AN ACT

relating to appointments made in and the appeal of certain suits affecting the parent-child relationship.

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

SECTION 1. Section 107.013, Family Code, is amended by adding Subsection (e) to read as follows:

(e) A parent who the court has determined is indigent for purposes of this section is presumed to remain indigent for the duration of the suit and any subsequent appeal unless the court, after reconsideration on the motion of the parent, the attorney ad litem for the parent, or the attorney representing the governmental entity, determines that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances.

SECTION 2. Section 107.016, Family Code, is amended to read as follows:

Sec. 107.016. CONTINUED REPRESENTATION; DURATION OF APPOINTMENT. In a suit filed by a governmental entity in which termination of the parent-child relationship or appointment of the entity as conservator of the child is requested:

(1) [~~,~~] an order appointing the Department of Family and Protective [~~and Regulatory~~] Services as the child's managing conservator may provide for the continuation of the appointment of the guardian ad litem or attorney ad litem for the child for any

period set by the court; and

(2) an attorney appointed under this subchapter to serve as an attorney ad litem for a parent or an alleged father continues to serve in that capacity until the earliest of:

(A) the date the suit affecting the parent-child relationship is dismissed;

(B) the date all appeals in relation to any final order terminating parental rights are exhausted or waived; or

(C) the date the attorney is relieved of the attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record.

SECTION 3. Section 109.002(a), Family Code, is amended to read as follows:

(a) An appeal from a final order rendered in a suit, when allowed under this section or under other provisions of law, shall be as in civil cases generally under the Texas Rules of Appellate Procedure. An appeal in a suit in which termination of the parent-child relationship is in issue shall be given precedence over other civil cases and shall be accelerated by the appellate courts. The procedures for an accelerated appeal under the Texas Rules of Appellate Procedure apply to an appeal in which the termination of the parent-child relationship is in issue.

SECTION 4. Sections 263.405(a), (b), and (c), Family Code, are amended to read as follows:

(a) An appeal of a final order rendered under this subchapter is governed by the procedures [~~rules of the supreme court~~] for accelerated appeals in civil cases under the Texas Rules

of Appellate Procedure [~~and the procedures provided by this section~~]. The appellate court shall render its final order or judgment with the least possible delay.

(b) A final order rendered under this subchapter must contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined: "A PARTY AFFECTED BY THIS ORDER HAS THE RIGHT TO APPEAL. AN APPEAL IN A SUIT IN WHICH TERMINATION OF THE PARENT-CHILD RELATIONSHIP IS SOUGHT IS GOVERNED BY THE PROCEDURES FOR ACCELERATED APPEALS IN CIVIL CASES UNDER THE TEXAS RULES OF APPELLATE PROCEDURE. FAILURE TO FOLLOW THE TEXAS RULES OF APPELLATE PROCEDURE FOR ACCELERATED APPEALS MAY RESULT IN THE DISMISSAL OF THE APPEAL." [~~Not later than the 15th day after the date a final order is signed by the trial judge, a party who intends to request a new trial or appeal the order must file with the trial court:~~

[~~(1) a request for a new trial; or~~

[~~(2) if an appeal is sought, a statement of the point or points on which the party intends to appeal.~~]

(c) The supreme court shall adopt rules accelerating the disposition by the appellate court and the supreme court of an appeal of a final order granting termination of the parent-child relationship rendered under this subchapter. [~~A motion for a new trial, a request for findings of fact and conclusions of law, or any other post-trial motion in the trial court does not extend the deadline for filing a notice of appeal under Rule 26.1(b), Texas Rules of Appellate Procedure, or the deadline for filing an affidavit of indigence under Rule 20, Texas Rules of Appellate~~

~~Procedure.~~]

SECTION 5. Sections 263.405(b-1), (d), (e), (f), (g), (h), and (i), Family Code, are repealed.

SECTION 6. The Supreme Court of Texas shall adopt rules of appellate procedure as required by Section 263.405(c), Family Code, as amended by this Act, as soon as practicable after the effective date of this Act, but not later than March 1, 2012.

SECTION 7. Section 107.013(e), Family Code, as added by this Act, and Section 107.016, Family Code, as amended by this Act, apply only to a suit affecting the parent-child relationship pending in a trial court on or filed on or after the effective date of this Act.

SECTION 8. Sections 109.002(a) and 263.405(a) and (b), Family Code, as amended by this Act, apply only to a final order rendered on or after the effective date of this Act. A final order rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 906 was passed by the House on March 30, 2011, by the following vote: Yeas 146, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 906 on May 5, 2011, by the following vote: Yeas 141, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 906 was passed by the Senate, with amendments, on April 29, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

_____

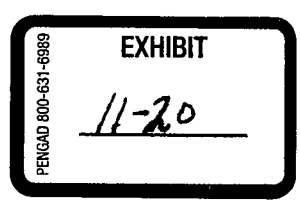
Governor

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11-9138

FINAL REPORT OF THE TASK FORCE FOR POST-TRIAL RULES IN CASES INVOLVING TERMINATION OF THE PARENTAL RELATIONSHIP

Submitted to the Supreme Court of Texas on October 14, 2011



TO THE HONORABLE SUPREME COURT:

I. INTRODUCTION

The Task Force for Post-Trial Rules in Cases Involving Termination of the Parental Relationship was established on July 15, 2011 by the Texas Supreme Court, pursuant to Misc. Docket No. 11-9138. The Task Force was charged with the responsibility to advise the Supreme Court regarding rules to be adopted or revised for post-trial proceedings in cases involving termination of the parental relationship.

The need for a revision of the rules arose from House Bill 906, enacted by the 82nd Legislature (Act of May 5, 2011, 82nd Leg., R.S., ch. 75) and effective September 1, 2011, which amended Sections 107.013, 107.016, 109.002(a) and 263.405 of the Family Code, regarding the appointment of attorneys to represent indigent litigants on appeal, and providing for the accelerated disposition of appeals from orders terminating parental rights or appointing the Department of Family and Protective Services (DFPS) as managing conservator. HB 906 required that the amended rules be adopted by March 1, 2012. The Task Force was directed to consider revisions to Rule 28, Texas Rules of Appellate Procedure; the adoption of new rules; the general impact of chapter 13, Texas Civil Practice and Remedies Code; and any other matter that may assist in implementing HB 906. The Supreme Court directed the Task Force to advise the Court by August 15, 2011, what rules or rules amendments should be adopted before September 1, 2011, if any. The Supreme Court further directed the Task Force to make final recommendations to the Court by October 17, 2011, on the rules to be adopted, to be presented to the Supreme Court Advisory Committee at its regular meeting on October 21-22, 2011.

The following persons served on the Task Force:

Hon. Dean Rucker, Chair – Presiding Judge, Seventh Administrative Judicial Region of Texas; Judge, 318th Family District Court; *Midland*

Tina Amberboy – Executive Director, Permanent Judicial Commission for Children, Youth and Families, *Austin*

Sandra D. Hachem – Senior Assistant County Attorney, Office of the Harris County Attorney, *Houston*

Hon. Debra H. Lehrmann – Justice, Supreme Court of Texas, *Austin*

Jo Chris Lopez – Langley & Banack, *San Antonio*

Jack Marr – Marr, Meier & Bradicich L.L.P., *Victoria*

Hon. Ann Crawford McClure – Chief Justice, Court of Appeals, Eighth District of Texas, *El Paso*

Richard R. Orsinger – McCurley, Orsinger, McCurley, Nelson & Downing, L.L.P., *San Antonio*

Georganna L. Simpson – Simpson Martin, L.L.P., *Dallas*

Charles A. Spain, Jr. – Senior Staff Attorney, Court of Appeals, First District of Texas, *Houston*

Court Liaison: Hon. Eva Guzman – Justice, Supreme Court of Texas, *Austin*

Rules Attorney: Marisa Secco – Rules Attorney, Supreme Court of Texas, *Austin*

II. PROCESS OF REVIEW

The Task Force held its first meeting by teleconference on August 10, 2011. Additional teleconferences were held on August 12, September 15, and September 28, and a formal meeting was held in Austin on October 7, 2011. The focus of the first two teleconferences was to advise the Supreme Court, by August 15, 2011, what rules or rules amendments, if any, should be adopted before September 1, 2011. The Task Force determined that the only rules amendments that needed to be proposed on an exigent basis for implementation on September 1, 2011, were amendments to Rule 20.1, Texas Rules of Appellate Procedure, governing the process for establishing indigence in a suit filed by a governmental entity in which termination of the parent-child relationship or managing conservatorship is requested for purposes of entitling an appellant to a clerk's record and reporter's record on appeal, without advance payment of costs. That recommendation is the subject of an interim report submitted to the Supreme Court of Texas on August 15, 2011. Members of the Task Force presented the interim report to the Supreme Court Advisory Committee on September 27, 2011. The Supreme Court of Texas thereafter promulgated its Order Adopting Amended Texas Rules of Appellate Procedure 20.1 and 25.1 on August 31, 2011.

The Task Force held additional telephone conferences on September 15 and September 28, 2011, and an in-person meeting on October 7, 2011. These meetings involved discussions about possible changes to various other Rules of Civil Procedure and Rules of Appellate Procedure discussed below.

III. RECOMMENDATIONS

A. RULES RELATING TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a non-jury trial, any party may request that the trial court set out in findings of fact and conclusions of law the factual and legal bases for its judgment. Tex. R. Civ. P. 296. The Task Force was aware that the normal time sequence of requesting findings of fact and conclusions of law under Texas Rules of Civil Procedure 296-299a did not interface well with the deadlines associated with accelerated appeals. In an accelerated appeal: the notice of appeal must be filed within 20 days after judgment is signed. Tex. R. App. P. 26.1(b). The clerk's record and reporter's record must be filed within 10 days after the notice of appeal is filed, Tex. R. App. P

35.1(b); and the appellant's brief must be filed within 20 days of the filing of the later of when the clerk's record was filed or the reporter's record was filed. Tex. R. App. P. 38.6(a). In appeals from final judgments, the deadline for requesting findings of fact and conclusions of law is 20 days after judgment is signed. Tex. R. Civ. P. 296. The trial court's findings and conclusions are due 20 days after the request is filed. Tex. R. Civ. P. 297. If the court misses the deadline, an aggrieved party can file a reminder of past due findings and conclusions up to 30 days after the original request was filed. Tex. R. Civ. P. 297. The court then has until 40 days after the original request was filed to file its findings and conclusions. Tex. R. Civ. P. 297. If findings and conclusions are filed, any party may, within 10 days of when the original findings and conclusions are filed, file a request for specified additional or amended findings or conclusions. If they do, such additional or amended findings are due 10 days after the request is filed. Tex. R. Civ. P. 298. In many cases it would be impossible to reconcile the timetable for findings and conclusions with the deadlines in an accelerated appeal from a final judgment. In sum, the length of time involved in obtaining findings of fact and conclusions of law can take as many as 80 days after the date the final order was signed.

To cure this problem, the Task Force suggests that this Court adopt a separate rule of procedure for findings of fact and conclusions of law following non-jury trials in parental termination and cases in which DFPS is appointed managing conservator of children. A proposed Rule 299b, Texas Rules of Civil Procedure, is attached to this report as Appendix A. All of the procedures associated with findings and conclusions after a non-jury trial in which a parent's rights are terminated or DFPS is appointed managing conservator of a child are gathered into this one rule. To compress the time associated with the process, in this proposed rule, trial courts are required to automatically file, at the time the judgment is signed and in a document separate from the judgment, written findings of fact and conclusions of law. See proposed Tex. R. Civ. P. 299b(a). If the trial court fails to do so, any party may within 10 days file a notice of past due findings and conclusions, which extends the deadline to file findings and conclusions until the 20th day after judgment. If the trial court still fails to file findings and conclusions, any party may, after perfecting an appeal, file a motion with the court of appeals for an order directing the trial court to do so. See proposed Tex. R. Civ. P. 299b(a). When findings and conclusions are filed, any party may within 5 days file a request for specified additional or amended findings and conclusions, which are due within 10 days of when they are requested. See proposed Tex. R. Civ. P. 299b. The maximum length of time for obtaining findings and conclusions is thus reduced from a maximum of 80 days to a maximum of 45 days, and the process for securing the assistance of the appellate court in seeing that findings and conclusions are filed by the trial court is moved to the front of the appellate process. If findings and conclusions, or amended findings and conclusions, are filed by the trial court after the clerk's record is prepared, they may be forwarded to the court of appeals in a supplemental clerk's record pursuant to Rule 34.5(c).

The Task Force believes that these proposals maintain the general features of the existing procedures for securing findings and conclusions while compressing the time frame to be consistent with the deadlines in proposed Rule 28.4 that are set out below.

B. RULES RELATING TO ACCELERATED APPEALS

1. Mandate

The Task Force observed that the existing practices regarding the issuance of mandate by the appellate court clerks at the conclusion of an appeal sometimes entails delays that are not consistent with House Bill 906's policy of expediting the appellate process. The Task Force recommends an amendment to Rule 18.6 by changing the title of the rule and adding an additional paragraph, contained in proposed Rule 18.6(b), stating that in cases subject to proposed Rule 28.4, discussed below, the clerk of the appellate court must issue the mandate on the first date that it may issue under Rule 18.1, Texas Rules of Appellate Procedure. The proposed changes are contained in Appendix B to this report.

2. Contest to Indigence

On September 1, 2011, amendments to Rule 20.1, Texas Rule of Appellate Procedure became effective. The Task Force recommends additional amendments to Rule 20.1 that are reflected in Appendix B. Proposed Rule 20.1(e) would contain an additional paragraph stating that a presumption of indigence established under Rule 20.1(a)(3) may be challenged by filing a contest that articulates facts showing a good faith belief that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances. The requirement of a change of circumstances precludes relitigating indigence determinations on facts already presented to the court. The Task Force recommends that the contest not be required to be sworn or limited to personal knowledge, since the sworn, admissible evidence presented at the hearing on the contest will adequately protect the integrity of the process. The proposed rule change provides that the contest be filed within 3 days of the filing of a notice of appeal. This short period reflects the Task Force's desire that the contest procedure should not delay the appellate process.

Proposed Rule 20(g) would contain an additional paragraph stating that, where a presumption of indigence has been established as provided by Rule 20.1(a)(3), the burden of production and persuasion is on the party filing the contest to prove that the parent is no longer indigent due to a material and substantial change in financial circumstances since the time of the last determination of indigence. The Task Force believes the presumption of indigence is rebuttable, but the burden to overcome that presumption should be on the party filing the contest.

The Task Force recommends amending Rule 20.1(i)(1) & (4) to make clear that the procedures of Rule 20.1(i) apply both when a contest is filed to an affidavit of indigence and when a contest is filed to a presumption of indigence. Without this change, these rules apply only to the contest of an affidavit of indigence.

The Task Force recommends amending Rule 20.1(i) by adding a subpart (5), pertaining to appellate court review of an order sustaining a contest of a finding of indigence. Review may be sought by filing a motion in the court of appeals, within 10 days after the trial court rules on the contest, or within 10 days after the notice of appeal is filed, whichever is later. The unsuccessful

party to the challenge may file the motion. No charge may be assessed for the filing of the motion. The trial court clerk and court reporter are required to prepare, certify and file their respective records. Both records must be provided without advance payment of the cost of the record. The Task Force also considered a proposal that would prohibit appellate review of an order denying a contest. After some discussion, the Task Force was divided whether the unsuccessful party should have the right to appellate review of an order denying a contest. As such a matter is grounded in policy considerations, the Task Force makes no recommendation and defers that issue to the wisdom of the Supreme Court Advisory Committee and the Court for a determination.

3. Accelerated Appeals

The Task Force recommends that Rule 25.1, Texas Rules of Appellate Procedure be altered slightly to reflect that a notice of appeal must indicate whether the case involves a parental termination or child protection case. The Task Force believes that the clerks of the courts of appeals should be advised of this fact at the very beginning of the appellate process, so that necessary administrative steps can be taken from the outset. The notice of appeal is likely the first document to be received by the clerk of the appellate court, so it is the best place to give first notice. *See* Appendix B. The Task Force recommends a similar addition to the docketing statement under Rule 32.1, Texas Rules of Appellate Procedure, discussed below.

The Task Force recommends that Rule of Appellate Procedure 28 be changed by adding a section 28.4 entitled "Accelerated Appeals in Parental Termination and Child Protection Cases," which gathers together in one place the appellate rules unique to accelerated appeals in parental termination and child protection cases. Gathering into one rule the procedures relating to appeals in these cases will better inform the practitioners on what to do, and will diminish the need for the practitioner to correlate provisions scattered throughout several different appellate rules. The new rules proposed by the Task Force are included in Appendix B to this report. The following explanation sets out the Task Force's rationale for these proposed rule changes.

Proposed Rule 28.4, title, and Rule 28.4(a). Both the title to proposed Rule 28.4 and subsection (a) of the proposed rule extend the effect of new Rule 28.4 only to cases involving termination of parental rights and to child protective services cases. Section 3 of House Bill 906 amended Family Code Section 109.002(a) to provide in part:

> The procedures for an accelerated appeal under the Texas Rules of Appellate Procedure apply to an appeal in which the termination of the parent-child relationship is in issue.

The new statutory language thus extends to all parental termination cases, including cases filed by a private party and cases filed by DFPS.

Section 4 of House Bill 906 amended 263.405(a), Texas Family Code to read:

> (a) An appeal of a final order rendered under this subchapter is governed by the procedures [rules of the supreme court] for accelerated appeals in civil cases under the

Texas Rules of Appellate Procedure.

Chapter 263 of the Family Code relates to cases involving placement of children under the care of the DFPS. Section 263.405 falls under Subchapter E, entitled "Final Orders for Child Under Department Care." Final orders rendered under Subchapter E include cases in which DFPS is seeking termination of parental rights and/or sole managing conservatorhip of a child without terminating parental rights. Tex. Fam. Code § 263.404. Thus, the title of proposed Rule 28.4, and the scope of the rule described in Rule 28.4(a), reflect that Rule 28.4 applies to all parental termination cases, as well as to suits filed by DFPS for managing conservatorship.

Proposed Rule 28.4(a)(1)-(3). *Application and Definitions.* Proposed Rule 28.4(a) sets out the scope of the rule and contains definitions of terms used in the rule.

Proposed Rule 28.4(a)(1) provides that Rule 28.4 prevails over all contrary appellate rules, including procedures pertaining to accelerated appeals that are not parental termination or child protection cases. This is necessary to ensure that lawyers appealing a parental termination or child protection orders can rely upon the deadlines and procedures in Rule 28.4 as opposed to the many other deadlines and procedures set out elsewhere in the Rules of Appellate Procedure.

Proposed Rule 28.4(a)(2)(A) defines a "parental termination case" as a suit in which termination of the parent-child relationship is an issue. Such proceedings are brought under Chapter 161, Texas Family Code. This definition includes both private parental termination cases and parental termination cases brought by DFPS.

Proposed Rule 28.4(a)(2)(B) defines "child protection case" as a suit affecting the parent-child relationship filed by a governmental agency for appointment as sole managing conservator. This definition correlates with Family Code Chapter 262, entitled "Procedures in Suit By Governmental Entity to Protect Health and Safety of Child." Orders under Chapter 262, Subchapter E, are final orders appointing the DFPS as managing conservator of a child without terminating the parent-child relationship. The term "child protection case" used in proposed Rule 28.9(a)(1) is meant to include such cases under Subchapter E of Chapter 262. The term "suit affecting the parent-child relationship" is defined in Section 101.032(a), Texas Family Code.

Proposed Rule 28.4(b). *Perfecting Appeal.* Proposed Rule 28.4(b) indicates that perfecting appeal from a judgment in a parental termination or child protection case is done in compliance with Rule 25.1, within the time period specified in Rule 26.1(b), which is within 20 days after the judgment or order is signed. This is the same deadline that exists for other accelerated appeals under Rule 26.1(b).

Proposed Rule 28.4(c). *Appellate Record.* Proposed Rule 28.4(c) deals with the appellate record in parental termination or child protection cases. The "appellate record" means the clerk's record and the reporter's record. *See* Tex. R. App. P. 34.1.

Proposed Rule 28.4(c)(1). *Responsibility for Preparation of Reporter's Record.* Proposed Rule 28.4(c)(1) carries the duty of the trial court beyond the requirement in Rule 35.3(c) that "[t]he trial

and appellate courts are jointly responsible for ensuring that the appellate record is timely filed." Under the proposed rule, the trial court has the duty to direct the court reporter to commence preparation of the reporter's record when that duty arises under Rule 35.3(b). The Task Force believed that much of the delay in this type of appeals results from a conflict between the reporter's duty to report hearings and trials on an ongoing basis and the duty to prepare records for appeals. The Task Force realizes that, as a practical matter, the court reporter must attend hearings and trial at the direction of the trial judge. The Task Force believed that the court reporter cannot be singled out as the sole reason why a reporter's record might not be filed on an accelerated basis, and that placing the obligation on the trial court to ensure that the reporter's record is prepared on an accelerated basis would best accomplish the Legislature's goal of an expedited appeal.

Proposed Rule 28.4(c)(2). *Time to File Record.* Proposed Rule 28.4(c)(2) provides that the appellate record must be filed in the court of appeals within 30 days of when the notice of appeal is filed. The Task Force believed that Rule 35.1(b)'s deadline in accelerated appeals of 10 days after notice of appeal was filed would be impractical in appeals that could well involve trials lasting a week or longer. The 30-day deadline is substantially faster than Rule 35.1(a)'s 120-day deadline in cases where the extended appellate timetable has been triggered.[1]

Proposed Rule 28.4(c)(3). *Extension of Time.* Proposed Rule 28.4(c)(3) provides that the appellate court can grant extensions of the deadline for filing the appellate record, only for good cause and not to exceed 60 days cumulatively, absent extraordinary circumstances. The extension procedure under the proposed rule varies from the procedure in non-accelerated appeals where under Rule 37.3(a)(1), if the record is not timely filed, then the appellate court clerk must send notice that the record must be filed in 30 days – tantamount to an automatic 30-day extension. The Task Force considered language that would limit the appellate court to one extension of the deadline to file the record but decided against that because extraordinary circumstances could arise that would constitute good cause for a subsequent extension. The Task Force agreed that capping extensions at 60 days, absent extraordinary circumstances, was in keeping with the goal of HB 906.

Proposed Rule 28.4(c)(4). *If No Clerk's Record Filed Due to Appellant's Fault.* Proposed Rule 28.4(c)(4) discusses the consequences of the failure to file the appellate record. If the clerk's record is not filed within 90 days after the notice of appeal was filed, and the delay resulted from the appellant's failure to pay or make arrangements to pay for the record and the appellant is not entitled to a free record, then under the proposed rule, after providing notice and an opportunity to cure, the appellate court *must* dismiss the appeal, unless extraordinary circumstances excuse the appellant's failure. The direction to dismiss the appeal absent extraordinary circumstances contrasts with Rule 37.3(b), which says that in such a situation, the appellate court *may* dismiss the appeal for want of prosecution.

[1] Under TRAP 35.1, the deadline to file the record is: in accelerated appeals, 10 days after notice of appeal is filed; in appeals from final judgment where the timetable is not extended, within 60 days after the judgment is signed; in appeals from final judgment where the timetable is extended, 120 days after the judgment is signed, and in restricted appeals, 30 days after the notice of appeal is filed.

Proposed Rule 28.4 (c)(5). *If No Reporter's Record Filed Due to Appellant's Fault.* If the clerk's record is filed but the reporter's record is not filed within 90 days after the notice of appeal was filed as a result of the appellant's failure to request, or pay for, or make satisfactory arrangements to pay for, the reporter's record, then the proposed rule requires the appellate court to give the appellant notice and an opportunity to cure, failing which the court "shall" decide the appeal based on the clerk's record alone. The proposed rule provides that the appellate court can allow the appellant to file the reporter's record after the notice and opportunity to cure has expired, only if the delay is excused by extraordinary circumstances. This is consistent with Rule 37.3(c) which says that when the deadline is missed, the appellate court must give the appellant notice and an opportunity to cure before disposing of the appeal only on complaints that do not require a reporter's record.

Rule 35.3(c) says that the trial and appellate courts are jointly responsible to see that the appellate record is timely filed. Under Rule 35.3(c), if the missed deadline is not the appellant's fault, the appellate court *must* allow a late-filed record, and the court *may* do so even if the delay is the appellant's fault. The Task Force contemplates that an appellant cannot be made to forfeit the right to an appellate record if he or she was not at fault for the missed deadline. However, the more lenient standard of Rule 35.3(c), that an appellate court *may* allow a later-filed appellate record even if the delay is appellant's fault, would not apply to parental termination and child protection cases under Proposed Rule 28.4(b)(5) once notice and the opportunity to cure has expired. The filing of the appellate record after notice and an opportunity to cure is allowed only upon extraordinary circumstances.

Proposed Rule 28.4(c)(6). *Restriction on Preparation Inapplicable.* Section 13.003, Civil Practice and Remedies Code provides that an indigent appellant is not entitled to a free appellate record unless the trial judge first finds that the appeal is not frivolous and that the clerk's record and reporter's record are needed to decide the issue presented by the appeal. Proposed Rule 28.4(c)(6) states that Section 13.003 does not apply to appeals in parental termination and child protection cases. Section 13.003 may likely be modified by the proposed rule in accordance with Section 22.004, Texas Government Code, which provides that rules adopted by the Court repeal all conflicting laws on procedure in civil cases, including statutes enacted by the Legislature. Section 22.004 requires the Court to list each article or section of general law or each part of an article or section of general law that is repealed or modified in any way.

Proposed Rule 28.4(d). *Appellate Briefs.* Proposed Rule 28.4(d)(1) provides that normal rules for accelerated appeals apply to the filing of briefs, with the two exceptions noted below. Under Rule 38.6, in an accelerated appeal, the appellant's brief is due 20 days after the clerk's record is filed, and appellee's brief is due 20 days after appellant's brief is filed. Appellant's reply brief is due 20 days after appellee's brief is filed. Rule 38.6(d) permits appellate courts to shorten or extend the time for filing a brief. The contents of motions to extend time are prescribed in Rule 10.5(b). The requirement includes "the facts relied on to reasonably explain the need for an extension." In contrast, proposed Rule 28.4(d) requires the party seeking an extension to show good cause, not just a reasonable explanation. The other exception created by the proposed rule is that the appellate court cannot grant extensions of the deadline to file a brief that exceed 40 days

cumulatively, absent extraordinary circumstances.

Proposed Rule 28.4(e). *Motions for Rehearing in the Court of Appeals.* Proposed Rule 28.4(e)(1) incorporates the standards for extending the time for filing a motion for rehearing. However, such extensions cannot exceed 30 days cumulatively, absent extraordinary circumstances. If a motion for rehearing or motion for rehearing en banc is timely filed, the appellate court is required to rule on it within 60 days of when it is filed. If no ruling is issued by then, then the motion is overruled by operation of law on the 61st day after it was filed.

Proposed Rule 28.4(f). *Motions for En Banc Reconsideration.* Proposed Rule 28.4(f) incorporates the standards for extending the time for filing a motion for en banc reconsideration. However, such extensions cannot exceed 30 days cumulatively, absent extraordinary circumstances. If a motion for rehearing or motion for rehearing en banc is timely filed, the appellate court is required to rule on it within 60 days of when it is filed. If no ruling is issued by then, then the motion is overruled by operation of law on the 61st day after it was filed.

Proposed Rule 28.4(g). *Petitions For Review.* Proposed Rule 28.4(g) prohibits a party from requesting an extension of the deadline for filing a petition for review, absent extraordinary circumstances. If a petition for review is timely filed, the Supreme Court is required to rule on it within 120 days, or it will be overruled by operation of law on the 121st day.

Proposed Rule 28.4(h). *Mandates Accelerated.* Proposed Rule 28.4(h) requires the clerk of the appellate court that rendered the judgment to issue its mandate in accordance with Rule 18.6. That rule, proposed by the Task Force and included in Appendix B to this report, provides for the issuance of mandate on an accelerated basis.

Proposed Rule 28.4(i). *Remand for New Trial.* Proposed Rule 28.4(i) provides that, if the appellate court reverses and remands the case for a new trial, the appellate court's judgment must instruct the trial court to commence the new trial within 180 days after the mandate is issued. The Task Force believed this was adequate time for the parties to complete discovery on events transpiring since the first trial, while still setting an outside limit on the delay in putting the case to trial.

IV. CONFORMING RULES AMENDMENTS

Proposed Rule 32.1(g). *Docketing Statement.* The Task Force proposes an amendment to Rule 32.1(g) to provide that the docketing statement reflect whether the appeal is an accelerated appeal in a parental termination or child protection case.

Proposed Rule 35.1(b). The amendment to this rule alerts the appellate attorney that proposed Rule 28.4 provides a different time within which the appellate record must be filed.

Proposed Rule 38.6(d). *Modifications of Filing Time.* This amendment alerts the appellate attorney that proposed Rule 28.4 differs in the manner in which it handles extensions of time to file appellate briefs.

Proposed Rule 49.8. *Extensions.* This amendment alerts the appellate attorney that proposed Rule 28.4 provides a different manner for addressing extensions of time generally.

Proposed Rule 53.7(f). *Extension of Time.* This amendment alerts the appellate attorney that proposed Rule 28.4 provides an exception to the general rule for extensions of time on a petition for review.

V. ADDITIONAL MATTERS

Appellate Time Standards for Resolution of Parental Termination and Child Protection Cases. The Task Force also discussed the appropriateness of a rule imposing a deadline on appellate courts to dispose of parental termination and child protection cases similar to Rule 6 of the Rules of Judicial Administration.[2] Rule 6 imposes a duty on trial courts to dispose of cases within certain time standards, but there is no corresponding rule for appellate courts. In a recent study performed by the Institute for Court Management, the study notes the American Bar Association (ABA) model rules recommend appellate resolution of dependency cases within 175 days from the filing of the notice of appeal. As used in the study, "dependency cases" were defined as "cases involving child abuse and neglect, termination of parental rights, child in need of assistance (CINA), custody, termination of parental rights (TPR), and adoption." *See* INST. FOR COURT MGMT., EXPEDITING DEPENDENCE APPEALS: EVALUATING AND IMPROVING THE PROCESS 3 (2011) (citing American Bar Association and National Council of Juvenile and Family Court Judges proposed appellate timetables). Appellate judges expressed concern about the idea of having timelines imposed on the disposition of the cases, so the Task Force did not include a timeline in the recommended rules. Ultimately, the Task Force determined that it should be left to the Legislature to impose such a requirement.

Style of Appeals. The Task Force observed that successful implementation of specific procedures for parental termination and child protection cases will depend on the clerks' ability to easily differentiate these cases from other civil matters. Currently, there is not an easy means of quickly identifying the cases as exists in juvenile cases which are statutorily required to be styled "In the matter of ____." TEX. FAM. CODE §§ 53.04(b), 56.01(j). While the Family Code requires that petitions filed under Title 5 be styled "In the interest of _____, a child," the Family Code does not provide a similar provision for the styling of appeals from such suits. TEX. FAM. CODE § 102.008(a). Further, because Title 5 of the Family Code applies to all suits affecting the parent-child relationship, its application extends to a broader range of cases in addition to parental termination and child protection cases.

The styling of appeals in parental termination and child protection cases is inconsistent among the courts of appeals. Some use the format "In re [child's initials]," while others follow the general styling format: "[Appellant's name] v. Department of Family and Protective Services." The style "In re [child's initials]" is also confusingly similar to the styling of original proceedings. *See* TEX. R. APP. P. 52.1 (requiring petition in original proceeding to be styled "*In re* [name of relator]"). As discussed above, the Task Force recommends that the rules relating to the

[2] Tex. R. Jud. Admin. 6.

docketing statement and notice of appeal be amended to require a party to indicate if a case is a parental termination or child protection case, which may be of some assistance to the clerks in identifying the cases subject to the special procedure. However, a special format of case style would also be helpful so that the courts can quickly pull all relevant cases by simply searching for the particular language in the style. The Task Force believes that a case style unique to parental termination and child protection cases would be of assistance to the appellate courts, permitting the courts to immediately recognize and track these cases on their dockets, and dispose of them in a manner consistent with the rules proposed by the Task Force. The Task Force believes this is an issue which should be addressed by the Legislature.

Anders Briefs. The appellate courts have concluded an *Anders* brief may be filed by an appointed attorney for an appealing party in a parental termination or child protection case if the attorney concludes the appeal is frivolous and without merit, and the brief is filed in a manner consistent with the requirements of *Anders v. California*, 386 U.S. 738 (1967).[3] In satisfying such procedure, the *Anders* brief presents a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. The attorney must accompany the brief with a motion to withdraw from representation. The attorney must also certify that a copy of the brief was delivered in person or by mail, by certified and by first-class mail, to the party at the party's last known address. The appellate court will send notice to the appellant of his or her right to examine the appellate record and file a pro se response within a certain number of days of the appellate court's notice. If no response is filed within the requisite time, the appellate court will proceed to determine if the appeal is frivolous and without merit without a pro se response.

The Task Force considered a proposal to include *Anders* brief procedures in proposed Rule 28.4. It was the Task Force's consensus that as *Anders* has not been codified in the Texas Rules of Appellate Procedure, we should not include such a procedure solely for parental termination and child protection cases. The Task Force recommends that the Supreme Court and the Court of Criminal Appeals consider whether *Anders* brief procedures should be included in the Texas Rules of Appellate Procedure or remain governed by case law.

Interlocutory Appeal from Trial Court Determination of Indigence. The Task Force discussed whether a party has a right to an interlocutory appeal from a trial court determination on indigence in appointments governed by Chapter 107, Texas Family Code. The Task Force agreed this was a matter which should be addressed through legislation.

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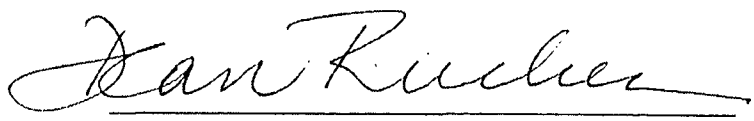
[3] All fourteen of the intermediate courts of appeals in Texas have held that the *Anders* procedure applies in CPS cases. *See In re K.D.*, 127 S.W.3d 66, 67 (Tex. App.—Houston [1st Dist.] 2003, no pet.); *In re K.M.*, 98 S.W.3d 774, 777 (Tex. App.—Fort Worth 2003, no pet.); *Taylor v. Tex. Dep't of Protective & Regulatory Servs.*, 160 S.W.3d 641, 646-47 (Tex. App.—Austin 2005, pet. denied); *In re EMLTCR*, No. 04-09-00660-CV (Tex. App.—San Antonio); *In re D.D.*, 279 S.W.3d 849, 850 (Tex. App.—Dallas 2005, pet. denied); *In re PMH*, No. 06-10-00008-CV (Tex. App.—Texarkana 2010); *In re A.W.T.*, 61 S.W.3d 87, 88 (Tex. App.-Amarillo 2001, no pet.); *In re J.B.*, 296 S.W.3d 618, 619 (Tex. App.-El Paso 2009, no pet.); *In re L.D.T.*, 161 S.W.3d 728, 731 (Tex. App.—Beaumont 2005, no pet.); In re E.L.Y., 69 S.W.3d 838, 841 (Tex. App.-Waco 2002, no pet.); *In re LKH*, No. 11-10-00080-CV (Tex. App.—Eastland 2011); *In re K.S.M.*, 61 S.W.3d 632, 634 (Tex. App.—Tyler 2001, no pet.); *Porter v. Tex. Dep't of Protective & Regulatory Servs.*, 105 S.W.3d 52, 56 (Tex. App.-Corpus Christi 2003, no pet.); *In re D.E.S.*, 135 S.W.3d 326, 329 (Tex. App.-Houston [14th Dist.] 2004, no pet.).

VI. CONCLUSION

I am honored to have been selected to chair this Task Force of distinguished lawyers and judges. On behalf of the members of the Task Force, allow me to express our gratitude for the privilege of assisting the Court in the exercise of its important role in overseeing the rules of procedure that govern litigation in the courts of our State.



DEAN RUCKER
Chair of the Task Force

APPENDIX A

RULE 299b. FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUIT FOR TERMINATION OF THE PARENT-CHILD RELATIONSHIP OR SUIT BY GOVERNMENTAL ENTITY FOR MANAGING CONSERVATORSHIP

(a) *Time to File Findings of Fact and Conclusions of Law.* In a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship that is tried without a jury, the court shall file its findings of fact and conclusions of law at the time the final order is signed. Findings of fact shall be filed with the clerk of the court as a document separate and apart from the final order. The court shall cause a copy of its findings and conclusions to be mailed to each party in the suit.

If the court fails to file findings of fact and conclusions of law at the time the final order is signed, any party may, within ten days after the final order is signed, file with the clerk and serve on all other parties in accordance with Rule 21a a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the court by the clerk. Upon filing this notice, the time for the court to file findings of fact and conclusions of law is extended to twenty days from the date the final order was signed. If the court does not file findings of fact and conclusions of law within twenty days from the date the final order is signed, any party may, after an appeal is perfected, file a motion with the appellate court for an order directing the trial court to prepare findings of fact and conclusions of law.

(b) *Additional or Amended Findings of Fact and Conclusions of Law.* After the court files original findings of fact and conclusions of law, any party may file with the clerk of the court a request for specified additional or amended findings or conclusions. The request for these findings shall be made within five days after the filing of the original findings and conclusions by the court. Each request made pursuant to this rule shall be served on each party to the suit in accordance with Rule 21a.

The court shall file any additional or amended findings and conclusions that are appropriate within ten days after such request is filed, and cause a copy to be mailed to each party to the suit. No findings or conclusions shall be deemed or presumed by any failure of the court to make any additional findings or conclusions.

APPENDIX B

18.6 Mandate in Accelerated Appeals and Parental Termination and Child Protection Cases

(a) *Interlocutory Orders.* In an accelerated appeal, ~~T~~the appellate court's judgment on an appeal from an interlocutory order takes effect when the mandate is issued. The court may issue the mandate with its judgment or delay the mandate until the appeal is finally disposed of. If the mandate is issued, any further proceeding in the trial court must conform to the mandate.

(b) *Parental Termination and Child Protection Cases.* In cases subject to Rule 28.4, the clerk of the appellate court that rendered the judgment must issue the mandate on the first date that it may issue under Rule 18.1.

Rule 20. When Party is Indigent

20.1 Civil Cases.

...

(e) ***Contest to ~~Affidavit~~ Indigence.*** The clerk, the court reporter, the court recorder, or any party may challenge an affidavit that is not accompanied by a TAJF certificate by filing — in the court in which the affidavit was filed — a contest to the affidavit. The contest must be filed on or before the date set by the clerk if the affidavit was filed in the appellate court, or within 10 days after the date when the affidavit was filed if the affidavit was filed in the trial court. The contest need not be sworn.

In cases in which a presumption of indigence has been established as provided by Rule 20.1(a)(3), the presumption of indigence may be challenged. The contest must articulate facts showing a good faith belief that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances. The contest must be filed in the trial court within three days after notice of appeal is filed. The contest need not be sworn.

...

(g) ***Burden of Proof.*** If a contest is filed, the party who filed the affidavit of indigence must prove the affidavit's allegations. If the indigent party is incarcerated at the time the hearing on a contest is held, the affidavit must be considered as evidence and is sufficient

to meet the indigent party's burden to present evidence without the indigent party's attending the hearing.

In cases in which a presumption of indigence has been established as provided by Rule 20.1(a)(3), the party filing the contest must prove that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances since the most recent determination of indigence.

...

(i) ***Hearing and Decision in the Trial Court.***

(1) ***Notice Required.*** If the affidavit of indigence is filed in the trial court or a presumption of indigence has been established as provided by Rule 20.1(a)(3) and a contest is filed, or if the appellate court refers a contest to the trial court, the trial court must set a hearing and notify the parties and the appropriate court reporter of the setting.

(2) ***Time for Hearing.*** The trial court must either conduct a hearing or sign an order extending the time to conduct a hearing:

(A) within 10 days after the contest was filed, if initially filed in the trial court; or

(B) within 10 days after the trial court received a contest referred from the appellate court.

(3) ***Extension of Time for Hearing.*** The time for conducting a hearing on the contest must not be extended for more than 20 days from the date the order is signed.

(4) ***Time for Written Decision; Effect.*** Unless — within the period set for the hearing — the trial court signs an order sustaining the contest, the affidavit's allegations will be deemed true or the presumption of indigence will continue unabated, and the party will be allowed to proceed without advance payment of costs.

(5) ***Review of Order Sustaining Contest.*** If the court sustains a contest, the unsuccessful party may seek review of the court's order by filing a motion with the appellate court without advance payment of costs. The motion shall be filed within 10 days after the order sustaining the contest is signed, or within 10 days after the notice of appeal is filed, whichever is later. The trial court clerk and court reporter shall prepare, certify and file the clerk's record and reporter's record of the indigence hearing, if any, and the hearing on the contest, which shall be provided without advance payment of costs.

Rule 25. Perfecting Appeal

25.1. Civil Cases

...

(d) *Contents of Notice.* The notice of appeal must:

(1) identify the trial court and state the case's trial court number and style;

(2) state the date of the judgment or order appealed from;

(3) state that the party desires to appeal;

(4) state the court to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the notice must state that the appeal is to either of those courts;

(5) state the name of each party filing the notice;

(6) in an accelerated appeal, state that the appeal is accelerated and state whether it is a parental termination or child protection case, as defined in Rule 28.4;

(7) in a restricted appeal:

(A) state that the appellant is a party affected by the trial court's judgment but did not participate — either in person or through counsel — in the hearing that resulted in the judgment complained of;

(B) state that the appellant did not timely file either a postjudgment motion, request for findings of fact and conclusions of law, or notice of appeal; and

(C) be verified by the appellant if the appellant does not have counsel.

(8) state, if applicable, that the appellant is presumed indigent and may proceed without advance payment of costs as provided in Rule 20.1(a)(3).

Rule 28. Accelerated, Agreed and Permissive Appeals in Civil Cases

...

28.4 Accelerated Appeals in Parental Termination and Child Protection Cases

(a) *Application and Definitions.*

(1) The rules of appellate procedure, including the rules for accelerated appeals, apply to parental termination and child protection cases, except that, to the extent of any conflict between those rules and Rule 28.4, Rule 28.4 prevails.

(2) In this rule:

(A) a "parental termination case" means a suit in which termination of the parent-child relationship is at issue.

(B) a "child protection case" means a suit affecting the parent-child relationship filed by a governmental entity for sole managing conservatorship.

(b) *Perfecting Appeal.* An appeal under this rule is perfected by filing a notice of appeal in compliance with Rule 25.1 within the time allowed by Rule 26.1(b) or as extended by Rule 26.3.

(c) *Appellate Record.*

(1) *Responsibility for Preparation of Reporter's Record.* In addition to the responsibility imposed upon the trial court in Rule 35.3(c), the trial court shall direct the official or deputy reporter to commence the preparation of the reporter's record when the reporter's responsibility to prepare, certify and timely file the reporter's record arises under Rule 35.3(b).

(2) *Time to File Record.* The appellate record must be filed within 30 days after the notice of appeal is filed.

(3) *Extension of Time.* The appellate court may grant an extension of time to file a record upon a showing of good cause; however, the extension or extensions granted may not exceed 60 days cumulatively, absent extraordinary circumstances.

(4) *If No Clerk's Record Filed Due to Appellant's Fault.* If the clerk's record was not filed by the 90th day after the notice of appeal was filed because the appellant failed to pay or make arrangements to pay for the clerk's record, after giving the appellant notice and opportunity to cure, the appellate court must dismiss the appeal for want of prosecution pursuant to Rule 37.3 and 42.3, absent extraordinary circumstances, unless the appellant was entitled to proceed without payment of costs

(5) *If No Reporter's Record Filed Due to Appellant's Fault.* If the clerk's record has been filed, but no reporter's record has been filed by the 90th day after the notice of appeal was filed because appellant failed to comply with Rule 37.3(c), after giving the appellant notice and opportunity to cure, the appellate court shall decide those issues or points that do not require a reporter's record for a decision, absent extraordinary circumstances, unless appellant was entitled to proceed without payment of costs.

(6) *Restriction on Preparation Inapplicable.* Section 13.003 of the Civil Practice & Remedies Code shall not apply to an appeal from a parental termination or child protection case.

(d) *Appellate Briefs.* All briefs must be filed within the time required for accelerated appeals under Rule 38.6. An extension of time may only be granted upon motion complying with Rule 10.5(b) if the requesting party shows good cause for the extension; however, the extension or extensions of time for such party may not exceed 40 days cumulatively, absent extraordinary circumstances.

(e) *Motions for Rehearing in the Court of Appeals.* An extension of time for a motion for rehearing may only be granted upon motion complying with Rule 10.5(b) if the requesting party shows good cause for the extension; however, the extension or extensions of time for such party may not exceed 30 days cumulatively, absent extraordinary circumstances. If a timely motion for rehearing is filed, the appellate court must grant or deny such motion within 60 days after it is filed. If an appellate court fails to grant or deny a decision on a motion for rehearing within 60 days after it is filed, it will be considered overruled by operation of law on the 61st day after the motion is filed.

(f) *Motions for En Banc Reconsideration.* An extension of time for a motion for en banc reconsideration may only be granted upon motion complying with Rule 10.5(b) if the requesting party shows good cause for the extension; however, the extension or extensions of time for such party may not exceed 30 days cumulatively, absent extraordinary circumstances. If a timely motion for en banc reconsideration is filed, the appellate court must grant or deny such motion within 60 days after it is filed. If an appellate court fails to grant or deny a decision on a motion for en banc reconsideration within 60 days after it is filed, it will be considered overruled by operation of law on the 61st day after the motion is filed.

(g) *Petitions for Review.* A party may not file a motion to extend the time for filing a petition for review, absent extraordinary circumstances. If a petition for review is timely filed, the Supreme Court must issue an order on the petition as provided under Rule 56.1, within 120 days after it is filed, or it will be considered denied by operation of law on the 121st day after the petition for review is filed.

(h) *Mandates Accelerated.* The clerk of the appellate court that rendered the judgment in a parental termination or child protection case must accelerate the issuance of the mandate pursuant to Rule 18.6.

(i) *Remand for New Trial.* If the judgment of the appellate court reverses and remands a parental termination or child protection case for a new trial, the judgment must instruct the trial court to commence the new trial no later than 180 days after the mandate is issued by the appellate court.

Rule 32. Docketing Statement

32.1. Civil Cases

Upon perfecting the appeal in a civil case, the appellant must file in the appellate court a docketing statement that includes the following information:

(a) (1) if the appellant filing the statement has counsel, the name of that appellant and the name, address, telephone number, fax number, if any, and State Bar of Texas identification number of the appellant's lead counsel; or (2) if the appellant filing the statement is not represented by an attorney, that party's name, address, telephone number, and fax number, if any;

(b) the date the notice of appeal was filed in the trial court and, if mailed to the trial court clerk, the date of mailing;

(c) the trial court's name and county, the name of the judge who tried the case, and the date the judgment or order appealed from was signed;

(d) the date of filing of any motion for new trial, motion to modify the judgment, request for findings of fact, motion to reinstate, or other filing that affects the time for perfecting the appeal;

(e) the names of all other parties to the trial court's judgment or the order appealed from, and:

(1) if represented by counsel, their lead counsel's names, addresses, telephone numbers, and fax numbers, if any; or

(2) if not represented by counsel, the name, address, and telephone number of the party, or a statement that the appellant diligently inquired but could not discover that information;

(f) the general nature of the case — for example, personal injury, breach of contract, or temporary injunction;

(g) whether the appeal's submission should be given priority ~~or~~, whether the appeal is an accelerated one under Rule 28 or another rule or statute, and whether the appeal is an accelerated one in a parental termination or child protection case under Rule 28.4;

(h) whether the appellant has requested or will request a reporter's record, and whether the trial was electronically recorded;

(i) the name of the court reporter;

(j) whether the appellant intends to seek temporary or ancillary relief while the appeal is pending;

(k) (1) the date of filing of any affidavit of indigence;

(2) the date of filing of any contest;

(3) the date of any order on the contest; and

(4) whether the contest was sustained or overruled;

(l) whether the appellant has filed or will file a supersedeas bond; and

(m) any other information the appellate court requires.

Rule 35. Time to File Record; Responsibility for Filing Record

35.1. Civil Cases

The appellate record must be filed in the appellate court within 60 days after the judgment is signed, except as follows:

(a) if Rule 26.1(a) applies, within 120 days after the judgment is signed;

(b) if Rule 26.1(b) applies, within 10 days after the notice of appeal is filed unless Rule 28.4 applies; or

(c) if Rule 26.1(c) applies, within 30 days after the notice of appeal is filed.

38.6. Time to File Briefs

(a) *Appellant's Filing Date.* Except in a habeas corpus or bail appeal, which is governed by Rule 31, an appellant must file a brief within 30 days — 20 days in an accelerated appeal — after the later of:

(1) the date the clerk's record was filed; or

(2) the date the reporter's record was filed.

(b) *Appellee's Filing Date.* The appellee's brief must be filed within 30 days — 20 days in an accelerated appeal — after the date the appellant's brief was filed. In a civil case, if the appellant has not filed a brief as provided in this rule, an appellee may file a brief within 30 days — 20 days in an accelerated appeal — after the date the appellant's brief was due.

(c) *Filing Date for Reply Brief.* A reply brief, if any, must be filed within 20 days after the date the appellee's brief was filed.

(d) *Modifications of Filing Time.* Except as provided in Rule 28.4, o~~O~~n motion complying with Rule 10.5(b), the appellate court may extend the time for filing a brief and may postpone submission of the case. A motion to extend the time to file a brief may be filed before or after the date a brief is due. The court may also, in the interests of justice, shorten the time for filing briefs and for submission of the case.

49.8. Extensions of Time

Except for cases subject to Rule 28.4, a~~A~~ court of appeals may extend the time for filing a motion for rehearing or en banc reconsideration if a party files a motion complying with Rule 10.5(b) no later than 15 days after the last date for filing the motion.

53.7. Time and Place of Filing

(a) *Petition.* Unless the Supreme Court orders an earlier filing deadline, the petition must be filed with the Supreme Court clerk within 45 days after the following:

(1) the date the court of appeals rendered judgment, if no motion for rehearing or en banc reconsideration is timely filed; or

(2) the date of the court of appeals' last ruling on all timely filed motions for rehearing or en banc reconsideration.

(b) *Premature Filing.* A petition filed before the last ruling on all timely filed motions for rehearing and en banc reconsideration is treated as having been filed on the date of, but after, the last ruling on any such motion. If a party files a petition for review while a motion for rehearing or en banc reconsideration is pending in the court of appeals, the party must include that information in its petition for review.

(c) *Petitions Filed by Other Parties.* If a party files a petition for review within the time specified in 53.7(a) — or within the time specified by the Supreme Court in an order granting an extension of time to file a petition — any other party required to file a petition may do so within 45 days after the last timely motion for rehearing is overruled or within 30 days after any preceding petition is filed, whichever date is later.

(d) *Response.* Any response must be filed with the Supreme Court clerk within 30 days after the petition is filed.

(e) *Reply*. Any reply must be filed with the Supreme Court clerk within 15 days after the response is filed.

(f) *Extension of Time*. Except for cases subject to Rule 28.4, t~~T~~he Supreme Court may extend the time to file a petition for review if a party files a motion complying with Rule 10.5(b) no later than 15 days after the last day for filing the petition. The Supreme Court may extend the time to file a response or reply if a party files a motion complying with Rule 10.5(b) either before or after the response or reply is due.

(g) *Petition Filed in Court of Appeals*. If a petition is mistakenly filed in the court of appeals, the petition is deemed to have been filed the same day with the Supreme Court clerk, and the court of appeals clerk must immediately send the petition to the Supreme Court clerk.

(1) the selection and authority of a presiding judge of the courts giving preference to a specified class of cases, such as civil, criminal, juvenile, or family law cases;

(2) other strategies for managing cases that require special judicial attention;

(3) [~~(2)~~] a coordinated response for the transaction of essential judicial functions in the event of a disaster; and

(4) [~~(3)~~] any other matter necessary to carry out this chapter or to improve the administration and management of the court system and its auxiliary services.

SECTION 7.04. Chapter 74, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ADDITIONAL RESOURCES FOR CERTAIN CASES

Sec. 74.251. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to:

(1) a criminal matter;

(2) a case in which judicial review is sought under Subchapter G, Chapter 2001; or

(3) a case that has been transferred by the judicial panel on multidistrict litigation to a district court for consolidated or coordinated pretrial proceedings under Subchapter H.

Sec. 74.252. RULES TO GUIDE DETERMINATION OF WHETHER CASE REQUIRES ADDITIONAL RESOURCES. (a) The supreme court shall adopt rules under which courts, presiding judges of the administrative judicial regions, and the judicial committee for additional resources may determine whether a case requires additional

resources to ensure efficient judicial management of the case.

(b) In developing the rules, the supreme court shall include considerations regarding whether a case involves or is likely to involve:

(1) a large number of parties who are separately represented by counsel;

(2) coordination with related actions pending in one or more courts in other counties of this state or in one or more United States district courts;

(3) numerous pretrial motions that present difficult or novel legal issues that will be time-consuming to resolve;

(4) a large number of witnesses or substantial documentary evidence;

(5) substantial postjudgment supervision;

(6) a trial that will last more than four weeks; and

(7) a substantial additional burden on the trial court's docket and the resources available to the trial court to hear the case.

Sec. 74.253. JUDICIAL DETERMINATION. (a) On the motion of a party in a case, or on the court's own motion, the judge of the court in which the case is pending shall review the case and determine whether, under rules adopted by the supreme court under Section 74.252, the case will require additional resources to ensure efficient judicial management. The judge is not required to conduct an evidentiary hearing for purposes of making the determination but may, in the judge's discretion, direct the attorneys for the parties to the case and the parties to appear

before the judge for a conference to provide information to assist the judge in making the determination.

(b) On determining that a case will require additional resources as provided by Subsection (a), the judge shall:

(1) notify the presiding judge of the administrative judicial region in which the court is located about the case; and

(2) request any specific additional resources that are needed, including the assignment of a judge under this chapter.

(c) If the presiding judge of the administrative judicial region agrees that, in accordance with the rules adopted by the supreme court under Section 74.252, the case will require additional resources to ensure efficient judicial management, the presiding judge shall:

(1) use resources previously allotted to the presiding judge; or

(2) submit a request for specific additional resources to the judicial committee for additional resources.

Sec. 74.254. JUDICIAL COMMITTEE FOR ADDITIONAL RESOURCES. (a) The judicial committee for additional resources is composed of:

(1) the chief justice of the supreme court; and

(2) the nine presiding judges of the administrative judicial regions.

(b) The chief justice of the supreme court serves as presiding officer. The office of court administration shall provide staff support to the committee.

(c) On receipt of a request for additional resources from a

presiding judge of an administrative judicial region under Section 74.253, the committee shall determine whether the case that is the subject of the request requires additional resources in accordance with the rules adopted under Section 74.252. If the committee determines that the case does require additional resources, the committee shall make available the resources requested by the trial judge to the extent funds are available for those resources under the General Appropriations Act and to the extent the committee determines the requested resources are appropriate to the circumstances of the case.

(d) Subject to Subsections (c) and (f), additional resources the committee may make available under this section include:

(1) the assignment of an active or retired judge under this chapter, subject to the consent of the judge of the court in which the case for which the resources are provided is pending;

(2) additional legal, administrative, or clerical personnel;

(3) information and communication technology, including case management software, video teleconferencing, and specially designed courtroom presentation hardware or software to facilitate presentation of the evidence to the trier of fact;

(4) specialized continuing legal education;

(5) an associate judge;

(6) special accommodations or furnishings for the parties;

(7) other services or items determined necessary to

try the case; and

(8) any other resources the committee considers appropriate.

(e) Notwithstanding any provision of Subchapter C, a justice or judge to whom Section 74.053(d) applies may not be assigned under Subsection (d).

(f) The judicial committee for additional resources may not provide additional resources under this subchapter in an amount that is more than the amount appropriated for this purpose.

Sec. 74.255. COST OF ADDITIONAL RESOURCES. The cost of additional resources provided for a case under this subchapter shall be paid by the state and may not be taxed against any party in the case for which the resources are provided or against the county in which the case is pending.

Sec. 74.256. NO STAY OR CONTINUANCE PENDING DETERMINATION. The filing of a motion under Section 74.253 in a case is not grounds for a stay or continuance of the proceedings in the case in the court in which the case is pending during the period the motion or request is being considered by:

(1) the judge of that court;

(2) the presiding judge of the administrative judicial region; or

(3) the judicial committee for additional resources.

Sec. 74.257. APPELLATE REVIEW. A determination made by a trial court judge, the presiding judge of an administrative judicial region, or the judicial committee for additional resources under this subchapter is not appealable or subject to review by

mandamus.

SECTION 7.05. (a) The Texas Supreme Court shall request the president of the State Bar of Texas to appoint a task force to consider and make recommendations regarding the rules for determining whether civil cases pending in trial courts require additional resources for efficient judicial management required by Section 74.252, Government Code, as added by this article. The president of the State Bar of Texas shall ensure that the task force has diverse representation and includes judges of trial courts and attorneys licensed to practice law in this state who regularly appear in civil cases before courts in this state. The task force shall provide recommendations on the rules to the Texas Supreme Court not later than March 1, 2012.

(b) The Texas Supreme Court shall:

(1) consider the recommendations of the task force provided as required by Subsection (a) of this section; and

(2) adopt the rules required by Section 74.252, Government Code, as added by this article, not later than May 1, 2012.

SECTION 7.06. The changes in law made by this article apply to cases pending on or after May 1, 2012.

ARTICLE 8. GRANT PROGRAMS

SECTION 8.01. Subchapter C, Chapter 72, Government Code, is amended by adding Section 72.029 to read as follows:

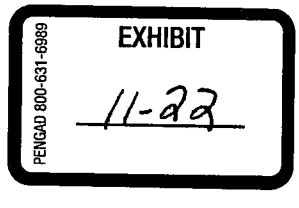
Sec. 72.029. GRANTS FOR COURT SYSTEM ENHANCEMENTS. (a) The office shall develop and administer, except as provided by Subsection (c), a program to provide grants from available funds to

STATE BAR OF TEXAS
TASK FORCE ON ADDITIONAL RESOURCES FOR COMPLEX CASES

FINAL REPORT AND PROPOSED RULES

Task Force Members

Judge Ernest Aliseda
Jeanne "Cezy" Collins
Martha S. Dickie
Greg M. Dykeman
Brent Hamilton
Lamont Jefferson
Bradley Parker
David M. Russell
Justice Rick Strange
Justice Linda B. Thomas
Judge Barbara Walther
Clay White
Judge Ken Wise
Richard C. Hile - Chair



PREFACE

The Task Force on Additional Resources for Complex Cases (Task Force) was appointed by Robert Black, President, State Bar of Texas, on July 26, 2011. The Task Force was created to make recommendations to the Texas Supreme Court "regarding the rules for determining whether civil cases pending in trial courts require additional resources for efficient judicial management...." Article VII, Subchapter J, Additional Resource for Certain Cases, Section 7.05(a) of H.B. 79, 82nd Legislature-1st Called Session.

The Task Force includes 14 members, all of whom are members of the State Bar of Texas. The membership includes lawyers of large defense and plaintiff firms, corporate in-house counsel, attorney mediators, small firm practitioners, current judges of trial courts and retired members of Courts of Appeals.

A number of individuals provided valuable assistance to the Task Force in developing the proposed rules. Several of these individuals were involved in the legislative process which resulted in the passage of H.B. 79 while others actively participated in providing resources to courts needing additional judicial resources. These individuals include Cory Pomeroy, General Counsel to Sen. Robert Duncan, R-Lubbock; Ryan Fisher, Chief of Staff to Sen. Jim Jackson, R-Carrollton; Bobby Janecka, Legislative Aide to Rep. Tryon Lewis, R-Odessa; Kari King, General Counsel to House Committee on Judiciary and Civil Jurisprudence; Marisa Secco, Rules Attorney, Texas Supreme Court; and Carl Reynolds, Administrative Director, Office of Court Administration and his staff.

Section 7.05(a) of H.B. 79 requires that the Task Force provide its recommendations on the rules to the Supreme Court not later than March 1, 2012. Subsection (b) further provides that the Texas Supreme Court shall adopt rules not later than May 1, 2012. The Task Force's deadline for submitting its recommendations was accelerated to November 1, 2011 to give the Supreme Court sufficient time to review the recommendations of the Task Force and to develop final rules, through their internal processes.

The Task Force met telephonically and in person on several occasions. Drafts of the proposed rules were also published on the State Bar of Texas

Website on October 1, 2011. On October 13, 2011 the Task Force held a public meeting in Austin, Texas, and members of the public and the State Bar were invited to appear in person or by video conferencing and to comment on the proposed rules.[1] On October 25, 2011 the Task Force submitted this report and proposed rules to the Executive Committee of the State Bar of Texas.

I. Legislation Regarding Complex Litigation in Texas 2007-2011

During the 80th Legislative Session (2007), Sen. Robert Duncan, R-Lubbock, introduced S.B. 1204, which sought to address a number of structural problems within Texas Courts as well as other issues, one of which included establishing a judicial panel on complex cases that would determine whether a case was "complex" and, if so, would appoint a judge to hear the case. Rep. Dan Gattis, R-Georgetown, subsequently filed a companion bill. The proposed establishment of specialized courts proved to be extremely controversial. As a result of discussions with representatives from various associations and sections of the State Bar, Sen. Duncan filed, the committee substitute, C.S.S.B. 1204, which deleted the establishment of specialized courts and instead proposed the creation of a judicial committee comprised of the Presiding Judges from the Administrative Judicial Regions to provide additional resources for trial courts handling complex cases. C.S.S.B 1204 passed the Senate but failed to pass the House.

In the fall of 2007, State Bar President Gib Walton appointed the Court Administration Task Force (CATF) to study the issues raised in S.B. 1204 and specifically, the issue related to specialized courts and the need for additional resources in certain civil cases. The CATF issued its Report (the "CATF Final Report") in October 2008, which, among other things, concluded that there was no need for specialized courts, and that the legislature should provide additional resources for cases requiring special judicial attention and additional funding for legal and judicial personnel to support the trial judges who must handle these cases. A more detailed discussion of this issue is included in Section III of the CATF Final Report, pp. 40-47.

[1] Video links with the SBOT offices in Dallas, Houston and San Antonio were established so that members of the State Bar and public might comment on the proposed rules. The State Bar also arranged for members to join the meeting by logging on to the Bar's Webinar.

In 2009 during the 81st Legislative Session, Sen. Duncan worked with members of the CATF in drafting comprehensive legislation to address the issues identified in the CATF Final Report. S.B. 992 once again included the need for additional resources by trial courts that must handle complex litigation. H.B. 3763, which contained similar provisions, was filed by Rep. Gattis, in the House. Neither bill passed that session.

During the 82nd Legislative Session (2011), Sen. Duncan and Rep. Jim Jackson, R-Carrollton, filed S.B.1717 and H.B. 3445, respectively. These bills included most of the CATF recommendations, the most notable exception being a deletion of the provision that converted to district courts all county courts at law that elected to keep their maximum jurisdictional amount in controversy in excess of $200,000. S.B. 1717 passed the Senate and House with differing language and was referred to a conference committee. The conference committee was able to resolve matters in disagreement and issued its report. The conference committee report was not adopted. During the 82nd Legislature-1st Called Session, Rep. Tryon Lewis, R-Odessa, changed the caption of H.B. 79 so that it was germane to the call and this bill passed on the last day of the special session and was signed into law on July 19, 2011 by Governor Perry.

II. The Task Force's Responsibilities

In proposing rules for managing complex cases as mandated in H.B. 79, the Task Force has not undertaken an independent study of alternative processes that might address this issue. In 2007, there was extensive discussion between Sen. Duncan and members of the trial bar, judges and tort reform groups regarding a number of alternative proposals. The CATF considered several proposals, and the legislative committee that the bills were assigned heard untold hours of testimony regarding various approaches that might be considered. In the end, the legislature and CATF concluded that the appropriate remedy was to provide additional resources to trial courts that must handle these cases. As such, the Task Force has focused its attention on developing rules that are consistent with H.B. 79. Some legislation simply mandates adoption of new rules and provides little guidance other than identifying the issue to be addressed. *See* H.B. 274, 82nd Legislative Session, "The Supreme Court shall adopt rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence...." H.B. 274, Sec. 1.01. H.B. 79 is quite specific and instructive in regard to considerations for determining when a case is in need of

additional resources and the process that should be followed in making this determination. Most of this text came from S.B. 1204 and the CATF Final Report. The Task Force concluded that this language should be incorporated whenever possible and has often proposed using specific text from the bill.

III. Issues Regarding the Proposed Rules

While H.B. 79 provided significant guidance regarding rules necessary to the implementation of the JCAR, there are several issues for which little or no guidance was provided and the Task Force had to decide the appropriate action to be taken. These issues and the basis for the Task Force's decision are discussed below.

a. Texas Rules of Judicial Administration. H.B. 79 does not state the rules within which these proceedings are to be addressed. The Task Force recommends that the Texas Rules of Judicial Administration be amended by adding Article 16, Rules for Additional Resources for Complex Cases. The proposed rules are consistent with the format used in the Texas Rules of Judicial Administration.

b. Flexibility. The Task Force determined that the rules should not be overly formal or prescriptive but should allow greater flexibility to the individual Presiding Judge and the Judicial Committee for Additional Resources (JCAR) to determine the process to be followed in a given case. The rules do not proscribe formal motion practice such as that used in Multidistrict Litigation (see Rule 13, Rules of Judicial Administration), rather they depict an informal process that simply states needs and resources requested and the response to those requests.

c. JCAR Clerk. Because we decided that the process should be an informal one, the Task Force came to a decision that filing should not be with the Supreme Court Clerk; instead, requests should be filed with OCA with a copy to the Presiding Judge of the region. This should expedite the process and is consistent with our informal process. It is also consistent with the ongoing support that OCA provides to the Presiding Judges, as well as the use of the OCA director as the focal point for appeals of the denial of judicial records under Rule 12, Rules of Judicial Administration.

d. Operating rules. The rule does not include formal meeting requirements for the JCAR such as a quorum requirement or deadlines for ruling. The Presiding Judges already operate as a committee and have existing operating procedures, and therefore the Task Force saw no need to micro-manage that process.

e. Gatekeeping Function of Presiding Judge. The proposed rules seek to reflect and not disrupt the Presiding Judge's existing role as gatekeeper, using state resources to address individualized solutions, typically through the assignment of a visiting judge. This is consistent with language in the legislation and the fact that this judge has a greater understanding of needs within a region and of the specific court.

f. JCAR Role in Disasters. The Task Force considered expanding the considerations for determining when a case requires additional resources to include cases affected by disasters. During the last decade Texas has experienced two catastrophic hurricanes, in which the day-to-day operations in courthouses throughout the Gulf Coast were disrupted for periods of time. However, it does not appear that the legislature considered disasters and the impact that such events might have on hundreds of cases in this legislation. The legislature has authorized the Supreme Court to modify or suspend procedures for the conducting of court proceedings during the existence of a disaster. See Government Code §22.2035. The Task Force believes that formal procedures and rules should be developed to ensure that needed judicial resources are made available in a timely manner in the event of disasters.

g. Legislature's Failure to Fund JCAR. The legislature failed to appropriate funds for JCAR during the 2012-2013 biennium. Additionally, H.B. 74.254(f) states, "The judicial committee for additional resources may not provide additional resources under this subchapter in an amount that is more than the amount appropriated for this purpose." The Task Force is concerned that this might be interpreted so as to preclude JCAR from finding that a case requires additional resources and preclude OCA from utilizing funds from other sources that are appropriated for such purposes. As an example, in the FLDS case OCA was able to provide additional resources through funds from a number of sources that were not

originally budgeted for this case including the use of outside grants. The fact that the legislature has not appropriated funds for this project should not preclude OCA, the Presiding Regional Judge and JCAR from seeking to assist a trial court in need of additional resources. Rule 16.11(b) is intended to address this issue.

h. Final Report. Rule 16.12 requires that OCA prepare a final report at the conclusion of a case that receives additional resources from JCAR. The report must identify the resources provided and their estimated cost. This will assist OCA in seeking appropriations from the legislature in future sessions.

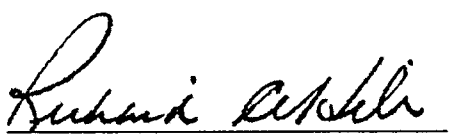
IV. Recommendations

The Task Force recommends that

a. pursuant to Section 31(a) of Article V of the Texas Constitution and Section 74.024 of the Texas Government Code, the Texas Rules of Judicial Administration be amended to include Rule 16, Additional Resources for Certain Cases, a copy of which is attached hereto as Appendix A; and

b. the legislature adequately fund this program.

Approved October 13, 2011.



Richard C. Hile, Chair
Task Force

APPENDIX A

RULES OF JUDICIAL ADMINISTRATION

Rule 16. Additional Resources for Certain Cases

16.1 Authority and Applicability.

(a) Authority. This rule is promulgated under Sections 74.251-74.257 of the Texas Government Code.

(b) Applicability. This rule applies to civil actions pending on or after May 1, 2012 in a constitutional county court, county court at law, probate court, or district court and that may require additional judicial resources.

(c) Other Cases. This rule does not apply to:

(1) criminal matters;
(2) grants for local court improvement under Section 72.029, Texas Government Code;
(3) cases in which judicial review is sought under Subchapter G, Chapter 2001; or
(4) cases that have been transferred by the judicial panel on multidistrict litigation to a district court for consolidated or coordinated pretrial proceedings under Chapter 74, Government Code, Subchapter H.

16.2 Definitions.

As used in this rule:

(a) *Judicial Committee for Additional Resources (JCAR)* means the judicial committee designated pursuant to Section 74.254 of the Texas Government Code, including the chief justice of the supreme court and the presiding judges of the administrative judicial regions.

(b) *JCAR Clerk* means the Administrative Director of the Office of Court Administration.

(c) *Presiding Officer* means the chief justice of the supreme court.

(d) *Presiding Judge of the Administrative Judicial Region* means the judge appointed pursuant to Section 74.005 of the Texas Government Code.

(e) *Trial Court* means the judge of the court in which a case is filed or assigned.

16.3 Duties of the Office of Court Administration.

(a) The Office of Court Administration (OCA) will assist the JCAR in carrying out its duties under this rule by:

(1) providing support staff and meeting facilities or technology to the JCAR;
(2) requesting appropriations for additional judicial resources from the legislature; and
(3) providing additional resources approved by the JCAR to the trial court.

(b) The JCAR Clerk shall file requests for additional resources and any orders or reports relating to additional resources provided to a trial court pursuant to this rule.

16.4 Considerations for Determining Whether a Case Requires Additional Resources.

(a) In determining whether a case requires additional judicial resources the trial court, the presiding judge of the administrative judicial region and the JCAR may consider whether a case involves or is likely to involve:

(1) a large number of parties who are separately represented by counsel;
(2) coordination with related actions pending in one or more courts in other counties of this state or in one or more United States district courts;
(3) numerous pretrial motions that present difficult or novel legal issues that will be time-consuming to resolve;

(4) a large number of witnesses or substantial documentary evidence;
(5) substantial post-judgment supervision;
(6) a trial that will last more than four weeks; or
(7) a substantial additional burden on the trial court's docket and the resources available to the trial court to hear the case.

16.5 Additional Resources. The presiding judge of the administrative judicial region and the JCAR may find that one or more of the following resources should be made available:

(a) the assignment of an active or retired judge, subject to the consent of the trial court;
(b) additional legal, administrative, or clerical personnel;
(c) information and communication technology, including case management software, video teleconferencing, and specially designed courtroom presentation hardware or software to facilitate presentation of the evidence to the trier of fact;
(d) specialized continuing legal education;
(e) an associate judge;
(f) special accommodations or furnishings for the parties;
(g) other services or items determined necessary to try the case; and
(h) any other resources the committee considers appropriate.

16.6 Procedure for Requesting Additional Resources.

(a) Motion for Additional Resources: A party in a case may move for the case to be designated as a case requiring additional resources to ensure efficient judicial management. The motion must be in writing and must state

(1) considerations that the case involves or is likely to involve that justify additional judicial resources;
(2) additional judicial resources that will promote the just and efficient conduct of the case;
(3) the time by which the additional resources should be provided; and
(4) whether all parties in the case agree to the motion.

(b) Request by Trial Court. A trial court may request that a case be designated as requiring additional resources to ensure efficient judicial management.

(c) Determination by Trial Court. Upon the motion of a party in a case, or on the trial court's own motion, the trial court shall determine whether the case will require additional resources to ensure efficient judicial management. The trial court may in its discretion conduct an evidentiary hearing for the purpose of making a determination or may direct the attorneys for the parties and the parties to appear before it for a conference to consider whether a case should be designated as requiring additional resources.

(d) Order Requesting Additional Judicial Resources. If the trial court determines that a case requires additional resources it must:

(1) enter an order describing the nature of the case, identifying the conditions that justify the additional resources and specific additional resources that are needed; and
(2) forward the order to the JCAR Clerk at the mailing address or email address listed on the "Contact Information" page of OCA's website, currently located at http://www.courts.state.tx.us/contact.asp; and
(3) submit a copy of the order to the presiding judge of the administrative region in which the case is filed

(e) Notification of Order Requesting Additional Resources. Upon receiving an order requesting additional resources, the JCAR clerk must submit the order to the JCAR. Within 15 days of receiving the order, the JCAR Clerk or the presiding judge of the affected administrative judicial region shall provide notice to the trial court of any action on the request, even if to report the inability to take action.

16.7 Review of Order Requesting Additional Resources.

(a) Review by Presiding Judge of Administrative Judicial Region. Upon receipt of the trial court's order requesting additional resources, if the presiding judge of the administrative judicial region in which the case is filed agrees with the trial court's

determination that a case will require additional resources to ensure efficient judicial management, the presiding judge shall:

(1) use resources previously allotted to the presiding judge, if the resources are permitted to be used for the purpose requested; or

(2) submit a request for specific additional resources to the JCAR.

(b) Review by the JCAR. If the additional resources requested by the trial court include resources not previously allotted to the presiding judge of the administrative judicial region, the JCAR shall determine whether additional resources are required.

(c) Determination of Order Requesting Additional Resources. The presiding judge of the administrative judicial region in which the case is filed or the JCAR shall file an order approving or denying a trial court's request for additional resources with the JCAR Clerk. Upon receipt of the order, the JCAR Clerk shall transmit a copy of the order to the affected trial court.

16.8 Implementation of Order for Additional Resources.

The presiding judge of the administrative judicial region in which the case is filed and the Office of Court Administration shall cooperate with the trial court or its designee in providing the approved additional resources.

16.9 Effect on the Trial Court of the Motion for Additional Resources.

(a) Jurisdiction. The filing of a motion under this rule does not deprive the trial court of jurisdiction or suspend proceedings or orders in that court.

(b) No Stay or Continuance of Proceedings. The filing of a motion under this rule is not grounds for a stay or continuance of the proceedings during the period the motion or request is being considered.

16.10 Review of Orders by the Trial Court, Presiding Judge or JCAR.

An order of the trial court, the presiding judge of the administrative region, or the JCAR granting or denying a request or motion for additional resources is not appealable or subject to review by mandamus.

16.11 Provisions for Additional Resources.

(a) Costs of Additional Resources. The costs for additional resources provided under this rule shall be paid by the state and may not be taxed against any party in the case for which the resources are provided or against the county in which the case is pending.

(b) Appropriation for Additional Resources. Additional resources are subject to the availability of appropriations made by the legislature or as provided through budget execution authority or other budget adjustment method, or from funds made available by grants or donations.

16.12 Final Report

At the conclusion of a case found to require additional resources, OCA shall prepare and file a report stating the additional resources provided to a court and their estimated costs. This report shall be filed with the JCAR Clerk.

overall groundwater consumption in that county.

[ARTICLE 78 reserved]

ARTICLE 79. EDUCATION JOBS FUND

SECTION 79.01. For purposes of interpreting and implementing Section 825.406, Government Code, the Teacher Retirement System of Texas may not consider salaries of personnel paid wholly or partly from the Education Jobs Fund distributed to school districts under Title I of Pub. L. No. 111-226 as being paid from federal funds.

ARTICLE 79A. CONFIDENTIALITY OF CERTAIN PEACE OFFICER VOUCHERS

SECTION 79A.01. Subchapter H, Chapter 660, Government Code, is amended by adding Section 660.2035 to read as follows:

Sec. 660.2035. CONFIDENTIALITY OF CERTAIN PEACE OFFICER VOUCHERS; QUARTERLY SUMMARIES. (a) A voucher or other expense reimbursement form, and any receipt or other document supporting that voucher or other expense reimbursement form, that is submitted or to be submitted under Section 660.027 is confidential under Chapter 552 for a period of 18 months following the date of travel if the voucher or other expense reimbursement form is submitted or is to be submitted for payment or reimbursement of a travel expense incurred by a peace officer while assigned to provide protection for an elected official of this state or a member of the elected official's family.

(b) At the expiration of the period provided by Subsection (a), the voucher or other expense reimbursement form and any supporting documents become subject to disclosure under Chapter 552

and are not excepted from public disclosure or confidential under that chapter or other law, except that the following provisions of that chapter apply to the information in the voucher, reimbursement form, or supporting documents:

(1) Section 552.117;

(2) Section 552.1175;

(3) Section 552.119;

(4) Section 552.136;

(5) Section 552.137;

(6) Section 552.147; and

(7) Section 552.152.

(c) A state agency that submits vouchers or other expense reimbursement forms described by Subsection (a) shall prepare quarterly a summary of the amounts paid or reimbursed by the comptroller based on those vouchers or other expense reimbursement forms. Each summary must:

(1) list separately for each elected official the final travel destinations and the total amounts paid or reimbursed in connection with protection provided to each elected official and that elected official's family members; and

(2) itemize the amounts listed under Subdivision (1) by the categories of travel, fuel, food, lodging or rent, and other operating expenses.

(d) The itemized amounts under Subsection (c)(2) must equal the total amount listed under Subsection (c)(1) for each elected official for the applicable quarter.

(e) A summary prepared under Subsection (c) may not include:

(1) the number or names of the peace officers or elected official's family members identified in the vouchers, expense reimbursement forms, or supporting documents;

(2) the name of any business or vendor identified in the vouchers, expense reimbursement forms, or supporting documents; or

(3) the locations in which expenses were incurred, other than the city, state, and country in which incurred.

(f) A summary prepared under Subsection (c) is subject to disclosure under Chapter 552, except as otherwise excepted from disclosure under that chapter.

(g) A state agency that receives a request for information described by Subsection (a) during the period provided by that subsection may withhold that information without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552. The Supreme Court of Texas has original and exclusive mandamus jurisdiction over any dispute regarding the construction, applicability, or constitutionality of Subsection (a). The supreme court may appoint a master to assist in the resolution of any such dispute as provided by Rule 171, Texas Rules of Civil Procedure, and may adopt additional rules as necessary to govern the procedures for the resolution of any such dispute.

SECTION 79A.02. Section 660.2035, Government Code, as added by this article, applies according to its terms in relation to travel vouchers or other reimbursement form and any supporting documents that pertain to expenses incurred or paid on or after the effective date of this article.

ARTICLE 80. EFFECTIVE DATE

SECTION 80.01. Except as otherwise provided by this Act:

(1) this Act takes effect September 1, 2011, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for effect on that date:

(A) this Act takes effect on the 91st day after the last day of the legislative session; and

(B) a provision of this Act that purports to take effect on September 1, 2011, takes effect on the date specified by Paragraph (A) of this subdivision.

Memorandum

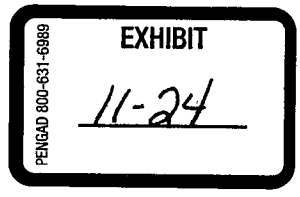
To: Appellate Rules Subcommittee, Texas Supreme Court Advisory Committee
Justice Nathan L. Hecht
Justice David Medina
Marisa Secco, Esquire
From: Bill Dorsaneo
Date: October 12, 2011
Re: Government Code § 660.2035 (revised)

As shown in Justice Hecht's July 13, 2011 letter to Charles L. "Chip" Babcock concerning Referral of Rules Issues, the subject entitled "Security Details" has been assigned to our subcommittee. As stated in Justice Hecht's letter:

"**Security Details.** SB 1 adds Government Code § 660.2035, which gives the Supreme Court 'original and exclusive mandamus jurisdiction over any dispute regarding the construction, applicability, or constitutionality of' provisions for the confidentiality of a 'voucher or other expense reimbursement form . . . for payment or reimbursement of a travel expense incurred by a peace officer while assigned to provide protection for an elected official of this state or a member of the elected official's family.'"

Government Code § 660.2035

Under Subsection (a) of Government Code § 660.2035 "a voucher or other expense reimbursement form, that is submitted [to the comptroller] under Section 660.027 is confidential under Chapter 552 [which contains the Public Information Act'] for a period of 18 months following the date of travel if [the reimbursement is for] a travel expense incurred by a peace officer while assigned to provide protection for an elected official of this state or a member of the elected official's family."



Subsection (b) of Government Code § 660.2035 states that: "At the expiration of the 18 month period, the voucher or expense reimbursement form and any supporting documents *become subject to disclosure under Chapter 552 and are not excepted from public disclosure or confidential under that chapter or other law"* except as provided in a number of sections of Chapter 552. (italics added)

Subsection (g) of Government Code § 660.2035 provides that "[a] state agency that receives a request for information *described by Subsection (a)* during the period provided by that subsection may withhold that information *without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552*." (italics added) Subsection (g) also provides that: "The Supreme Court of Texas has original and exclusive mandamus jurisdiction over any dispute regarding the construction, applicability, or constitutionality *of Subsection* (a). (italics added) The supreme court may appoint a master to assist in the resolution of *any such dispute* as provided in Rule 171, Texas Rules of Civil Procedure, and may adopt additional rules as necessary to govern procedures for the resolution of any such dispute." (italics added)

The Dept. of Public Safety Case

In *Dept. of Public Safety v. Cox Texas*, 343 S.W.3d 112 (Tex. 2011) the Texas Supreme Court interpreted the Texas Public Information Act in connection with requests for information made to the Department of Public Safety for travel vouchers from Governor Perry's "security detail" by reporters representing three newspapers. The DPS requested a ruling from the Attorney General's office, which determined that the release of the information "would place the governor in imminent threat of physical danger."

The Cox and Hearst publishers sued DPS seeking complete disclosure. The trial judge ordered complete disclosure after a bench trial, finding that "public disclosure . . . would not put any person in imminent threat of physical danger or create a substantial risk of serious bodily harm." The court of appeals affirmed. The Texas Supreme Court granted review.

Among other things the Court's decision "recognizes, for the first time, a common law physical safety exception to the PIA." Because the Court had "never before addressed whether or how [the exception] applies to the PIA, the case was remanded to the trial court." 343 S.W.3d 118-121.

Statutory Interpretation

It is unclear to me whether the new legislation substitutes "exclusive mandamus jurisdiction over any dispute regarding the construction, applicability, or constitutionality of Subsection (a)" for all of the procedures employed in *Dept. of Public Safety v. Cox Texas*. But perhaps the limiting reference to "Subsection (a)" in subsection (g)'s rulemaking sentences has a more limited meaning and does not oust the lower courts' jurisdiction to adjudicate the factual issues and the legal issues arising under the PIA and "other law" in such cases. I mentioned this issue to Justice Hecht and Marisa Secco at our last meeting. Their view is that the legislature probably intended to give the supreme court the entire job. With that in mind, I plan to draft a rule for inclusion in Section 3 of the Appellate Rules for discussion purposes and to schedule a conference call to that end.

Please let me know what you think about the meaning of the statutory language.

Attachments

1 of 1 DOCUMENT

TEXAS ADVANCE LEGISLATIVE SERVICE
STATENET

STATENET

TEXAS 82ND LEGISLATURE - 1ST CALLED SESSION

SENATE BILL 1

2011 Tex. SB 1

NOTICE: **[A>** Text within these symbols is added **<A]**
[D> Text within these symbols is deleted **<D]**

... [*79Ax01] SECTION 79A.01. Subchapter H, Chapter 660, Government Code, is amended by adding Section 660.2035 to read as follows:

[A> Sec. 660.2035. CONFIDENTIALITY OF CERTAIN PEACE OFFICER VOUCHERS; QUARTERLY SUMMARIES. (a) A voucher or other expense reimbursement form, and any receipt or ...

other document supporting that voucher or other expense reimbursement form, that is submitted or to be submitted under Section 660.027 is confidential under Chapter 552 for a period of 18 months following the date of travel if the voucher or other expense reimbursement form is submitted or is to be submitted for payment or reimbursement of a travel expense incurred by a peace officer while assigned to provide protection for an elected official of this state or a member of the elected official's family. **<A]**

[A> (b) At the expiration of the period provided by Subsection (a), the voucher or other expense reimbursement form and any supporting documents become subject to disclosure under Chapter 552 and are not excepted from public disclosure or confidential under that chapter or other law, except that the following provisions of that chapter apply to the information in the voucher, reimbursement form, or supporting documents: **<A]**

[A> (1) Section 552.117; **<A]**

[A> (2) Section 552.1175; **<A]**

[A> (3) Section 552.119; **<A]**

[A> (4) Section 552.136; **<A]**

[A> (5) Section 552.137; **<A]**

[A> (6) Section 552.147; and **<A]**

[A> (7) Section 552.152. **<A]**

[A> (c) A state agency that submits vouchers or other expense reimbursement forms described by Subsection (a) shall prepare quarterly a summary of the amounts paid or reimbursed by the comptroller based on those vouchers or other expense reimbursement forms. Each summary must: <A]

[A> (1) list separately for each elected official the final travel destinations and the total amounts paid or reimbursed in connection with protection provided to each elected official and that elected official's family members; and <A]

[A> (2) itemize the amounts listed under Subdivision (1) by the categories of travel, fuel, food, lodging or rent, and other operating expenses. <A]

[A> (d) The itemized amounts under Subsection (c)(2) must equal the total amount listed under Subsection (c)(1) for each elected official for the applicable quarter. <A]

[A> (e) A summary prepared under Subsection (c) may not include: <A]

[A> (1) the number or names of the peace officers or elected official's family members identified in the vouchers, expense reimbursement forms, or supporting documents; <A]

[A> (2) the name of any business or vendor identified in the vouchers, expense reimbursement forms, or supporting documents; or <A]

[A> (3) the locations in which expenses were incurred, other than the city, state, and country in which incurred. <A]

[A> (f) A summary prepared under Subsection (c) is subject to disclosure under Chapter 552, except as otherwise excepted from disclosure under that chapter. <A]

[A> (g) A state agency that receives a request for information described by Subsection (a) during the period provided by that subsection may withhold that information without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552. The Supreme Court of Texas has original and exclusive mandamus jurisdiction over any dispute regarding the construction, applicability, or constitutionality of Subsection (a). The supreme court may appoint a master to assist in the resolution of any such dispute as provided by Rule 171, Texas Rules of Civil Procedure, and

... [*79Ax01] may adopt additional rules as necessary to govern the procedures for the resolution of any such dispute. <A]

[*79Ax02] SECTION 79A.02. Section 660.2035, Government Code, as added by this article, applies according to its terms in relation to travel vouchers or other reimbursement form and any ...

supporting documents that pertain to expenses incurred or paid on or after the effective date of this article.

ARTICLE 80. EFFECTIVE DATE

[*80x01] SECTION 80.01. Except as otherwise provided by this Act:

(1) this Act takes effect September 1, 2011, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for effect on that date:

(A) this Act takes effect on the 91st day after the last day of the legislative session; and

(B) a provision of this Act that purports to take effect on September 1, 2011, takes effect on the date specified by Paragraph (A) of this subdivision.

Approved by the Governor: July 19, 2011

Duncan

Tex. Gov't Code § 660.027

GOVERNMENT CODE
TITLE 6. PUBLIC OFFICERS AND EMPLOYEES
SUBTITLE B. STATE OFFICERS AND EMPLOYEES
CHAPTER 660. TRAVEL EXPENSES
SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

GO TO TEXAS CODE ARCHIVE DIRECTORY

Tex. Gov't Code § 660.027 (2011)

§ 660.027. Vouchers

(a) The comptroller may issue a warrant or initiate an electronic funds transfer to pay or reimburse a travel expense only if a state agency submits to the com

(b) A voucher submitted under Subsection (a) is valid only if:

(1) the state agency submitting the voucher approves it in accordance with Chapter 2103 and, if required by law, certifies the voucher; and

(2) the state employee who incurred the travel expense or, if the employee is unavailable, another individual acceptable to the comptroller approves the descri

ATTACHMENT A

Rule 52A. Other Original Actions in the Supreme Court

52A.1 *Application of Rule* This rule applies to an action invoking the Supreme Court's exclusive, original jurisdiction as provided by statute.

52A.2 *Procedure in Original Actions* Except as provided by this rule or by court order, original actions shall be governed by the procedures in Appellate Rule 52.

52A.3 *Record in Original Action*

(a) *Relator's Proof.* In addition to the items delineated in Appellate Rule 52.7, the relator may file:

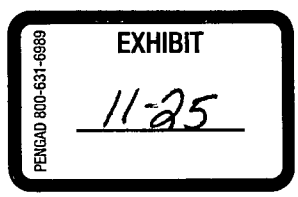
(1) a stipulation or partial stipulation of facts;

(2) authenticated or certified public records and

(3) affidavits of the type and in the form provided for by Texas Rule of Civil Procedure 166a, in support of the relief sought in the petition.

(b) *Respondent's Proof.* Respondents may supplement the record as provided by Appellate Rule 52.7 and may serve objections to the relator's proof , opposing affidavits or other evidence contesting the relator's right to relief.

(c) *Special Master.* At any time during the pendency of an original action, the Court may appoint a special master to preside over the conduct of pretrial discovery described in the order, to take such evidence as may be



necessary to resolve factual issues and to report the master's findings and conclusions to the Court. The Court's order appointing the special master must identify the factual issues to be resolved by the master. The order may also establish time deadlines for decision and modify the rules of procedure and discovery as necessary to accommodate the deadlines. [The Court may confirm, modify, correct, reject, reverse or recommit the master's report in resolving the dispute.]