the jury for that purpose.

Sec. 3. The state shall give the defendant notice of the state's intent to introduce in the case in chief evidence described by Section 1 or 2 not later than the 30th day before the date of the defendant's trial.

Sec. 4. This article does not limit the admissibility of evidence of extraneous crimes, wrongs, or acts under any other applicable law.

Appendix C: Former Tex. Code Crim. Proc. Art 38.072

Art. 38.072. Hearsay Statement of Certain Abuse Victims. [Effective until September 1, 2025]

Sec. 1. This article applies to a proceeding in the prosecution of an offense under any of the following provisions of the Penal Code, if committed against a child younger than 18 years of age or a person with a disability:

(1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);

(2) Section 25.02 (Prohibited Sexual Conduct);

(3) Section 43.25 (Sexual Performance by a Child);

(4) Section 43.05(a)(2) or (3) (Compelling Prostitution);

(5) Section 20A.02(a)(5), (6), (7), or (8) (Trafficking of Persons);

(6) Section 20A.03 (Continuous Trafficking of Persons), if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(5), (6), (7), or (8); or

(7) Section 15.01 (Criminal Attempt), if the offense attempted is described by Subdivision (1), (2), (3), (4), (5), or (6) of this section.

Sec. 2.

(a) [2 Versions: As amended by Acts 2009, 81st Leg., ch. 284] This article applies only to statements that describe the alleged offense that:

(1) were made by the child or person with a disability against whom the offense was allegedly committed; and

(2) were made to the first person, 18 years of age or older, other than the defendant, to whom the child or person with a disability made a statement about the offense.

(a) [2 Versions: As amended by Acts 2009, 81st Leg., ch. 710] This article applies only to statements that:

(1) describe:

(A) the alleged offense; or

(B) if the statement is offered during the punishment phase of the proceeding, a crime, wrong, or act other than the alleged offense that is:

(i) described by Section 1;

(ii) allegedly committed by the defendant against the child who is the victim of the offense or another child younger than 14 years of age; and

(iii) otherwise admissible as evidence under Article 38.37, Rule 404 or 405, Texas Rules of Evidence, or another law or rule of evidence of this state;

(2) were made by the child against whom the charged offense or extraneous crime, wrong, or act was allegedly committed; and

(3) were made to the first person, 18 years of age or older, other than the defendant, to whom the child made a statement about the offense or extraneous crime, wrong, or act.

(b) A statement that meets the requirements of Subsection (a) is not inadmissible because of the hearsay rule if:

(1) on or before the 14th day before the date the proceeding begins, the party intending to offer the statement:

(A) notifies the adverse party of its intention to do so;

(B) provides the adverse party with the name of the witness through whom it intends to offer the statement; and

(C) provides the adverse party with a written summary of the statement;

(2) the trial court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child or person with a disability testifies or is available to testify at the proceeding in court or in any other manner provided by law.

Sec. 3. In this article, “person with a disability” means a person 13 years of age or older who because of age or physical or mental disease, disability, or injury is substantially unable to protect the person’s self from harm or to provide food, shelter, or medical care for the person’s self.

APPENDIX D: HB 1778, §4.02 §4.05, §4.08

HB 1778

SECTION 4.02. Section 2(a), Article 38.072, Code of Criminal Procedure, as amended by Chapters 284 (S.B. 643) and 710 (H.B. 2846), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) This article applies only to statements that:

(1) describe:

(A) the alleged offense; or

(B) if the statement is offered during the punishment phase of the proceeding, a crime, wrong, or act other than the alleged offense that is:

(i) described by Section 1;

(ii) allegedly committed by the defendant against the child or person with a disability who is the victim of the offense or against another person who is a child younger than 18 [14] years of age or a person with a disability; and

(iii) otherwise admissible as evidence under Article 38.37, Rule 404 or 405, Texas Rules of Evidence, or another law or rule of evidence of this state;

(2) were made by the child or person with a disability against whom the charged offense or extraneous crime, wrong, or act was allegedly committed; and

(3) were made to the first person, 18 years of age or older, other than the defendant, to whom the child or person with a disability made a statement about the offense or extraneous crime, wrong, or act.

SECTION 4.05. Section 1, Article 38.37, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. (a) Subsection (b) applies to a proceeding in the prosecution of a defendant for an offense, or an attempt or conspiracy to commit an offense, under the following provisions of the Penal Code:

(1) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);

(2) Section 21.11 (Indecency with a Child);

(3) Section 21.15 (Invasive Visual Recording);

(4) Section 21.16 (Unlawful Disclosure or Promotion of Intimate Visual Material);

(5) Section 21.165 (Unlawful Production or Distribution of Certain Sexually Explicit Videos);

(6) Section 21.18 (Sexual Coercion);

(7) Section 21.19 (Unlawful Electronic Transmission of Sexually Explicit Visual Material);

(8) Section 25.02 (Prohibited Sexual Conduct); [or

(9) Section 43.25 (Sexual Performance by a Child);

(10) Section 20A.02 [20A.02(a)(5), (6), (7), or (8)] (Trafficking of Persons);

(11) Section 20A.03 (Continuous Trafficking of Persons)

(12) Section 43.05 (Compelling Prostitution);

(13) if committed against a child younger than 18 years of age:

(A) Chapter 21 (Sexual Offenses); or

(B) Chapter 22 (Assaultive Offenses).

(b) Notwithstanding Rules 404 and 405, Texas Rules of Evidence, evidence of other crimes, wrongs, or acts committed by the defendant against the victim of the alleged offense shall be admitted for its bearing on relevant matters, including:

(1) the state of mind of the defendant and the victim; and

(2) the previous and subsequent relationship between the defendant and the victim.

(c) If a court admits evidence under this section and on request by either party, the court shall provide to the jury a limiting instruction regarding the purposes for which the evidence may be used. The court shall provide the limiting instruction:

(1) orally at the time the evidence is admitted; and

(2) in writing on conclusion of the presentation of evidence in the case, at the time written instructions are provided to the jury.

SECTION 4.08. The changes in law made by this article to Chapter 38, Code of Criminal Procedure, apply to a criminal proceeding that commences on or after September 1, 2025. A criminal proceeding that commences before September 1, 2025, is governed by the law in effect on the date the proceeding commenced, and the former law is continued in effect for that purpose.

Tab VII- Texas Rules of Evidence

Texas Supreme Court Advisory Committee

Memo

To: Texas Supreme Court Advisory Committee (SCAC)

From: TRE Subcommittee

Date: June 20, 2025

Re: FRE amendments effective December 1, 2024

The Evidence Subcommittee was asked to review the Federal Rules of Evidence new rules and amendments adopted on December 1, 2024. **The blue lines below show the changes in the federal rule. The red font with italics and highlighting shows our changes to the federal rule or tweaks to the corresponding TRE.**

This memo summarizes each rule, quotes the new rule or amendments, quotes portions evidence committee's official comments, and makes a recommendation for each rule.

Rule 107. Illustrative Aids [New Rule]

FRE 107 creates a new rule for demonstrative evidence now to be called "illustrative aids"; defines "illustrative aids" and allows their use in jury deliberations only with consent of parties or judicial finding of "good cause." Nonetheless, illustrative aids are not evidence.

(a) Permitted Uses. The court may allow a party to present an illustrative aid to help the trier of fact understand the evidence or argument if the aid's utility in assisting comprehension is not substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time.

(b) Use in Jury Deliberations. An illustrative aid is not evidence and must not be provided to the jury during deliberations unless:

(1) all parties consent; or
(2) the court, for good cause, orders otherwise.

(c) Record. When practicable, an illustrative aid used at trial ~~must~~ *may upon the request of any party* be entered into the record.

(d) Summaries of Voluminous Materials Admitted as Evidence. A summary, chart, or calculation admitted as evidence to prove the content of voluminous

admissible evidence is governed by Rule 1006.

The committee notes explain:

- The term "illustrative aid" is used instead of the term "demonstrative evidence," as that latter term has been subject to differing interpretation in the courts. An illustrative aid is any presentation offered not as evidence but rather to assist the trier of fact in understanding evidence or argument. "Demonstrative evidence" is a term better applied to substantive evidence offered to prove, by demonstration, a disputed fact.

- Examples of illustrative aids include "depictions, charts, graphs, and computer simulations." These kinds of presentations, referred to in this rule as "illustrative aids," have also been described as "pedagogical devices" and sometimes (and less helpfully) "demonstrative presentations"—that latter term being unhelpful because the purpose for presenting the information is not to "demonstrate" how an event occurred but rather to help the trier of fact understand evidence or argument that is being or has been presented.

- It is possible that the illustrative aid may be prepared to distort or oversimplify the evidence presented or stoke unfair prejudice. This rule requires the court to assess the value of the illustrative aid in assisting the trier of fact to understand the evidence or argument.

- If the court does allow the aid to be presented at a jury trial, the adverse party may ask to have the jury instructed about the limited purpose for which the illustrative aid may be used.

- The amendment therefore leaves it to trial judges to decide whether, when, and how to require advance notice of an illustrative aid.

The Committee on Rules of Practice and Procedure explained that Rule 107 provides that illustrative aids can be used unless the negative factors "substantially" outweigh the educative value of the aid, made clear that illustrative aids are not evidence, and referred to Rule 1006 for summaries of voluminous evidence.

Comments: This rule appears unnecessary but not harmful.

Recommendation: The committee recommends the adoption of this rule.

The committee discussed whether to make this Rule 108 or renumber current Rule 107 as Rule 108. Renumbering so TRE and FRE have the same rule numbers when possible is helpful pedagogically for students learning the federal and state rules in an evidence class and for conducting legal research using federal authorities to support arguments in state court. On the other hand, it may create confusion when looking at prior Texas authorities. On balance, the committee recommends using the federal rule number; the federal rules and state rules have the same numbers except the end of Article VI—FRE 614 does not have a counterpart in the Texas rules, FRE 615 is TRE 614 and Texas has a particular rule on producing a witness's statement in criminal cases (TRE Rule 615).

Rule 613. Witness's Prior Statement

FRE 613(b) [prior inconsistent statements] provides that prior inconsistent statements are inadmissible until the witness is allowed to first explain or deny the statement. However, a court may order otherwise. The "flexibility" is added to address situations where witness becomes unavailable, or the witness openly admits the inconsistency.

It provides:

2 * * * * *

> **(b) Extrinsic Evidence of a Prior Inconsistent Statement.** Unless the court orders otherwise, extrinsic evidence of a witness's prior inconsistent statement may not be admitted until after the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

The committee notes explain:

- Rule 613(b) has been amended to require that a witness receive an opportunity to explain or deny a prior inconsistent statement *before* the introduction of extrinsic evidence of the statement.

- The amendment preserves the trial court's discretion to delay an opportunity to explain or deny until after the introduction of extrinsic evidence in appropriate cases, or to dispense with the requirement altogether. A trial judge may decide to delay or even forgo a witness's opportunity to explain or deny a prior inconsistent statement in certain circumstances, such as when the failure to afford the prior opportunity was inadvertent and the witness may be afforded a subsequent opportunity, or when a prior opportunity was impossible because the witness's statement was not discovered until after the witness testified.

Comments: Texas Rule 613 already requires a party to give a witness an opportunity to explain or deny a prior inconsistent statement before the introduction of evidence of the statement.

Recommendation: The committee recommends *against* the adoption of this rule because Texas Rule 613 adequately covers this.

But we do recommend tweaking TRE 613 to adopt the concept from the new federal rule that a court should have discretion to allow a party to use a prior inconsistent statement in some limited circumstances. FRE 613 does this through the phrase, "Unless the court orders otherwise." We could add the same phrase at the beginning of TRE 613(a)(4). If so, it would read as follows:

> *Unless the court orders otherwise, [e]xtrinsic evidence of a witness's prior inconsistent statement is not admissible unless the witness is first examined about the statement and fails to unequivocally admit making the statement.*:

We also recommend adding a comment that quotes the FRE committee comment quoted above.

It would state as follows:

> The trial court *has* discretion to delay an opportunity to explain or deny until after the introduction of extrinsic evidence in appropriate cases, or to dispense with the requirement altogether. A trial judge may decide to delay or even forgo a witness's opportunity to explain or deny a prior inconsistent statement in certain circumstances, such as when the failure to afford the prior opportunity was inadvertent and the witness may be afforded a subsequent opportunity, or when a prior opportunity was impossible because the witness's statement was not discovered until after the witness testified.

These changes address a problem when the extrinsic evidence of a prior inconsistent statement is not discovered until after the witness has been excused so there is no opportunity to allow the witness to review it. This change gives the trial court discretion to address that issue.

Rule 801. Definitions That Apply to Hearsay Article; Exclusions from Hearsay

FRE 801(d)(2)(E)'s amendment provides that if a party's claim or defense is directly derived from the declarant or the declarant's principal and the statement would be admissible against the declarant or the declarant's principal as an "opposing party's" statement, then it will be admissible against the opposing party. It is somewhat convoluted, but the idea is that if the opposing party's claim or defense is "directly derivative" of a declarant, then the statements by that declarant or by the declarant's agents within the scope of their agency may not be hearsay.

Note: The section numbers differ between the Federal and Texas Rule. Texas adds subsection (c) defining "matter asserted." Therefore FRE 801(d)—entitled "statements that are not hearsay"—is TRE 801(e).

* * * * *

(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

* * * * *

(2) ***An Opposing Party's Statement.*** The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;
(B) is one the party manifested that it adopted or believed to be true;
(C) was made by a person whom the party authorized to make a statement on the subject;
(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

If a party's claim, defense, or potential liability is directly derived from a declarant or the declarant's principal, a statement that would be admissible against the declarant or the principal under this rule is also admissible against the party.

The committee notes explain:

- The rule has been amended to provide that when a party stands in the shoes of a declarant or the declarant's principal, hearsay statements made by the declarant or principal are admissible against the party. For example, if an estate is bringing a claim for damages suffered by the decedent, any hearsay statement that would have been admitted against the decedent as a party-opponent under this rule is equally admissible against the estate.

- The rule is justified because if the party is standing in the shoes of the declarant or the principal, the party should not be placed in a better position as to the admissibility of hearsay than the declarant or the principal would have been. A party that derives its interest from a declarant or principal is ordinarily subject to all the substantive limitations applicable to them, so it follows that the party should be bound by the same evidence rules as well.

The Committee on Rules of Practice and Procedure explained that the amendment to Rule 801(d)(2) "would resolve the dispute in the courts about the admissibility of statements by the predecessor-in-interest of a party-opponent, providing that such a hearsay statement would be admissible against the declarant's successor-in-interest."

Comments: No additional comments.

Recommendation: We recommend making this amendment to the rule, although it will be located in TRE 802(e).

Also note that TRE 801(e)(2) does not have FRE 801(d)(2)(E)'s provision that the statement alone does not prove the declarant's authority or agency for a principal. Roger Hughes suggests adopting the federal rule's provision that the statement itself does not establish the declarant's authority or the scope of the relationship. He would suggest amended TRE 801(e)(2) to provide:

> The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Roger Hughes' concern is the hardship to the party against whom the out-of-court statement is offered. His example is a realty case over construction of a deed concerning a possibly ambiguous provision; Plaintiff's claims come from the deed. Defendant wants to offer an out-of-court statement by Smith, grantor's alleged employee. The grantor is dead or otherwise unavailable to give testimony. Plaintiff wants to prove the grantor did not employ Smith, did not authorize the statement, or otherwise denies Smith's scope of agency/employment. If the statement alone is proof of agency/employment/scope, Plaintiff has a hardship to disprove them because the grantor is dead or unavailable.

Professor Goode has no problems with that suggestion and thinks it is consistent with the few Texas cases he has reviewed on the subject.

Rule 804. Exceptions to the Rule Against Hearsay—
When the Declarant Is Unavailable as a Witness

FRE 804(3) [declarant unavailable] is amended to modify the statement against interest exception for criminal cases. Should this be referred to the CCA? Regardless, the Texas exception for statements against interest is in TRE 803(b)(24) and therefore does not require the witness to be unavailable.

* * * *

(b) The Exceptions. * * *

(3) ***Statement Against Interest.*** A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) if offered in a criminal case as one that tends to expose the declarant to criminal liability, is supported by corroborating circumstances that clearly indicate its trustworthiness after considering the totality of circumstances under which it was made and any evidence that supports or undermines it.

* * * * *

The committee notes explain:

- Rule 804(b)(3)(B) has been amended to require that in assessing whether a statement is supported by "corroborating circumstances that clearly indicate its trustworthiness," the court must consider not only the totality of the circumstances under which the statement was made, but also any evidence supporting or undermining it.

The Committee on Rules of Practice and Procedure explained that Rule 804(b)(3) provides a hearsay exception for declarations against interest. In a criminal case in which a declaration against penal interest is offered, the rule requires that the proponent provide "corroborating circumstances that clearly indicate the trustworthiness" of the statement. There is a dispute in the courts about the meaning of the "corroborating circumstances" requirement. The proposed amendments to Rule 804(b)(3) would require that, in assessing whether a statement is supported by corroborating circumstances, the court must consider not only the totality of the circumstances under which the statement was made, but also any evidence supporting or undermining it.

Comments: Professor Goode notes that the language highlighted above is in the federal rule but not the state rule. He has not seen it in any case but thinks it might be helpful but is not necessary.

Recommendation: None of us has expertise in criminal matters but we agreed the change seems reasonable. The CCA should be consulted before making any change in this rule.

Rule 1006. Summaries to Prove Content

FRE 1006 on summaries of voluminous evidence is amended. FRE 1006(a) provides that underlying documents must be admissible, but not necessarily offered in evidence. New FRE 1006(c) provides that summaries, charts, or calculations that act only as "illustrative aids" are controlled by FRE 107.

> **(a) Summaries of Voluminous Materials Admissible as Evidence**. The court may admit as evidence a summary, chart, or calculation offered to prove the content of voluminous admissible writings, recordings, or photographs that cannot be conveniently examined in court, whether or not they have been introduced into evidence.
> **(b) Procedures**. The proponent must make the underlying originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.
> **(c) Illustrative Aids Not Covered**. A summary, chart, or calculation that functions only as an illustrative aid is governed by Rule 107.

The committee notes explain:

- Rule 1006 has been amended to correct misperceptions about the operation of the rule by some courts. Some courts have mistakenly held that a Rule 1006 summary is "not evidence" and that it must be accompanied by limiting instructions cautioning against its substantive use. But the purpose of Rule 1006 is to permit alternative proof of the content of writings, recordings, or photographs too voluminous to be conveniently examined in court. To serve their intended purpose, therefore, Rule 1006 summaries must be admitted as substantive evidence and the rule has been amended to clarify that a party may offer a Rule 1006 summary "as evidence." The court may not instruct the jury that a summary admitted under this rule is not to be considered as evidence.

- Rule 1006 has also been amended to clarify that a properly supported summary may be admitted into evidence whether or not the underlying voluminous materials reflected in the summary have been admitted.

- A summary admissible under Rule 1006 must also pass the balancing test of Rule 403. For example, if the summary does not accurately reflect the underlying voluminous evidence, or if it is argumentative, its probative value may be substantially outweighed by the risk of unfair prejudice or confusion.

Comments: This is a good clarification.

Recommendation: We recommend adopting this rule and including the third bullet point quotation in a comment on the rule.