

SCAC MEETING AGENDA
January 16-17, 2004

Location: Texas Association of Broadcasters
502 E. 11th Street
Austin, Texas 78701

1. **WELCOME**
2. **REPORT FROM JUSTICE HECHT**

2.1 Status Report

Justice Hecht will report on Supreme Court actions and those of other courts related to the Supreme Court Advisory Committee since the August 2003 meeting. Justice Hecht will also review new legislation that may require rules changes and may refer new issues for the committee's study.

3. **HB 4 and OTHER LEGISLATIVE CHANGES**

RULES CHANGES REQUIRED BY OR NECESSITATED BY STATUTES ADOPTED BY 78TH LEGISLATURE (CARLSON/JACKS)

3.1 OUTSTANDING CLASS ACTION ISSUES (ORSINGER)

HB 4 required several changes to Texas rules relating to award of class action fees. In the August meeting, the SCAC focused on rules related to attorney's fees and to conforming the rule to FRCP 23. The Supreme Court has proposed the changes to take effect Jan. 1, 2004. An issue of discussion will be the effective date of the Rule 42 changes. Also, the SCAC left for another day, discussion of several other changes, including opt-in and opt out, inchoate classes, and any other proposals remain to be discussed.

Provisions of HB 4 relating to class actions are in Article 1, on pages 1-6 of the PDF:

<http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=78&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=00004&VERSION=5&TYPE=B>

3.2 AD LITEM APPOINTMENTS, RESPONSIBILITY AND COMPENSATION: TRCP 173 (MEADOWS)

In August, the SCAC briefly discussed changes to ad litem proposals. This meeting will have a continuation of discussion and comment on Task Force on

Civil Litigation Improvements' ad litem rules proposal, including any changes that need to be considered in light of HB 1815.

HB 1815 relates to appointments and duties of ad litem

<http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=78&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=01815&VERSION=5&TYPE=B>

Click here for Task Force's ad litem proposal.

<http://www.supreme.courts.state.tx.us/advisory/03/03062011.pdf>

3.3 TEXAS RULES OF EVIDENCE ISSUES (LOW)

- A. AFFIDAVITS CONCERNING COST AND NECESSITY OF SERVICES: TRCP 904
- B. EX PARTE COMMUNICATIONS AND PHYSICIAN-PATIENT CONFIDENTIALITY: TRCP 509

Discussion topics will include whether an existing federal statute bars *ex parte* communication of a patient's medical condition by a physician to any other person. The SCAC will also discuss several other recommended changes to the Texas Rules of Evidence to make them conform with the Federal Rules of Evidence.

<http://courtstuff.com/sct/rules/Committee/Nov-2002/RULE509cmterepor.pdf>

<http://www.supreme.courts.state.tx.us/rules/Committee/Sep-2002/2.6%20sample.pdf>

<http://www.supreme.courts.state.tx.us/rules/Committee/Sep-2002/2.6%20edwards.pdf>

<http://www.supreme.courts.state.tx.us/rules/Committee/Sep-2002/2.6%20letters.pdf>

<http://www.supreme.courts.state.tx.us/rules/Committee/Sep-2002/2.6%20letters2.pdf>

3.4 SEALING COURT RECORDS: TRCP 76A (ORSINGER)

The SCAC has been asked to review the effectiveness and operation of Texas Rule of Civil Procedure Rule 76a addressing the appropriateness of and method for sealing court records. A copy of the most recent information on this issue is below.

<http://www.supreme.courts.state.tx.us/rules/Committee/Sep-2002/2.11%20background.pdf>

3.5 PREFILING, INVESTIGATIVE DEPOSITIONS: TRCP 202 (MEADOWS)

The committee has been asked to review the effectiveness and operation of Texas Rule of Civil Procedure Rule 202 that allows depositions before a suit is filed or to investigate a claim.

<http://www.supreme.courts.state.tx.us/rules/Committee/Sep-2002/2.9%20background.pdf>

<http://www.supreme.courts.state.tx.us/rules/Committee/Sep-2002/2.9%20duggins.pdf>

<http://www.supreme.courts.state.tx.us/rules/Committee/Sep-2002/2.9%20sweeny>