SCAC Meeting
June 8, 2007
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2. TRAP 24.2 – Amount of Bond, Deposit or Security (E. Carlson)
3. Dorsaneo memo (6/5/07) on proposals regarding TRAP 9.8, 20.1, 41 and 52.6
4. Rule 661 etc. – Writs of Garnishment (T. Lawrence)

TRAP 24.2 Amount of Bond, Deposit or Security

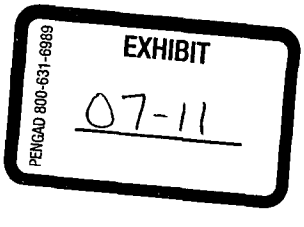
(c) Determination of Net Worth

(1) ***Judgment Debtor's Affidavit Required; Contents; Prima Facie Evidence.*** A judgment debtor who provides a bond, deposit, or security under (a)(2) in an amount based on the debtor's net worth must simultaneously file with the trial court clerk an affidavit that states the debtor's net worth and states complete, detailed information concerning the debtor's assets and liabilities from which net worth can be ascertained. ~~The affidavit is prima facie evidence of the debtor's net worth.~~ A trial court clerk must receive and file a net worth affidavit tendered for filing by a judgment debtor. A net worth affidavit filed with the trial court clerk is prima facie evidence of the debtor's net worth for the purpose of establishing the amount of the bond, deposit or security required to suspend enforcement of the judgment.

(2) ***Contest; Discovery; Hearing.*** A judgment creditor may file a contest to the debtor's claimed net worth. The contest need not be sworn. The creditor may conduct reasonable discovery concerning the judgment debtor's net worth.

The trial court must hear a judgment creditor's contest of the claimed net worth of the judgment debtor promptly after any discovery has been completed. The judgment debtor has the burden of proving net worth. The trial court must issue an order that states the debtor's net worth and states with particularity the factual basis for that determination.

If the trial court orders additional or other security to supersede the judgment, the enforcement of the judgment will be suspended for twenty days after the trial court's order. If the judgment debtor does not comply with the order within that period, the judgment may be enforced against the judgment debtor.



ALTERNATIVE

(C)(2) ***Contest; Discovery; Hearing***. A judgment creditor may file a contest to the debtor's claimed net worth. The contest need not be sworn. The creditor may conduct reasonable discovery concerning the judgment debtor's net worth.

The trial court must hear a judgment creditor's contest of the claimed net worth of the judgment debtor promptly after any discovery has been completed. The judgment debtor has the burden of proving net worth. The trial court must issue an order that states the debtor's net worth and states with particularity the factual basis for that determination. [Alternative: or why the proof of claimed net worth is insufficient to allow the court to make a net worth finding. Should the trial court sustain the judgment creditor's contest due to the judgment debtors' failure to sustain its burden of proof or because it determines the judgment debtor's proof is not credible, it may order enforcement of the trial court judgment is no longer suspended.]

If the trial court orders additional or other security [*Alternative: If the trial court orders additional monetary* security] to supersede the judgment, the enforcement of the judgment will be suspended for twenty days after the trial court's order. If the judgment debtor does not comply with the order within that period, the judgment may be enforced against the judgment debtor.

Chapter 52, Civil Practice and Remedies Code

52.001 Definition (no change proposed)

In this chapter, "security" means a bond or deposit posted, as provided by the Texas Rules of Appellate Procedure, by a judgment debtor to suspend execution of the judgment during appeal of the judgment.

52.002 Bond or Deposit for Money Judgment (repealed)

52.003 Review for Sufficiency (repealed)

52.004 Review for Excessiveness (repealed)

52.005 Conflict with Texas Rules of Appellate Procedure

(a) To the extent that this chapter conflicts with the Texas Rules of Appellate Procedure, this chapter controls.

(b) Notwithstanding Section 22.004, Government Code, the Supreme Court may not adopt rules in conflict with this chapter.

(c) The Texas Rules of Appellate Procedure apply to any proceeding, cause of action, or claim to which Section 52.002 does not apply.

Sec. 52.006. AMOUNT OF SECURITY FOR MONEY JUDGMENT.

(a) Subject to Subsection (b), when a judgment is for money, the amount of security must equal the sum of:

(1) the amount of compensatory damages awarded in the judgment;

(2) interest for the estimated duration of the appeal; and

(3) costs awarded in the judgment.

(b) **Notwithstanding any other law or rule of court**, when a judgment is for money, the amount of security **must not** exceed the lesser of:

(1) 50 percent of the judgment debtor's net worth; or

(2) $25 million.

(c) On a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post security in an amount required under Subsection (a) or (b), the trial court shall lower the amount of the security to an amount that will not cause the judgment debtor substantial economic harm.

(d) An appellate court may review the amount of security as allowed under Rule 24, Texas Rules of Appellate Procedure, except that when a judgment is for money, the appellate court may not modify the amount of security to exceed the amount allowed under this section.

(e) Nothing in this section prevents a trial court from enjoining the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

MEMORANDUM

To: Appellate Subcommittee Members

From: Bill Dorsaneo

cc: Jody Hughes

Date: June 5, 2007

Re: Proposals regarding TRAP 9.8, 20.1, 41, and 52.6

This is an abbreviated version of the 1/8/2007 memo addressing the proposed revisions discussed and voted on at our October 2006 and February and April 2007 meetings. Proposed new 9.8 and amended 52.6 have not been discussed by the Committee. The proposed revisions to 20.1, and 41 were addressed by the Committee at the April meeting but may need further brief discussion to clarify the Committee's preference for either of the two alternatives versions presented for each rule. Any update regarding TRAP 24 will be circulated separately.

Rule 9. Papers Generally

9.8 Use of Minors' Initials in Parental-Rights Termination Cases.

(a) In Appellate Briefing. In appeals or original proceedings involving the termination of parental rights, the name of any minor child who was the subject of a termination proceeding should be identified in any brief filed with or received by an appellate court only by the initial letters of the minor's first, middle, and last name, unless the court orders otherwise. If multiple minors in the case share the same initials, numbers should be used in conjunction with the initials to distinguish between the minors, with lower numbers assigned to earlier-born children.

(b) In Copies of Appendix Items. To the extent any papers a party desires to include as necessary or optional items in an appendix to a brief or petition contain the name of a minor child who was the subject of a termination proceeding, the copies of any such papers to be included in the appendix must be redacted so that the minor is identified only by the initial letters of the minor's first, middle, and last name. Nothing in this rule authorizes alteration of the original appellate record except as specifically authorized by court order.

Status: Ready for SCAC discussion

Rule 20. When Party is Indigent

20.1 Civil Cases

(a) *Establishing indigence.* A party who cannot pay the costs in an appellate court may proceed without advance payment of costs if:

(1) the party files an affidavit of indigence in compliance with this rule.

(2) the claim of indigence is not contested, is not contestable, or if contested, the contest is not sustained by written order; and

(3) the party timely files a notice of appeal.

(b) *Contents of affidavit.* The affidavit of indigence must identify the party filing the affidavit and must state what amount of costs, if any, the party can pay. The affidavit must also contain complete information about:

***

(12) if applicable, the party's lack of the skill and access to equipment necessary to prepare the appendix, as required by Rule 38.5(d).

(c) *IOLTA Certificate.* If the appellant proceeded in the trial court without payment of fees pursuant to an IOLTA certificate, an additional IOLTA certificate may be filed in the appellate court confirming that the IOLTA funded program rescreened the party for income eligibility under IOLTA income guidelines after entry of the trial court's judgment. A party's affidavit of inability accompanied by an attorney's IOLTA certificate may not be contested.

~~(c)~~(d) *When and Where Affidavit Filed.*

(1) Appeals. Except as provided in paragraph (3), a~~A~~n appellant must file the affidavit of indigence in the trial court with or before the notice of appeal. The prior filing of an affidavit of indigence in the trial court pursuant to Civil Procedure Rule 145 does not meet the requirements of this rule, which requires a separate affidavit and proof of current indigence. An appellee who is required to pay part of the cost of preparation of the record under Rule 34.5(b)(3) or 34.6(c)(3) must file an affidavit of indigence in the trial court within 15 days after the date when the appellee becomes responsible for paying that cost.

(2) Other proceedings. [no change]

(3) Extension of time. The appellate court may extend the time to file an affidavit of indigence if, within 15 days after the deadline for filing the affidavit, the party files in the appellate court a motion complying with Rule 10.5(b). But the appellate court may not dismiss the appeal on the ground that the appellant has failed to file [an affidavit or] [a sufficient affidavit] of indigence without providing the appellant a reasonable time to do so after notice from the court.

OR

(3) Extension of time. The appellate court may extend the time to file an affidavit of indigence if, within 15 days after the deadline for filing the affidavit, the party files in the appellate court a motion complying with Rule 10.5(b). The appellate court must notify the

appellant of the appellant's failure to file a sufficient affidavit of indigence and must allow the appellant a reasonable time to correct the appellant's failure to file an affidavit of indigence or a sufficient affidavit of indigence before dismissing the appeal or affirming the trial court's judgment due to the appellant's failure to comply with paragraph (1).

~~(d)~~(e) *Duty of Clerk.* [no change]

~~(e)~~(f) *Contest to affidavit.* The clerk, the court reporter, the court recorder, or any party may challenge ~~the claim of indigence~~ an affidavit that is not accompanied by an IOLTA certificate by filing—in the court in which the affidavit was filed—a contest to the affidavit of indigence.

~~(f)~~(g) *No contest filed.* [no change]

~~(g)~~(h) *Burden of proof.* [no change]

~~(h)~~(i) *Decision in appellate court.* [no change]

~~(i)~~(j) *Hearing and decision in the trial court.* [no change]

~~(j)~~(k) *Record to be prepared without payment.* [no change]

~~(k)~~(l) *Partial payment of costs.* [no change]

~~(l)~~(m) *Later ability to pay.* [no change]

~~(m)~~(n) *Costs defined.* As used in this rule, *costs* means:

(1) a filing fee relating to the case in which the affidavit of inability is filed; ~~and~~
(2) the charges for preparing the appellate record in that case; and
(3) in cases where the proceedings were electronically recorded, the actual expense of preparing the appendix or the amount prescribed for official reporters, as provided in Rule 38.5(f).

See Higgins v. Randall County Sheriff's Office, 193 S.W.3d 898 (Tex. 2006).

Status: approved 10/20/06 at 15022, 4/27/07 at 15799-803; **however, at the 4/27/07 meeting, the Committee did not express a preference between either of the 2 proposed alternatives.**

Rule 41. Panel and En Banc Decision

41.1 Decision by Panel

(a) *Constitution of Panel.* Unless a court of appeals with more than three justices votes to decide a case en banc, a case must be assigned for decision to a panel of the court consisting of three justices, although not every member of the panel must be present for argument. If the case is decided without argument, three justices must participate in the decision. A majority of the

panel, which constitutes a quorum, must agree on the judgment. Except as otherwise provided in these rules, a panel's opinion constitutes the court's opinion, and the court must render a judgment in accordance with the panel opinion.

(b) *When Panel Cannot Agree on Judgment.* After argument, if for any reason a member of the panel cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, the chief justice of the court of appeals must designate another justice of the court to sit on the panel to consider the case, request the temporary assignment by the Chief Justice of the Supreme Court of an active court of appeals justice from another court of appeals, a qualified retired or former appellate justice or appellate judge, or a qualified active district court judge to sit on the panel to consider the case, or convene the court en banc to consider the case. The reconstituted panel or the en banc court may order the case reargued.

OR

(b) *When Panel Cannot Agree on Judgment.* After argument, if for any reason a member of the panel cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, the chief justice of the court of appeals must designate another justice of the court to sit on the panel to consider the case, request the temporary assignment by the Chief Justice of the Supreme Court of an active court of appeals justice from another court of appeals, a retired or former appellate justice or appellate judge, or an active district court judge to sit on the panel to consider the case as provided in chapters 74 and 75 of the Government Code, or convene the court en banc to consider the case. The reconstituted panel or the en banc court may order the case reargued.

(c) *When Court Cannot Agree on Judgment.* After argument, if for any reason a member of a court consisting of only three justices cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief Justice may then temporarily assign a justice of another court of appeals, ~~or~~ a qualified retired or former appellate justice or appellate judge, or a qualified active district court judge to sit with the court of appeals to consider the case. The reconstituted court may order the case reargued.

OR

(c) *When Court Cannot Agree on Judgment.* After argument, if for any reason a member of a court consisting of only three justices cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief Justice may then temporarily assign a justice of another court of appeals, ~~or~~ a ~~qualified~~ retired or former appellate justice or appellate judge, or an active district court judge to sit with the court of appeals to consider the case as provided in chapters 74 and 75 of the Government Code. The reconstituted court may order the case reargued.

41.2 Decision by En Banc Court

(a) [No change]

(b) *When En Banc Court Cannot Agree on Judgment.* If a majority of an en banc court cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief Justice may then temporarily assign a justice of another court of appeals, ~~or~~ a qualified retired or former appellate justice or appellate judge, or an active district court judge to sit with the court of appeals to consider the case. The reconstituted court may order the case reargued.

OR

(b) *When En Banc Court Cannot Agree on Judgment.* If a majority of an en banc court cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief Justice may then temporarily assign a justice of another court of appeals, ~~or~~ a ~~qualified~~ retired or former appellate justice or appellate judge, or an active district court judge to sit with the court of appeals to consider the case as provided in chapters 74 and 75 of the Government Code. The reconstituted court may order the case reargued.

[Note: the Appellate Subcommittee was invited to suggest new language if it believes a broad change is needed to the current procedure of requiring an initial assignment of three judges to hear cases submitted after oral argument. 2/16/07 at 15600. The above draft reflects two changes from previous drafts. First, the two alternatives are split into separate paragraphs, instead of brackets as previously shown. Also, the second alternative has been slightly revised to ensure that the language regarding Gov't Code chap. 74-75 clearly applies to assigned district-court judges as well. -jdh 3/28/07]

Status: the SCAC implicitly approved the proposal at the 4/27/07 meeting but did not express a preference for either of the two alternatives presented (15889).

Rule 52. Original Proceedings

52.6 Length of Petition, Response, and Reply. Excluding those pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, and the appendix, the petition and response must not exceed 50 pages each if filed in the court of appeals, or 15 pages each if filed in the Supreme Court. A reply may be no longer than 15 pages if filed in the court of appeals or 8 pages if filed in the Supreme Court, exclusive of the items stated above. The court may, on motion, permit a longer petition, response, or reply.

Status: Ready for SCAC discussion

in these rules, a panel's opinion constitutes the court's opinion, and the court must render a judgment in accordance with the panel opinion.

(b) *When panel cannot agree on judgment.* After argument, if for any reason a member of the panel cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, the chief justice of the court of appeals must designate another justice of the court to sit on the panel to consider the case, request the temporary assignment by the Chief Justice of the Supreme Court of an active court of appeals justice from another court of appeals, a [qualified] retired or former appellate justice or appellate judge [who is qualified for appointment by Chapters 74 and 75 of the Government Code] or an active district court judge to sit on the panel to consider the case, or convene the court en banc to consider the case. The reconstituted panel or the en banc court may order the case reargued.

(c) *When court cannot agree on judgment.* After argument, if for any reason a member of a court consisting of only three justices cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief may then temporarily assign a justice of another court of appeals or a [qualified] retired or former appellate justice or appellate judge [who is qualified for appointment by Chapters 74 and 75 of the Government Code] or an active district court judge to sit with the court of appeals to consider the case. The reconstituted court may order the case reargued.

41.2 Decision by En Banc Court

(a) [No change]

(b) *When en banc court cannot agree on judgment.* If a majority of an en banc court cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief Justice may then temporarily assign a justice of another court of appeals or a [qualified] retired or former [appellate] justice or appellate judge [who is qualified for appointment by Chapters 74 and 75 of the Government Code] or an active district court judge to sit with the court of appeals to consider the case. The reconstituted court may order the case reargued.

49.7 En Banc Reconsideration. A party may file a motion for en banc reconsideration, as a separate motion, with or without filing a motion for rehearing, within 15 days after the court of appeals judgment or order is rendered. Alternatively a motion for en banc reconsideration may be filed by a party no later than 15 days after the overruling of the same party's timely filed motion for rehearing or further motion for rehearing. While the court has plenary power, as provided in Rule 19, a majority of the en banc court may, with or without a motion, order en banc reconsideration of a panel's decision . . .

49.8 Extension of Time

Jun 8

Jody Hughes

From: David Dubose
Sent: Thursday, April 26, 2007 7:13 PM
To: Jody Hughes
Cc: Alessandra Ziek
Subject: Unsolicited commentary on 20.1(d) changes

Here are some thoughts on the proposed amendments to TRAP 20.1 governing affidavits of indigence. We understand that these are just proposals. Even if our initial reaction to the rules is not well-founded, we thought we should alert you to the way they struck us because others might use these concerns to drag out or prematurely terminate litigation. I'll try to use the amended rule sections for citation.

We like the clarification in 20.1(d)(1) regarding the need to file again on appeal. Would you consider moving it to 20.1(a) or giving it a separate subsection in order to emphasize it? Also, why not specify that the "appellate affidavit of indigence" must be filed after the trial court judgment or appealable order? ("An appellant must file an appellate affidavit of indigence in the trial court on or after the date of the judgment or order being appealed.") That would further emphasize that the trial court affidavit is not enough.

We understand that the changes to 20.1(d)(3) are intended to incorporate Higgins. We applaud the attempt to harmonize the rules with case law. We're on board with enhancing access to justice for our indigent citizens. Some concerns arise:

1. Uncertain discretion to extend. The proposed amendments appear to create a strange duality regarding discretion to refuse to extend the time to file an affidavit. The first sentence of 20.1(d)(3) says that courts "may" extend the time to file an affidavit if the appellant files a motion within 15 days after the 20.1(d)(1) "deadline," indicating discretion. However, both proposed amendments state (in different ways) that courts must permit appellants to file affidavits within a reasonable time after the court sends them notice that they haven't filed an affidavit, indicating no discretion. While I've never known us to deny a motion filed within 15 days, it seems we should have the same standard for both classes of potential affiants. Indeed, it seems pointless to have a 15-day period if courts must accept later-filed affidavits.

2. Why retain a deadline or extension period? Higgins and the proposed language essentially modify 20.1(d)(1) to require filing affidavits with or before the notice of appeal, OR within a reasonable period after the court of appeals tells the appellant that no affidavit has been filed. Because courts must accept affidavits filed months after the "deadline" (as in Higgins) the "deadline" and the "extension period" are functionally obsolete. Why persist in having a deadline that is rendered unenforceable by its own terms?

3. Where to file? 20.1(d)(1) specifies the trial court, which makes sense because the regularly filed affidavits are filed with or before the notice of appeal, which is being filed in the trial court. But the "reasonable time" affidavit presumably may be filed weeks or months after the notice of appeal. (see Higgins) Context indicates they should be filed in courts of appeals, but neither proposal suggests a place for filing (and there's no

provision, like with notices of appeal, that an affidavit filed in the wrong court should be forwarded to the right one).

4. Related to #3. If the court of appeals is the proper place for filing "reasonable time" affidavits, then 20.1(e)(2) should change to reflect that. Thus we're not just administering contests filed in "other proceedings" under 20.1(d)(2) and our clerk does have the duty to send notice to interested parties. (You'll have to update the references in new 20.1(e) to reflect the renumeration of 20.1(c) to 20.1(d).) That way, there'll be no dispute that 20.1(h) (now probably 20.1(i)) controls our proceeding.

5. "Reasonable time?" We understand the value of flexibility for the courts, but does this simply create another litigation point for subsequent review? Could we get a set period that could be modified/extended for cause? That may not solve anything other than to establish a rebuttably reasonable period, but might forestall some persnickety courts from setting too-short periods without explanation.

6. What triggers the court's duty to send notice to a party that it hasn't filed an affidavit? Generally, the affidavit issue only surfaces in conjunction with an absent record. Must we send a no-affidavit notice to every party who has not filed a record before dismissing their appeal? Will courts that dismiss for want of prosecution because there's no record risk having those overturned if they haven't sent such notice? It's not a big change for us, but just asking.

7. A fine technical point regarding the basis/ground of dismissal: Because we generally dismiss these cases under 42.3(b) for want of prosecution for failing to arrange for preparation of a record or 42.3(c) for failure to comply with rules---not for failure to file an affidavit---the "due to" language in Proposal 2 rings a little truer.

Also: "contestible" in 20.1(a)(2) may be misspelled ("contestable" is preferred every place we've looked).

Sorry, this has gotten a bit long, but you've inadvertently unleashed our geek genies. Some of this stuff is fairly minor and technical, but if you're going to amend the rule anyway, we thought we'd toss in some ideas to try to clarify the roles and rules further. We can chat about this in person if you want. We'll try not to jump you in front of judges this time.

Chip — At the last meeting, Elaine was asked to consider new language for Rule 24 - see notes above 24.4 (pg. 6 of memo) and above Rule 34 (p. 7 of memo). To my knowledge, she hasn't had a chance to draft, or the subcommittee to consider, new language.

June 8

GOVERNMENT CODE

CHAPTER 74. COURT ADMINISTRATION ACT

SUBCHAPTER A. CHIEF JUSTICE

Sec. 74.001. MEETINGS. (a) The chief justice shall call and preside over an annual meeting of the presiding judges of the administrative judicial regions on a date and at a time and place in the state designated by the chief justice.

(b) The chief justice may call and convene additional meetings of the regional presiding judges or local administrative judges that he considers necessary for the promotion of the orderly and efficient administration of justice.

(c) At the meetings, the judges shall:

(1) study the statistics reflecting the condition of the dockets of the courts of the state to determine the need for the assignment of judges under Subchapter C;

(2) compare the regional and local rules of court to achieve the uniformity of rules that is practicable and consistent with local conditions;

(3) consider uniformity in the administration of this chapter in the various administrative regions; and

(4) promote more effective administration of justice through the use of this chapter.

(d) The expenses of the judges attending these meetings shall be paid as provided by Sections 74.043 and 74.061.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 2.93(a), eff. Sept. 1, 1987.

Sec. 74.003. ASSIGNMENT OF JUSTICES AND JUDGES FOR APPELLATE COURTS. (a) The chief justice of the supreme court may temporarily assign a justice of a court of appeals to another court of appeals regardless of whether a vacancy exists in the court of appeals to which the justice is assigned.

(b) The chief justice of the supreme court may assign a qualified retired justice or judge of the supreme court, of the court of criminal appeals, or of a court of appeals to a court of appeals for active service regardless of whether a vacancy exists in the court to which the justice is assigned. To be eligible for assignment under this subsection, a retired justice or judge must:

(1) have served as an active justice or judge for at least 96 months in a district, statutory probate, statutory county, or appellate court, with at least 48 of those months in an appellate court;

(2) not have been removed from office;

(3) certify under oath to the chief justice of the supreme court, on a form prescribed by the chief justice, that:

(A) the justice or judge has never been publicly reprimanded or censured by the State Commission on Judicial Conduct; and

(B) the justice or judge:

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

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

(4) annually demonstrate that the justice or judge has completed in the past state fiscal year the educational requirements for active appellate court justices or judges; and

(5) certify to the chief justice of the supreme court a willingness not to appear and plead as an attorney in any court in this state for a period of two years.

(c) An active or retired justice or judge assigned as provided by this section out of the county of his residence is entitled to receive the same expenses and per diem as those allowed a district judge assigned as provided by Subchapter C. The state shall pay the expenses and per diem on certificates of approval by the chief justice of the supreme court or the chief justice of the court of appeals to which the justice or judge is assigned. The compensation authorized by this subsection is in addition to all

other compensation authorized by law.

(d) An active justice assigned out of the county of his residence as provided by this section is entitled to receive, pro rata for the time serving on assignment, supplemental compensation from the county or counties paying supplemental compensation under Chapter 31 to an associate justice of the court of appeals to which the justice is assigned.

(e) A retired justice or judge assigned as provided by this section is entitled to receive, pro rata for the time serving on assignment, from money appropriated from the general revenue fund for that purpose, an amount equal to the compensation received from state and county sources by a justice of the court of appeals to which assigned.

(f) For the purposes of Subsection (b)(1), a month of service is calculated as a calendar month or a portion of a calendar month in which a justice or judge was authorized by election or appointment to preside.

(g) Subsection (b)(1) does not apply to a retired justice of the supreme court.

(h) Notwithstanding any other provision of law, an active district court judge may be assigned to hear a matter pending in an appellate court.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 2.93(a), eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 785, Sec. 1, 7, eff.

June 16, 1991; Acts 2003, 78th Leg., ch. 315, Sec. 7, 8, eff. Sept. 1, 2003.

Sec. 74.004. SUPERVISION OF OFFICE OF COURT ADMINISTRATION. The chief justice shall direct and supervise the office of court administration.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 2.93(a), eff. Sept. 1, 1987.

Sec. 74.005. APPOINTMENT OF REGIONAL PRESIDING JUDGES. (a) The governor, with the advice and consent of the senate, shall appoint one judge in each administrative region as presiding judge of the region.

(b) On the death, resignation, or expiration of the term of office of a presiding judge, the governor immediately shall appoint or reappoint a presiding judge.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 2.93(a), eff. Sept. 1, 1987.

Sec. 74.006. SUPREME COURT DUTIES. The chief justice shall ensure that the supreme court executes and implements the court's administrative duties and responsibilities under this chapter.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 2.93(a), eff. Sept. 1, 1987.

Sec. 74.007. COMMITTEES. The chief justice, subject to the approval of the supreme court, shall name and appoint members to committees necessary or desirable for the efficient administration

of justice or to carry out the provisions of this chapter.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 2.93(a), eff. Sept. 1, 1987.

SUBCHAPTER B. SUPREME COURT

Sec. 74.021. SUPERVISORY AND ADMINISTRATIVE CONTROL. The supreme court has supervisory and administrative control over the judicial branch and is responsible for the orderly and efficient administration of justice.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 2.93(a), eff. Sept. 1, 1987.

Sec. 74.022. CHANGES IN NUMBER OF COURTS. (a) The supreme court shall assess the need for adding, consolidating, eliminating, or reallocating existing appellate courts.

(b) The supreme court shall promulgate rules, regulations, and criteria to be used in assessing those needs.

(c) The supreme court shall recommend to the regular session of the legislature convening in the third year following the year in which the federal decennial census is taken any needed changes in the number or allocation of those courts.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 2.93(a), eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 639, Sec. 1, eff. Sept. 1, 1995.

Sec. 74.023. DIRECTOR OF OFFICE OF COURT ADMINISTRATION. (a) The supreme court shall appoint the administrative director of the

courts for the office of court administration.

(b) The director serves at the pleasure of the supreme court and shall be subordinate to, and act by the authority and under the direction of, the chief justice.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 2.93(a), eff. Sept. 1, 1987.

Sec. 74.024. RULES. (a) The supreme court may adopt rules of administration setting policies and guidelines necessary or desirable for the operation and management of the court system and for the efficient administration of justice.

(b) The supreme court shall request the advice of the court of criminal appeals before adopting rules affecting the administration of criminal justice.

(c) The supreme court may consider the adoption of rules relating to:

(1) nonbinding time standards for pleading, discovery, motions, and dispositions;

(2) nonbinding dismissal of inactive cases from dockets, if the dismissal is warranted;

(3) attorney's accountability for and incentives to avoid delay and to meet time standards;

(4) penalties for filing frivolous motions;

(5) firm trial dates;

(6) restrictive devices on discovery;

(7) a uniform dockets policy;

(8) formalization of settlement conferences or settlement programs;

(9) standards for selection and management of nonjudicial personnel;

(10) transfer of related cases for consolidated or coordinated pretrial proceedings; and

(11) the conducting of proceedings under Rule 11, Rules of Judicial Administration, by a district court outside the county in which the case is pending.

(d) Any rules adopted under this section remain in effect unless and until disapproved by the legislature. The clerk of the supreme court shall file with the secretary of state the rules or any amendments to the rules adopted by the supreme court under this section and shall mail a copy of the rules and any amendments to each registered member of the State Bar not later than the 120th day before the date on which they become effective. The supreme court shall allow a period of 60 days for review and comment on the rules and any amendments. The clerk of the supreme court shall report the rules or amendments to the rules to the next regular session of the legislature by mailing a copy of the rules or amendments to the rules to each elected member of the legislature on or before December 1 immediately preceding the session.

Added by Acts 1987, 70th Leg., ch. 674, Sec. 2.01, eff. Sept. 1,

Sec. 75.551. OBJECTION TO JUDGE OR JUSTICE ASSIGNED TO AN APPELLATE COURT. (a) When a judge or justice is assigned to an appellate court under this chapter or Chapter 74:

(1) the order of assignment must state whether the judge or justice is an active, former, retired, or senior judge or justice; and

(2) the person who assigns the judge or justice shall, if it is reasonable and practicable and if time permits, give notice of the assignment to each attorney representing a party to the case that is to be heard in whole or part by the assigned judge or justice.

(b) A judge or justice assigned to an appellate court may not hear a civil case if a party to the case files a timely objection to the assignment of the judge or justice. Except as provided by Subsection (d), each party to the case is entitled to only one objection under this section for that case in the appellate court.

(c) An objection under this section must be filed not later than the seventh day after the date the party receives actual notice of the assignment or before the date the case is submitted to the court, whichever date occurs earlier. The court may extend the time to file an objection under this section on a showing of good cause.

(d) A judge or justice who was defeated in the last primary or general election for which the judge or justice was a candidate

for the judicial office held by the judge or justice may not sit in an appellate case if either party objects to the judge or justice.

(e) An active judge or justice assigned under this chapter is not subject to an objection.

(f) For purposes of this section, notice of an assignment may be given and an objection to an assignment may be filed by electronic mail.

(g) In this section, "party" includes multiple parties aligned in a case as determined by the appellate court.

Added by Acts 1997, 75th Leg., ch. 1064, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 315, Sec. 14, eff. Sept. 1, 2003.

Rule 661. Form of Writ

The following form of writ may be used:

"The State of Texas

To E. F., Garnishee, greeting:

Whereas, in the _____ Court of _____ County (if a justice court, state also the number of the precinct), in a certain cause wherein A.B. is plaintiff and C.D. is defendant, the plaintiff claiming an indebtedness against the said C.D. of _____ dollars, besides interest and costs of suit, has applied for a writ of garnishment against you, E.F.; therefore you are hereby commanded to be and appear before said court at _____ in said county (if the writ is issued from the county or district court, here proceed: 'at 10 o'clock a.m. on the Monday next following the expiration of twenty days from the date of service hereof.' If the writ is issued from a justice of the peace court, here proceed: 'at or before 10 o'clock a.m. on the Monday next after the expiration of ten days from the date of service hereof.' In either event, proceed as follows:) then and there to answer upon oath what, if anything, you are indebted to the said C.D., and were when this writ was served upon you, and what effects, if any, of the said C.D. you have in your possession, and had when this writ was served, and what other persons, if any, within your knowledge, are indebted to the said C.D. or have effects belonging to him in their possession. You are further commanded NOT to pay to defendant any debt or to deliver to him any effects, pending further order of this court. Herein fail not, but make due answer as the law directs."

Rule 662. Delivery of Writ

The writ of garnishment shall be dated and tested as other writs, and may be delivered to ~~the~~ (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than 18 years of age, or (3) any person certified under order of the Supreme Court by the officer who issued it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

Rule 663. Execution and Return of Writ

The writ of garnishment may be executed by (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than 18 years of age, or (3) any person certified under order of the Supreme Court. The ~~sheriff or constable~~ person receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof as of other citations.

Rule 664. Defendant May Replevy

At any time before judgment, should the garnished property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ, payable to plaintiff, in the amount fixed by the court's order, or, at the defendant's option, for the value of the property or indebtedness, sought to be replevied (to be estimated by the officer), plus one year's interest thereon at the legal rate from the date of the bond, conditioned that the

defendant, garnishee, shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the officer or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that garnished, for the property garnished. Provided that there has been located sufficient property of the defendant's to satisfy the order of garnishment, the court may authorize substitution of one or more items of defendant's property for all or for part of the property garnished. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from garnishment shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of garnishment or modification thereof shall be terminated. Garnishment of substituted property shall be deemed to have existed from date of garnishment on the original property garnished, and no property on which liens have become affixed since the date of garnishment of the original property may be substituted.

Rule 670. Refusal to Deliver Effects

Should the garnishee adjudged to have effects of the defendant in his possession, as provided in the preceding rule, fail or refuse to deliver them to the sheriff or constable on such demand, the officer shall immediately make return of such failure or refusal, whereupon on motion of the plaintiff, the garnishee shall be cited to show cause upon a date to be fixed by the court why he should not be attached for contempt of court for such failure or refusal. If the garnishee fails to show some good and sufficient excuse for such failure or refusal, he shall be fined for such contempt and imprisoned until he shall deliver such effects.

Rule 672. Sale of Effects

The sale so ordered shall be conducted in all respects as other sales of personal property under execution; and the officer making such sale shall execute a transfer of such effects or interest to the purchaser with a brief recital of the judgment of the court under which the same was sold.

Comment------2007

The 2005 amendments to Rule 103 generally allow private process servers to serve citation and other notices, writs, orders, and papers issued by the court, but private process servers are not authorized to serve writs that require the actual taking of property. Although a writ of garnishment may be served by a private process server under Rules 663 and 663a, only a sheriff or constable may accept delivery of the effects of the garnishee under Rule 669, make return of a garnishee's failure or refusal to deliver the effects under Rule 670, or conduct a sale of the effects under Rule 672.