SCAC MEETING AGENDA-AMENDED
Friday, September 3rd, 2021 [9:00 a.m. – 5:00 p.m.]
VIA ZOOM

1. **WELCOME (C. BABCOCK)**

2. **STATUS REPORT FROM CHIEF JUSTICE HECHT**
   Chief Justice Hecht will report on Supreme Court actions and those of other courts related to the Supreme Court Advisory Committee since the June 18, 2021 meeting.

3. **COMMENTS FROM JUSTICE BLAND**

4. **SEIZURE EXEMPTION RULES AND FORM**

   Legislative Sub-Committee Members:
   Jim Perdue – Chair
   Peter Schenkkan – Vice Chair
   Prof. Elaine Carlson
   Hon. David Evans
   Robert Levy
   Richard Orsinger
   Richard Tomlinson – *Lone Star Legal Aid – On behalf of Debtors*
   Craig Noack *– Co-Chair, Legal Administrative –*
   On behalf of Creditors
   Affairs Committee for Texas Creditors Bar Association
   Ann Baddour – *Texas Appleseed*

   A. June 2, 2021 Referral Letter from Chief Justice Hecht with supporting bills
   B. August 19, 2021 Email from Richard Orsinger with assignment information
   C. August 25, 2021 Memorandum from Rich Tomlinson – Proposed Garnishment & Turnover Rules with attachments A-D.
   D. Proposal by Texas Creditors Bar Assc. Relating to HB 3774 Exemptions – Final
   E. Proposal by Texas Creditors Bar Assc. Relating to HB 3774 Exemptions – Sept 1, 2021
   F. A Brief Response to the Texas Appleseed Proposal

5. **RULE OF JUDICIAL ADMINISTRATION 7**

   Judicial Sub-Committee Members:
   Hon. Bill Boyce – Chair
   Keenon Wooten – Vice Chair
   Nina Cortell
   Hon. Tom Gray
   Michael Hatchellf
   Prof. Lonny Hoffman
   Hon. David Newell
   Hon. David Peeples

Hon. Maria Salas-Mendoza

G. September 1, 2021 Report from Judicial Sub-Committee
H. August 4, 2021 Email from Honorable Christopher with update

6. RULE OF CIVIL PROCEDURE 199.2

Rule 167 – 206 Sub-Committee Members:
Robert Meadows – Chair
Hon. Tracy Christopher – Vice Chair
Prof. Alexandra Albright
Manuel Berrelez
Harvey Brown
Alistair Dawson
David B. Jackson
Hon. Ana Estevez
Kimberly Phillips
Evan Young

I. August 27, 2021 Report form 167 – 206 Sub-Committee
6-2. February 14, 2021 Article by Richard Orsinger regarding Discovery Subpoenas and Depositions of Entities

7. RULE OF CIVIL PROCEDURE 226A

Rule 216-299a Sub-Committee Members:
Prof. Elaine Carlson – Chair
Thomas Riney – Vice Chair
Alistair Dawson
Marcy Greer
Rusty Hardin
John Kim
Robert Meadows
Hon. David Peeples
Hon. Robert Schaffer
Kent Sullivan
Hon. Cathy Stryker
Kennon Wooten

J. August 24, 2021 Report from 216 – 299a Sub-Committee
7-2. Jury Selection Report regarding Juror Comprehension in reference to Implicit Bias

8. ***JURY RULES***

216-299a Sub-Committee Members:
Prof. Elaine Carlson – Chair
Thomas Riney – Vice Chair
Alistair Dawson
Marcy Greer
Rusty Hardin
John Kim
Robert Meadows
Hon. David Peeples
Hon. Robert Schaffer
Kent Sullivan
Hon. Cathy Stryker
John Warren
Kennon Wooten

K. March 29, 2021 Referral Letter from Chief Justice Hecht
L. August 24, 2021 Report from 216 – 299a Sub-Committee
M. April 29, 2021 Jury Rules with proposed changes
N. August 12, 2021 Email from T. Riney with update
8-2. August 19, 2021 Email from R. Orsinger with update

9. **SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP & OUT OF TIME APPEALS IN PARENTAL RIGHTS TERMINATION CASES**
[Stage 1(b) & Stage 2 still pending]

Appellate Sub-Committee Members:
Pamela Baron – Chair
Hon. Bill Boyce – Vice Chair
Prof. Elaine Carlson
Prof. William Dorsaneo
Connie Pfeiffer
Richard Phillips
Scott Stolley
Charles Watson
Evan Young
Judge Rob Hofmann, ***452nd District Court***

O. May 31, 2019 Referral Letter (without supporting docs)
P. September 1, 2021 Report from the Appellate Sub-Committee
Q. April 12, 2021 Report from Appellate Sub-Committee

Tab A

The Supreme Court of Texas

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June 2, 2021

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

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters. Some require immediate attention, while others are longer-range initiatives. I have provided a complete list for the Committee's information.

Several matters arise from legislation passed by the 87th Legislature, which, if signed by the Governor, takes effect immediately or on September 1, 2021. The Committee should conclude its work on them by its June 18, 2021, meeting. Many of the changes may be simple and straightforward. They are:

MDL Applicability. Government Code §§ 74.161-.201 create the Judicial Panel on Multidistrict Litigation, and Rule of Judicial Administration 13 governs its operation. HB 2950, § 2 amends § 74.1625(a) to prohibit the MDL panel from transferring a Texas Medicaid Fraud Prevention Act action "brought by the consumer protection division of the attorney general's office." The amendment does not direct that Rule 13 be changed, but the Committee should consider whether the text of Rule 13.1 should be changed to reference or restate the statute.

Family Violence Protective Orders. Rule of Civil Procedure 107(h) states: "No default judgment shall be granted in any case until proof of service . . . [has] been on file with the clerk of the court ten days . . . ." HB 39, § 2 amends Family Code § 85.006 to state: "Notwithstanding TRCP 107, a court may render a protective order that is binding on a respondent who does not attend a hearing if: (1) the respondent received service of the [protective order] application and notice of the hearing; and (2) proof of service was filed with the court before the time set for

hearing." The Committee should consider whether Rule 107(h) should be changed or a comment added to reference or restate the statute.

Time Limits for Child Protection Cases. Rule of Judicial Administration 6 governs time standards for the disposition of cases. HB 567, § 10 adds Family Code § 263.4011 to require a 90-day period for rendering a final order in a child protection case after the date the trial commences. The Committee should consider whether Rule 6 should be changed or a comment added to reference or restate the statute.

Uri-Related Direct Appeals. Several bills add provisions to the Utilities Code to provide that certain district court judgments related to a Winter Storm Uri "may be reviewed only by direct appeal to the Supreme Court of Texas": HB 1520, HB 4492, and SB 1580. The Committee should consider whether Rule of Appellate Procedure 57, governing direct appeals, should be changed or a comment added to reference or restate the statutes.

Protection of Sensitive Data. HB 1540 and HB 2669 add several statutes to protect sensitive data. HB 1540, § 4 adds Civil Practice and Remedies Code § 98.007 to permit a claimant in a trafficking suit to use a confidential identity and require a court use a confidential identity and maintain records in a confidential manner. § 98.007 also prohibits the Court from amending or adopting rules in conflict with § 98.007. HB 2669 amends Code of Criminal Procedure Art. 44.2811 and reenacts and amends Art. 45.0217 to make confidential a child's criminal records related to certain misdemeanor offenses. The Committee should consider whether the sensitive data rules should be changed or a comment added to reference or restate the statutes.

Sexual Assault Survivor Privilege. SB 295, § 3 amends Gov't Code § 420.071 to provide a sexual assault survivor with the privilege to refuse to disclose any communication with an advocate employed by or volunteering at a sexual assault program and related records. The Committee should consult with the State Bar of Texas Administration of Rules of Evidence Committee and consider whether Article V of the Texas Rules of Evidence, governing privileges, should be changed or a comment added to reference or restate the statute.

Oaths in Oral Depositions. HB 3774, § 17.07 adds Gov't Code § 154.105 to allow court reporters to administer the oath to certain witnesses, even if they are not in the same location as the witness. The Committee should consider whether Rule of Civil Procedure 199.1(b), governing remote oral depositions, should be changed or a comment added to reference or restate the statute.

One other matter arising from legislation passed by the 87th Legislature requires rulemaking by May 1, 2022.

Seizure Exemption Rules and Form. HB 3774, § 15.01 adds Gov't Code § 22.0042, which directs the Court to adopt rules that "establish a simple and expedited procedure for a judgment debtor to assert an exemption to the seizure of personal property by a judgment creditor or receiver" and a form for asserting such exemption. § 22.0042 also directs the Court to adopt rules that "require a court to stay a proceeding for a reasonable period, to allow for the assertion of [such] exemption" and "require a court to promptly set a hearing and stay proceedings until a

hearing is held, if a judgment debtor timely asserts [such] exemption." The Committee should consult with justice court stakeholders and make recommendations.

Finally, there are several matters unrelated to recent legislation on which the Court requests the Committee's recommendations.

Rule of Judicial Administration 7. In the attached report, the Remote Proceedings Task Force recommends updating Rule of Judicial Administration 7 to include remote proceedings. The Committee should make recommendations.

Rule of Civil Procedure 199.2. In the attached memorandum, the State Bar of Texas Court Rules Committee proposes amendments to Rule of Civil Procedure 199.2. The Committee should review the proposal and make recommendations.

Rule of Civil Procedure 226a. In the attached memorandum, the State Bar of Texas Rules Committee proposes adding implicit bias instructions to Rule of Civil Procedure 226a. The Committee should review the proposal and make recommendations.

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

Sincerely,

Nathan L. Hecht
Chief Justice

Attachments

AN ACT

relating to the operation and administration of and practice and procedure related to proceedings in the judicial branch of state government.

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

ARTICLE 1. DISTRICT COURTS

SECTION 1.01. (a) Effective January 1, 2022, Section 24.129(b), Government Code, is amended to read as follows:

(b) The 27th, 146th, 169th, 264th, [~~and~~] 426th, and 478th judicial districts have concurrent jurisdiction in Bell County.

(b) Effective January 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60022 to read as follows:

Sec. 24.60022. 478TH JUDICIAL DISTRICT (BELL COUNTY). (a) The 478th Judicial District is composed of Bell County.

(b) The terms of the 478th District Court begin on the first Mondays in January, April, July, and October.

(c) Section 24.129, relating to the 27th District Court, contains provisions applicable to both that court and the 478th District Court.

(c) The 478th Judicial District is created on January 1, 2022.

SECTION 1.02. (a) Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60027 to read as follows:

Sec. 24.60027. 482ND JUDICIAL DISTRICT (HARRIS COUNTY). The 482nd Judicial District is composed of Harris County.

(b) The 482nd Judicial District is created on the effective date of this Act.

SECTION 1.03. (a) Effective January 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60030 to read as follows:

Sec. 24.60030. 485TH JUDICIAL DISTRICT (TARRANT COUNTY). (a) The 485th Judicial District is composed of Tarrant County.

(b) The 485th District Court shall give preference to criminal matters.

(b) The 485th Judicial District is created on January 1, 2022.

SECTION 1.04. (a) Effective October 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60025 to read as follows:

Sec. 24.60025. 480TH JUDICIAL DISTRICT (WILLIAMSON COUNTY). The 480th Judicial District is composed of Williamson County.

(b) The 480th Judicial District is created on October 1, 2022.

SECTION 1.05. (a) Effective January 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60026 to read as follows:

Sec. 24.60026. 481ST JUDICIAL DISTRICT (DENTON COUNTY). The 481st Judicial District is composed of Denton County.

(b) The 481st Judicial District is created on January 1,

2022.

SECTION 1.06. (a) Effective September 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60028 to read as follows:

Sec. 24.60028. 483RD JUDICIAL DISTRICT (HAYS COUNTY). The 483rd Judicial District is composed of Hays County.

(b) The 483rd Judicial District is created on September 1, 2022.

SECTION 1.07. (a) Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60029 to read as follows:

Sec. 24.60029. 484TH JUDICIAL DISTRICT (CAMERON COUNTY). (a) The 484th Judicial District is composed of Cameron County.

(b) The 484th District Court shall give preference to juvenile matters under Title 3, Family Code.

(b) The 484th Judicial District is created on the effective date of this Act.

SECTION 1.08. (a) Effective October 1, 2022, Section 24.120(b), Government Code, is amended to read as follows:

(b) The 19th, 54th, 74th, 170th, [~~and~~] 414th, and 474th district courts have concurrent jurisdiction in McLennan County.

(b) Effective October 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60097 to read as follows:

Sec. 24.60097. 474TH JUDICIAL DISTRICT (MCLENNAN COUNTY). The 474th Judicial District is composed of McLennan County.

(c) The 474th Judicial District is created on October 1, 2022.

SECTION 1.09. (a) Effective January 1, 2023, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60098 to read as follows:

Sec. 24.60098. 475TH JUDICIAL DISTRICT (SMITH COUNTY). The 475th Judicial District is composed of Smith County.

(b) The 475th Judicial District is created January 1, 2023.

SECTION 1.10. (a) Effective September 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60099 to read as follows:

Sec. 24.60099. 476TH JUDICIAL DISTRICT (HIDALGO COUNTY). The 476th Judicial District is composed of Hidalgo County.

(b) The 476th Judicial District is created on September 1, 2022.

ARTICLE 2. STATUTORY COUNTY COURTS AND CONSTITUTIONAL COUNTY COURTS

SECTION 2.01. Section 25.00211(a), Government Code, is amended to read as follows:

(a) Beginning on the first day of the state fiscal year, the state shall annually compensate each county that collects the additional fees under Section 51.704 in an amount equal to 60 percent of the annual base salary the state pays to a district judge as set by the General Appropriations Act in accordance with Section 659.012(a) [~~$40,000~~] for each statutory probate court judge in the county.

SECTION 2.02. Section 25.0172(p), Government Code, is amended to read as follows:

(p) The county clerk shall keep a separate docket for each

county court at law. The county clerk shall appoint a deputy clerk for each county court at law. [~~An appointment of a deputy clerk of County Court at Law No. 2 or 3 takes effect when it is confirmed in writing by the judge of the court to which the deputy clerk is assigned and the deputy clerk serves at the pleasure of the judge of the court to which he is assigned.~~] A deputy clerk must take the constitutional oath of office and may be required to furnish bond in an amount, conditioned and payable, as required by the county clerk. A deputy clerk must attend all sessions of the court to which the deputy clerk [~~he~~] is assigned. A deputy clerk acts in the name of the county clerk and may perform any official act or service required of the county clerk and shall perform any other service required by the judge of a county court at law. The deputy clerks may act for one another in performing services for the county courts at law, but a deputy is not entitled to receive additional compensation for acting for another deputy. If a vacancy occurs, the county clerk shall immediately appoint another deputy clerk as provided by this subsection. [~~A deputy clerk of a county court at law is entitled to the same amount of compensation as received by the deputy clerks of the other county courts at law in Bexar County. The commissioners court shall pay the salary of a deputy clerk in equal monthly installments from county funds.~~]

SECTION 2.03. Section 25.0173(g), Government Code, is amended to read as follows:

(g) The county clerk shall appoint a deputy clerk for each statutory probate court. [~~An appointment takes effect when it is confirmed in writing by the judge of the court to which the deputy~~

~~clerk is assigned.~~] A deputy clerk serves at the pleasure of the judge of the court to which the deputy clerk is assigned. A deputy clerk must take the constitutional oath of office, and the county clerk may require the deputy clerk to furnish a bond in an amount, conditioned and payable, as required by law. A deputy clerk acts in the name of the county clerk and may perform any official act or service required of the county clerk and shall perform any other service required by the judge of a statutory probate court. A deputy clerk must attend all sessions of the court to which the deputy clerk [~~he~~] is assigned. [~~A deputy clerk is entitled to receive an annual salary set by the judge in an amount that does not exceed the amount paid the deputies of the county courts at law of Bexar County. The salary shall be paid in equal monthly installments as provided by law for the payment of salaries of deputy clerks.~~]

SECTION 2.04. (a) Effective January 1, 2022, Sections 25.0631(b) and (c), Government Code, are amended to read as follows:

(b) Denton County has the following statutory probate courts:

(1) [~~one statutory probate court, the~~] Probate Court of Denton County; and

(2) Probate Court Number 2 of Denton County.

(c) The statutory county courts of Denton County sit in the county seat or at another location in the county as assigned by the local administrative statutory county court judge. The statutory probate courts [~~court~~] of Denton County sit [~~sits~~] in the county

seat and may conduct docket matters at other locations in the county as the statutory probate court judges consider [~~judge considers~~] necessary for the protection of wards or mental health respondents or as otherwise provided by law.

(b) Section 25.0632(i), Government Code, is amended to read as follows:

(i) A judge of a statutory probate court is subject to assignment as provided by Section 25.0022. On request by the judge of a Denton County statutory county court, a judge of a statutory probate court may be assigned by the regional presiding judge to the requesting judge's court pursuant to Chapter 74. A statutory probate court judge assigned to a statutory county court by the regional presiding judge may hear any matter pending in the requesting judge's court.

(c) Section 25.0633(e), Government Code, is amended to read as follows:

(e) The County Court at Law No. 2 of Denton County has jurisdiction:

(1) over all civil causes and proceedings, original and appellate, prescribed by law for county courts; and

(2) regardless of the amount in controversy sought, over:

(A) eminent domain cases as provided by Section 21.001, Property Code, for statutory county courts; and

(B) direct and inverse condemnation cases.

(d) The Probate Court Number 2 of Denton County is created on January 1, 2022.

SECTION 2.05. (a) Effective October 1, 2022, Subchapter C, Chapter 25, Government Code, is amended by adding Sections 25.1331 and 25.1332 to read as follows:

Sec. 25.1331. KENDALL COUNTY. Kendall County has one statutory county court, the County Court at Law of Kendall County.

Sec. 25.1332. KENDALL COUNTY COURT AT LAW PROVISIONS. (a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Kendall County has:

(1) concurrent jurisdiction with the district court in state jail, third degree, and second degree felony cases on assignment from a district judge presiding in Kendall County and acceptance of the assignment by the judge of the county court at law to:

(A) conduct arraignments;

(B) conduct pretrial hearings;

(C) accept guilty pleas and conduct sentencing;

(D) conduct jury trials and nonjury trials;

(E) conduct probation revocation hearings;

(F) conduct post-trial proceedings; and

(G) conduct family law cases and proceedings; and

(2) jurisdiction in:

(A) Class A and Class B misdemeanor cases;

(B) probate proceedings;

(C) disputes ancillary to probate, eminent domain, condemnation, or landlord and tenant matters relating to the adjudication and determination of land titles and trusts, whether testamentary, inter vivos, constructive, resulting, or any

other class or type of trust, regardless of the amount in controversy or the remedy sought;

(D) eminent domain; and

(E) appeals from the justice and municipal courts.

(b) A judge of a county court at law shall be paid a total annual salary set by the commissioners court in an amount that is not less than $1,000 less than the annual salary received by a district judge with equivalent years of service as a judge, as provided under Section 25.0005, to be paid out of the county treasury by the commissioners court.

(c) The district clerk serves as clerk of a county court at law in matters of concurrent jurisdiction with the district court, and the county clerk serves as clerk of a county court at law in all other matters. Each clerk shall establish a separate docket for a county court at law.

(d) The official court reporter of a county court at law is entitled to receive the same compensation and to be paid in the same manner as the court reporters of the district court in Kendall County.

(b) The County Court at Law of Kendall County is created on October 1, 2022.

SECTION 2.06. (a) Section 25.1571, Government Code, is amended to read as follows:

Sec. 25.1571. MCLENNAN COUNTY. McLennan County has the following statutory county courts:

(1) County Court at Law of McLennan County; [~~and~~]

(2) County Court at Law No. 2 of McLennan County; and

(3) County Court at Law No. 3 of McLennan County.

(b) Section 25.1572, Government Code, is amended by amending Subsections (a), (d), and (i) and adding Subsections (b), (c), and (e) to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law and except as limited by Subsection (b), a county court at law in McLennan County has jurisdiction in third degree felony cases and jurisdiction to conduct arraignments, conduct pretrial hearings, accept guilty pleas, and conduct probation revocation hearings in felony cases.

(b) On request of a district judge presiding in McLennan County, the regional presiding judge may assign a judge of a county court at law in McLennan County to the requesting judge's court under Chapter 74. A county court at law judge assigned to a district court may hear any matter pending in the requesting judge's court.

(c) A county court at law does not have jurisdiction in:

(1) suits on behalf of the state to recover penalties or escheated property;

(2) misdemeanors involving official misconduct; or

(3) contested elections.

(d) A judge of a county court at law shall be paid an annual base salary set by the commissioners court in an amount not less than $1,000 less than the annual base salary the state pays to a district judge as set by the General Appropriations Act in accordance with Section 659.012 with equivalent years of service as

the judge [~~of not more than $20,000~~]. A county court at law judge's and a district judge's annual base salaries do not include contributions and supplements paid by the county [~~Each judge receives the same amount as salary. The salary shall be paid out of the county treasury by the commissioners court~~].

(e) The district clerk serves as clerk of a county court at law in matters of concurrent jurisdiction with the district court. The county clerk serves as the clerk of a county court at law in all other matters. Each clerk shall establish a separate docket for a county court at law.

(i) The official court reporter of a county court at law is entitled to receive a salary set by the judge of a county court at law with the approval of the commissioners court [~~the same compensation and to be paid in the same manner as the court reporters of the district courts in McLennan County~~].

(c) The County Court at Law No. 3 of McLennan County is created on the effective date of this Act.

SECTION 2.07. (a) Section 25.1721, Government Code, is amended to read as follows:

Sec. 25.1721. MONTGOMERY COUNTY. Montgomery County has the following statutory county courts:

(1) County Court at Law No. 1 of Montgomery County;

(2) County Court at Law No. 2 of Montgomery County;

(3) County Court at Law No. 3 of Montgomery County;

(4) County Court at Law No. 4 of Montgomery County; [~~and~~]

(5) County Court at Law No. 5 of Montgomery County;

and

(6) County Court at Law No. 6 of Montgomery County.

(b) The County Court at Law No. 6 of Montgomery County is created on the effective date of this Act.

SECTION 2.08. Sections 25.1972(a) and (b), Government Code, are amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, and except as limited by Subsection (b), a county court at law in Reeves County has:

(1) concurrent jurisdiction with the district court:

(A) in disputes ancillary to probate, eminent domain, condemnation, or landlord and tenant matters relating to the adjudication and determination of land titles and trusts, whether testamentary, inter vivos, constructive, resulting, or any other class or type of trust, regardless of the amount in controversy or the remedy sought;

(B) over civil forfeitures, including surety bond forfeitures without minimum or maximum limitation as to the amount in controversy or remedy sought;

(C) in all actions by or against a personal representative, in all actions involving an inter vivos trust, in all actions involving a charitable trust, and in all actions involving a testamentary trust, whether the matter is appertaining to or incident to an estate;

(D) in proceedings under Title 3, Family Code; and

(E) in family law cases and proceedings [~~any~~

~~proceeding involving an order relating to a child in the possession or custody of the Department of Family and Protective Services or for whom the court has appointed a temporary or permanent managing conservator~~];

(2) jurisdiction in mental health matters, original or appellate, provided by law for constitutional county courts, statutory county courts, or district courts with mental health jurisdiction, including proceedings under:

(A) Chapter 462, Health and Safety Code; and

(B) Subtitles C and D, Title 7, Health and Safety Code;

(3) jurisdiction over the collection and management of estates of minors, persons with a mental illness or intellectual disability, and deceased persons; and

(4) jurisdiction in all cases assigned, transferred, or heard under Sections 74.054, 74.059, and 74.094.

(b) A county court at law does not have jurisdiction of:

(1) felony cases, except as otherwise provided by law;

(2) misdemeanors involving official misconduct unless assigned under Sections 74.054 and 74.059; or

(3) contested elections[~~; or~~

[~~(4) except as provided by Subsections (a)(1)(D) and (E), family law cases~~].

SECTION 2.09. (a) Effective January 1, 2023, Section 25.2071(a), Government Code, is amended to read as follows:

(a) San Patricio County has the following [~~one~~] statutory county courts:

(1) [~~court,~~] the County Court at Law of San Patricio County; and

(2) the County Court at Law No. 2 of San Patricio County.

(b) Effective January 1, 2023, Section 25.2072, Government Code, is amended by amending Subsections (a), (d), and (m) and adding Subsections (g-1) and (g-2) to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in San Patricio County has concurrent jurisdiction with the district court except that a county court at law does not have jurisdiction of:

(1) felony criminal matters; and

(2) civil cases in which the matter in controversy exceeds the maximum amount provided by Section 25.0003 [~~in matters involving the juvenile and child welfare law of this state~~].

(d) [~~The judge of a county court at law shall be paid an annual salary in an amount of not less than $43,000.~~] The judge of a county court at law is entitled to receive travel and necessary office expenses, including administrative and clerical assistance.

(g-1) The county clerk serves as clerk of a county court at law except in family law cases. In family law cases, including juvenile and child welfare cases, the district clerk serves as clerk of a county court at law. The district clerk shall establish a separate family law docket for each county court at law.

(g-2) The commissioners court shall provide the deputy clerks, bailiffs, and other personnel necessary to operate the county courts at law.

(m) The judge of the county court and the judges [~~judge~~] of the [~~a~~] county courts [~~court~~] at law may agree on a plan governing the filing, numbering, and docketing of cases within the concurrent jurisdiction of their courts and the assignment of those cases for trial. The plan may provide for the centralized institution and filing of all such cases with one court, clerk, or coordinator designated by the plan and for the systemized assignment of those cases to the courts participating in the plan, and the provisions of the plan for the centralized filing and assignment of cases shall control notwithstanding any other provisions of this section. If the judges of the county court and the county courts [~~court~~] at law are unable to agree on a filing, docketing, and assignment of cases plan, a board of judges composed of the district judges and the county court at law judges for San Patricio County [~~the presiding judge of the 36th Judicial District~~] shall design a plan for the [~~both~~] courts.

(c) The County Court at Law No. 2 of San Patricio County is created January 1, 2023.

SECTION 2.10. Effective January 1, 2023, Section 25.2223(l), Government Code, is amended to read as follows:

(l) The County Criminal Court No. 5 of Tarrant County and the County Criminal Court No. 6 of Tarrant County shall give preference to cases brought under Title 5, Penal Code, involving family violence as defined by Section 71.004, Family Code, and cases brought under Sections 25.07, 25.072, and 42.072, Penal Code.

SECTION 2.11. (a) Effective October 1, 2022, Section 25.2481, Government Code, is amended to read as follows:

Sec. 25.2481. WILLIAMSON COUNTY. Williamson County has the following statutory county courts:

(1) County Court at Law No. 1 of Williamson County;

(2) County Court at Law No. 2 of Williamson County;

(3) County Court at Law No. 3 of Williamson County; [~~and~~]

(4) County Court at Law No. 4 of Williamson County; and

(5) County Court at Law No. 5 of Williamson County.

(b) The County Court at Law No. 5 of Williamson County is created on October 1, 2022.

SECTION 2.12. (a) Sections 26.006(a) and (b), Government Code, are amended to read as follows:

(a) A county judge is entitled to an annual salary supplement from the state in an amount equal to 18 percent of the state base salary paid to a district judge as set by the General Appropriations Act in accordance with Section 659.012(a) if at least 18 [~~40~~] percent of the:

(1) functions that the judge performs are judicial functions; or

(2) total hours that the judge works are in the performance of judicial functions.

(b) To receive a supplement under Subsection (a), a county judge must file with the comptroller's judiciary section an affidavit stating that at least 18 [~~40~~] percent of the:

(1) functions that the judge performs are judicial functions; or

(2) total hours that the judge works are in the performance of judicial functions.

(b) The changes in law made by this section take effect on the effective date of this Act and apply only to a salary payment for a pay period beginning on or after that date. A salary payment for a pay period beginning before the effective date of this Act is governed by the law in effect on the date the pay period began, and that law is continued in effect for that purpose.

ARTICLE 3. JUSTICE AND MUNICIPAL COURTS

SECTION 3.01. Article 4.14(g), Code of Criminal Procedure, is amended to read as follows:

(g) A municipality may enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for:

(1) all cases in which either municipality has jurisdiction under Subsection (a) or (b); and

(2) cases that arise under Section 821.022, Health and Safety Code.

SECTION 3.02. Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.0241 to read as follows:

Art. 45.0241. ACCEPTANCE OF DEFENDANT'S PLEA. A justice or judge may not accept a plea of guilty or plea of nolo contendere from a defendant in open court unless it appears to the justice or

judge that the defendant is mentally competent and the plea is free and voluntary.

SECTION 3.03. Article 103.003, Code of Criminal Procedure, is amended by adding Subsection (a-1) to read as follows:

(a-1) The clerk of a municipal court may collect money payable to the municipal court under this title.

SECTION 3.04. Article 103.0081, Code of Criminal Procedure, is amended to read as follows:

Art. 103.0081. UNCOLLECTIBLE FINES AND FEES. (a) Any officer authorized by this chapter to collect a fine, fee, or item of cost may request the trial court in which a criminal action or proceeding was held to make a finding that a fine, fee, or item of cost imposed in the action or proceeding is uncollectible if the officer believes:

(1) the defendant is deceased;

(2) the defendant is serving a sentence for imprisonment for life or life without parole; or

(3) the fine, fee, or item of cost has been unpaid for at least 15 years.

(b) On a finding by a court that any condition described by Subsections (a)(1)-(3) is true, the court may order the officer to designate the fine, fee, or item of cost as uncollectible in the fee record. The officer shall attach a copy of the court's order to the fee record.

SECTION 3.05. Section 29.003(i), Government Code, is amended to read as follows:

(i) A municipality may enter into an agreement with a

contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for:

(1) all cases in which either municipality has jurisdiction under Subsection (a) or (b); and

(2) cases that arise under Section 821.022, Health and Safety Code, or Section 65.003(a), Family Code.

SECTION 3.06. Section 292.001(d), Local Government Code, is amended to read as follows:

(d) A justice of the peace court may not be housed or conducted in a building located outside the court's precinct except as provided by Section 27.051(f) or 27.0515, Government Code, or unless the justice of the peace court is situated in the county courthouse in a county with a population of at least 305,000 [~~275,000~~] persons and the county seat of which is located in the Llano Estacado region of this state [~~but no more than 285,000 persons~~].

ARTICLE 4. JUVENILE JUSTICE AND FAMILY COURTS

SECTION 4.01. Subchapter H, Chapter 6, Family Code, is amended by adding Section 6.712 to read as follows:

Sec. 6.712. DATE OF MARRIAGE REQUIREMENT IN FINAL DECREE. (a) In a suit for dissolution of a marriage in which the court grants a divorce, the court shall state the date of the marriage in the decree of divorce.

(b) This section does not apply to a suit for dissolution of a marriage described by Section 2.401(a)(2).

SECTION 4.02. Section 51.02, Family Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Dual status child" means a child who has been referred to the juvenile justice system and is:

(A) in the temporary or permanent managing conservatorship of the Department of Family and Protective Services;

(B) the subject of a case for which family-based safety services have been offered or provided by the department;

(C) an alleged victim of abuse or neglect in an open child protective investigation; or

(D) a victim in a case in which, after an investigation, the department concluded there was reason to believe the child was abused or neglected.

SECTION 4.03. Section 51.04(h), Family Code, is amended to read as follows:

(h) A judge exercising jurisdiction over a child in a suit instituted under Subtitle E, Title 5, may refer any aspect of a suit involving a dual status [~~the~~] child that is instituted under this title to the appropriate associate judge appointed under Subchapter C, Chapter 201, serving in the county and exercising jurisdiction over the child under Subtitle E, Title 5, if the associate judge consents to the referral. The scope of an associate judge's authority over a suit referred under this subsection is subject to any limitations placed by the court judge in the order of referral.

SECTION 4.04. Section 51.0414(a), Family Code, is amended to read as follows:

(a) The juvenile court may transfer a dual status child's case, including transcripts of records and documents for the case, to a district or statutory county court located in another county that is exercising jurisdiction over the child in a suit instituted under Subtitle E, Title 5. A case may only be transferred under this section with the consent of the judge of the court to which the case is being transferred.

SECTION 4.05. Sections 107.004(d) and (e), Family Code, are amended to read as follows:

(d) Except as provided by Subsection (e), an attorney ad litem appointed for a child in a proceeding under Chapter 262, [~~or~~] 263, or 264 shall:

(1) meet before each court hearing with:

(A) the child, if the child is at least four years of age; or

(B) the individual with whom the child ordinarily resides, including the child's parent, conservator, guardian, caretaker, or custodian, if the child is younger than four years of age; and

(2) report to the court whether [~~if the child or individual is not present at the court hearing, file a written statement with the court indicating that~~] the attorney ad litem:

(A) complied with Subdivision (1); or

(B) requests that the court find good cause for noncompliance because compliance was not feasible or in the best

interest of the child under Subsection (e).

(e) An attorney ad litem appointed for a child in a proceeding under Chapter 262, [~~or~~] 263, or 264 is not required to comply with Subsection (d) before a hearing if the court finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance with that subsection is not feasible or in the best interest of the child. Additionally, a court may, on a showing of good cause, authorize an attorney ad litem to comply with Subsection (d) by conferring with the child or other individual, as appropriate, by telephone or video conference.

SECTION 4.06. The change in law made by Section 6.712, Family Code, as added by this article, applies only to a suit for dissolution of a marriage filed on or after the effective date of this Act. A suit for dissolution of a marriage filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

ARTICLE 5. MAGISTRATES AND MAGISTRATE COURTS

SECTION 5.01. Article 4.01, Code of Criminal Procedure, is amended to read as follows:

Art. 4.01. WHAT COURTS HAVE CRIMINAL JURISDICTION. The following courts have jurisdiction in criminal actions:

1. The Court of Criminal Appeals;

2. Courts of appeals;

3. The district courts;

4. The criminal district courts;

5. The magistrates appointed by the judges of the

district courts of Bexar County, Dallas County, Tarrant County, or Travis County that give preference to criminal cases and the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County;

6. The county courts;

7. All county courts at law with criminal jurisdiction;

8. County criminal courts;

9. Justice courts;

10. Municipal courts;

11. The magistrates appointed by the judges of the district courts of Lubbock County; [~~and~~]

12. The magistrates appointed by the El Paso Council of Judges;

13. The magistrates appointed by the Collin County Commissioners Court;

14. The magistrates appointed by the Brazoria County Commissioners Court or the local administrative judge for Brazoria County; and

15. The magistrates appointed by the judges of the district courts of Tom Green County.

SECTION 5.02. Section 54.1502, Government Code, is amended to read as follows:

Sec. 54.1502. JURISDICTION. A magistrate has concurrent criminal jurisdiction with:

(1) the judges of the justice of the peace courts of Burnet County; and

(2) a municipal court in Burnet County, if approved by a memorandum of understanding between the municipality and Burnet County.

SECTION 5.03. Chapter 54, Government Code, is amended by adding Subchapter PP to read as follows:

SUBCHAPTER PP. BRAZORIA COUNTY CRIMINAL LAW MAGISTRATE COURT

Sec. 54.2501. CREATION. The Brazoria County Criminal Law Magistrate Court is a court with the jurisdiction provided by this subchapter.

Sec. 54.2502. APPOINTMENT. (a) On recommendation from the local administrative judge, the commissioners court of Brazoria County may appoint one or more full- or part-time judges to preside over the criminal law magistrate court for the term determined by the commissioners court. The local administrative judge shall appoint one or more full- or part-time judges to preside over the criminal law magistrate court if the commissioners court is prohibited by law from appointing a judge.

(b) To be eligible for appointment as a judge of the criminal law magistrate court, a person must meet all the requirements and qualifications to serve as a district court judge.

(c) A judge of the criminal law magistrate court is entitled to the salary set by the commissioners court. The salary may not be less than the annual base salary paid to a district judge under Chapter 659.

(d) A judge appointed under this section serves at the pleasure of the commissioners court or the local administrative judge, as applicable.

Sec. 54.2503. JURISDICTION. (a) Except as provided by this subsection, the criminal law magistrate court has the criminal jurisdiction provided by the constitution and laws of this state for county courts at law. The criminal law magistrate court does not have jurisdiction to:

(1) hear a trial of a misdemeanor offense, other than a Class C misdemeanor, on the merits if a jury trial is demanded; or

(2) hear a trial of a misdemeanor, other than a Class C misdemeanor, on the merits if a defendant pleads not guilty.

(b) The criminal law magistrate court has the jurisdiction provided by the constitution and laws of this state for magistrates. A judge of the criminal law magistrate court is a magistrate as that term is defined by Article 2.09, Code of Criminal Procedure.

(c) Except as provided by this subsection, the criminal law magistrate court has the criminal jurisdiction provided by the constitution and laws of this state for a district court. The criminal law magistrate court does not have jurisdiction to:

(1) hear a trial of a felony offense on the merits if a jury trial is demanded;

(2) hear a trial of a felony offense on the merits if a defendant pleads not guilty;

(3) sentence in a felony case unless the judge in whose court the case is pending assigned the case to the criminal law magistrate court for a guilty plea and sentence; or

(4) hear any part of a capital murder case after indictment.

(d) A criminal law magistrate court may not issue writs of habeas corpus in felony cases but may hear and grant relief on a writ of habeas corpus issued by a district court and assigned by the district court to the criminal law magistrate court.

(e) A felony or misdemeanor indictment or information may not be filed in or transferred to the criminal law magistrate court.

(f) A judge of the criminal law magistrate court shall exercise jurisdiction granted by this subchapter over felony and misdemeanor indictments and informations only as judge presiding for the court in which the indictment or information is pending and under the limitations set out in the assignment order by the assigning court or as provided by local administrative rules.

(g) The criminal law magistrate court has concurrent criminal jurisdiction with the justice courts located in Brazoria County.

Sec. 54.2504. POWERS AND DUTIES. (a) The criminal law magistrate court or a judge of the criminal law magistrate court may issue writs of injunction and all other writs necessary for the enforcement of the jurisdiction of the court and may issue misdemeanor writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and the judge may punish for contempt as provided by law for district courts. A judge of the criminal law magistrate court has all other powers, duties, immunities, and privileges provided by law for:

(1) justices of the peace when acting in a Class C misdemeanor case;

(2) county court at law judges when acting in a Class A or Class B misdemeanor case; and

(3) district court judges when acting in a felony case.

(b) A judge of the criminal law magistrate court may hold an indigency hearing and a capias pro fine hearing. When acting as the judge who issued the capias pro fine, a judge of the criminal law magistrate court may make all findings of fact and conclusions of law required of the judge who issued the capias pro fine. In conducting a hearing under this subsection, the judge of the criminal law magistrate court is empowered to make all findings of fact and conclusions of law and to issue all orders necessary to properly dispose of the capias pro fine or indigency hearing in accordance with the provisions of the Code of Criminal Procedure applicable to a misdemeanor or felony case of the same type and level.

(c) A judge of the magistrate court may accept a plea of guilty or nolo contendere from a defendant charged with a misdemeanor or felony offense.

Sec. 54.2505. TRANSFER AND ASSIGNMENT OF CASES. (a) Except as provided by Subsection (b) or local administrative rules, the local administrative judge or a judge of the criminal law magistrate court may transfer between courts a case that is pending in the court of any magistrate in the criminal law magistrate court's jurisdiction if the case is:

(1) an unindicted felony case;

(2) a Class A or Class B misdemeanor case if an

information has not been filed; or

(3) a Class C misdemeanor case.

(b) A case may not be transferred from or to the magistrate docket of a district court judge, county court at law judge, or justice of the peace without the consent of the judge of the court to which it is transferred.

(c) Except as provided by Subsection (d) or local administrative rules, the local administrative judge may assign a judge of the criminal law magistrate court to act as presiding judge in a case that is pending in the court of any magistrate in the criminal law magistrate court's jurisdiction if the case is:

(1) an unindicted felony case;

(2) a Class A or Class B misdemeanor case if an information has not been filed; or

(3) a Class C misdemeanor case.

(d) A case may not be assigned to a district court judge, county court at law judge, or justice of the peace without the assigned judge's consent.

(e) This section applies only to the district courts, county courts at law, and justice courts in the county.

Sec. 54.2506. PROCEEDING THAT MAY BE REFERRED. A district judge, county court at law judge, or justice of the peace may refer to a judge of the criminal law magistrate court any criminal case or matter relating to a criminal case for any proceeding other than presiding over a criminal trial on the merits, whether or not the trial is before a jury.

Sec. 54.2507. OATH OF OFFICE. A judge of the criminal law

magistrate court must take the constitutional oath of office prescribed for appointed officers.

Sec. 54.2508. JUDICIAL IMMUNITY. A judge of the criminal law magistrate court has the same judicial immunity as a district judge.

Sec. 54.2509. CLERK. The clerk of a district court or county court at law that refers a proceeding to a magistrate under this subchapter shall perform the statutory duties necessary for the magistrate to perform the duties authorized by this subchapter.

Sec. 54.2510. SHERIFF. The county sheriff, either in person or by deputy, shall attend the criminal law magistrate court as required by the judge of that court.

Sec. 54.2511. WITNESSES. (a) A witness who is sworn and who appears before a magistrate is subject to the penalties for perjury and aggravated perjury provided by law.

(b) A referring court may fine or imprison a witness or other court participant for failure to appear after being summoned, refusal to answer questions, or other acts of direct contempt before a magistrate.

SECTION 5.04. Chapter 54, Government Code, is amended by adding Subchapter QQ to read as follows:

SUBCHAPTER QQ. CRIMINAL LAW MAGISTRATES IN TOM GREEN COUNTY

Sec. 54.2601. APPOINTMENT. (a) The judges of the district courts of Tom Green County, with the consent and approval of the commissioners court of Tom Green County, shall jointly appoint the number of magistrates set by the commissioners court to perform the duties authorized by this subchapter.

(b) Each magistrate's appointment must be made with the approval of at least two-thirds of all the judges described in Subsection (a).

(c) If the number of magistrates is less than the number of district judges, each magistrate shall serve equally in the courts of those judges.

Sec. 54.2602. QUALIFICATIONS. To be eligible for appointment as a magistrate, a person must:

(1) be a resident of this state; and

(2) have been licensed to practice law in this state for at least four years.

Sec. 54.2603. COMPENSATION. (a) A full-time magistrate is entitled to the salary determined by the commissioners court of Tom Green County. The salary may not be less than an amount equal to the salary, supplements, and allowances paid to a justice of the peace of Tom Green County as set by the annual budget of Tom Green County.

(b) A magistrate's salary is paid from the county fund available for payment of officers' salaries.

(c) The salary of a part-time magistrate is equal to the per-hour salary of a full-time magistrate. The per-hour salary is determined by dividing the annual salary by a 2,080 work-hour year. The judges of the courts trying criminal cases in Tom Green County shall approve the number of hours for which a part-time magistrate is to be paid.

Sec. 54.2604. JUDICIAL IMMUNITY. A magistrate has the same judicial immunity as a district judge.

Sec. 54.2605. TERMINATION OF SERVICES. (a) A magistrate

who serves a single court serves at the will of the judge.

(b) The services of a magistrate who serves more than one court may be terminated by a majority vote of all the judges whom the magistrate serves.

Sec. 54.2606. PROCEEDING THAT MAY BE REFERRED. (a) A judge may refer to a magistrate any criminal case or matter relating to a criminal case for proceedings involving:

(1) a negotiated plea of guilty or no contest and sentencing before the court;

(2) a bond forfeiture, remittitur, and related proceedings;

(3) a pretrial motion;

(4) a writ of habeas corpus;

(5) an examining trial;

(6) an occupational driver's license;

(7) a petition for an order of expunction under Chapter 55, Code of Criminal Procedure;

(8) an asset forfeiture hearing as provided by Chapter 59, Code of Criminal Procedure;

(9) a petition for an order of nondisclosure of criminal history record information or an order of nondisclosure of criminal history record information that does not require a petition provided by Subchapter E-1, Chapter 411;

(10) a motion to modify or revoke community supervision or to proceed with an adjudication of guilty;

(11) setting conditions, modifying, revoking, and surrendering of bonds, including surety bonds;

(12) specialty court proceedings;

(13) a waiver of extradition; and

(14) any other matter the judge considers necessary and proper.

(b) A judge may refer to a magistrate a civil case arising out of Chapter 59, Code of Criminal Procedure, for any purpose authorized by that chapter, including issuing orders, accepting agreed judgments, enforcing judgments, and presiding over a case on the merits if a party has not requested a jury trial.

(c) A magistrate may accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses.

(d) A magistrate may select a jury. A magistrate may not preside over a criminal trial on the merits, whether or not the trial is before a jury.

(e) A magistrate may not hear a jury trial on the merits of a bond forfeiture.

(f) A judge of a designated juvenile court may refer to a magistrate any proceeding over which a juvenile court has exclusive original jurisdiction under Title 3, Family Code, including any matter ancillary to the proceeding.

Sec. 54.2607. ORDER OF REFERRAL. (a) To refer one or more cases to a magistrate, a judge must issue an order of referral specifying the magistrate's duties.

(b) An order of referral may:

(1) limit the powers of the magistrate and direct the magistrate to report only on specific issues, perform particular

acts, or only receive and report on evidence;

(2) set the time and place for the hearing;

(3) prescribe a closing date for the hearing;

(4) provide a date for filing the magistrate's findings;

(5) designate proceedings for more than one case over which the magistrate shall preside;

(6) direct the magistrate to call the court's docket; and

(7) provide the general powers and limitations of authority of the magistrate applicable to any case referred.

Sec. 54.2608. POWERS. (a) Except as limited by an order of referral, a magistrate to whom a case is referred may:

(1) conduct hearings;

(2) hear evidence;

(3) compel production of relevant evidence;

(4) rule on admissibility of evidence;

(5) issue summons for the appearance of witnesses;

(6) examine witnesses;

(7) swear witnesses for hearings;

(8) make findings of fact on evidence;

(9) formulate conclusions of law;

(10) rule on a pretrial motion;

(11) recommend the rulings, orders, or judgment to be made in a case;

(12) regulate proceedings in a hearing;

(13) accept a plea of guilty from a defendant charged

with misdemeanor, felony, or both misdemeanor and felony offenses;

(14) select a jury;

(15) accept a negotiated plea on probation revocation;

(16) conduct a contested probation revocation hearing;

(17) sign a dismissal in a misdemeanor case;

(18) in any case referred under Section 54.656(a)(1), accept a negotiated plea of guilty or no contest and:

(A) enter a finding of guilty and impose or suspend the sentence; or

(B) defer adjudication of guilty; and

(19) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(b) A magistrate may sign a motion to dismiss submitted by an attorney representing the state on cases referred to the magistrate, or on dockets called by the magistrate, and may consider adjudicated cases at sentencing under Section 12.45, Penal Code.

(c) A magistrate has all the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

Sec. 54.2609. COURT REPORTER. At the request of a party in a felony case, the court shall provide a court reporter to record the proceedings before the magistrate.

Sec. 54.2610. WITNESS. (a) A witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

Sec. 54.2611. PAPERS TRANSMITTED TO JUDGE. At the conclusion of the proceedings, a magistrate shall transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

Sec. 54.2612. JUDICIAL ACTION. (a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the referring court shall enter a decree on the minutes adopting the actions of the magistrate of which the court approves.

Sec. 54.2613. MAGISTRATE. (a) If a magistrate appointed under this subchapter is absent or unable to serve, the judge referring the case may appoint another magistrate to serve for the absent magistrate.

(b) A magistrate serving for another magistrate under this section has the powers and shall perform the duties of the magistrate for whom the magistrate is serving.

Sec. 54.2614. CLERK. The clerk of a district court that

refers a proceeding to a magistrate under this subchapter shall perform the statutory duties necessary for the magistrate to perform the duties authorized by this subchapter.

SECTION 5.05. Section 54.653(b), Government Code, is repealed.

ARTICLE 6. ELECTRONIC FILING SYSTEM

SECTION 6.01. Section 72.031(a), Government Code, is amended by adding Subdivision (5) to read as follows:

(5) "State court document database" means a database accessible by the public and established or authorized by the supreme court for storing documents filed with a court in this state.

SECTION 6.02. Section 72.031(b), Government Code, is amended to read as follows:

(b) The office as authorized by supreme court rule or order may:

(1) implement an electronic filing system for use in the courts of this state;

(2) allow public access to view information or documents in the state court document database; and

(3) charge a reasonable fee for additional optional features in the state court document database.

ARTICLE 7. TRANSFER OF CASES

SECTION 7.01. Section 155.207, Family Code, is amended to read as follows:

Sec. 155.207. TRANSFER OF COURT FILES. (a) Not later than the 10th working day after the date an order of transfer is signed,

the clerk of the court transferring a proceeding shall send, using the electronic filing system established under Section 72.031, Government Code, to the proper court in the county to which transfer is being made:

(1) a transfer certificate and index of transferred documents [~~the pleadings in the pending proceeding and any other document specifically requested by a party~~];

(2) [~~certified copies of all entries in the minutes;~~

[~~(3)~~] a [~~certified~~] copy of each final order;

(3) [~~and~~

[~~(4)~~] a [~~certified~~] copy of the order of transfer signed by the transferring court;

(4) a copy of the original papers filed in the transferring court;

(5) a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6) a bill of any costs that have accrued in the transferring court.

(a-1) The clerk of the transferring court shall use the standardized transfer certificate and index of transferred documents form created by the Office of Court Administration of the Texas Judicial System under Section 72.037, Government Code, when transferring a proceeding under this section.

(b) The clerk of the transferring court shall keep a copy of [~~the~~] transferred pleadings [~~and other requested documents. If the transferring court retains jurisdiction of another child who was the subject of the suit, the clerk shall send a copy of the~~

~~pleadings and other requested documents to the court to which the transfer is made and shall keep the original pleadings and other requested documents~~].

(c) The [~~On receipt of the pleadings, documents, and orders from the transferring court, the~~] clerk of the transferee court shall:

(1) accept documents transferred under Subsection (a);

(2) docket the suit; and

(3) [~~shall~~] notify, using the electronic filing system established under Section 72.031, Government Code [~~the judge of the transferee court~~], all parties, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed.

(c-1) The clerk of the transferee court shall physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (c), but may not physically or electronically mark or stamp any other document transferred under Subsection (a).

(d) The clerk of the transferring court shall send a certified copy of the order directing payments to the transferee court:

(1) [~~,~~] to any party [~~or employer~~] affected by the [~~that~~] order, and, if appropriate, to the local registry of the transferee court using the electronic filing system established under Section 72.031, Government Code; and

(2) to an employer affected by the order

electronically or by first class mail.

(e) The clerks of both the transferee and transferring courts may each produce under Chapter 51, Government Code, certified or uncertified copies of documents filed in a case transferred under this section, but shall also include a copy of the transfer certificate and index of transferred documents with each document produced.

(f) Sections 80.001 and 80.002, Government Code, do not apply to the transfer of documents under this section.

SECTION 7.02. Section 51.3071, Government Code, is amended to read as follows:

Sec. 51.3071. TRANSFER OF CASES. (a) If a case is transferred from a district court to a county court, the clerk of the district court shall [~~may~~] send to the county clerk using the electronic filing system established under Section 72.031 [~~in electronic or paper form~~]:

(1) a transfer certificate and index of transferred documents [~~certified transcript of the proceedings held in the district court~~];

(2) a copy of the original papers filed in the transferring [~~district~~] court; [~~and~~]

(3) a copy of the order of transfer signed by the transferring court;

(4) a copy of each final order;

(5) a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6) a bill of any [~~the~~] costs that have accrued in the

transferring [~~district~~] court.

(b) The clerk of the transferring court shall use the standardized transfer certificate and index of transferred documents form created by the Office of Court Administration of the Texas Judicial System under Section 72.037 when transferring a case under this section.

(c) The clerk of the transferee court shall accept documents transferred under Subsection (a) and docket the case.

(d) The clerk of the transferee court shall physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (c), but may not physically or electronically mark or stamp any other document transferred under Subsection (a).

(e) Sections 80.001 and 80.002 do not apply to the transfer of documents under this section.

SECTION 7.03. Section 51.403, Government Code, is amended to read as follows:

Sec. 51.403. TRANSFER OF CASES. (a) If a case is transferred from a county court to a district court, the clerk of the county court shall send to the district clerk using the electronic filing system established under Section 72.031 [~~in electronic or paper form~~]:

(1) a transfer certificate and index of transferred documents [~~certified transcript of the proceedings held in the county court~~];

(2) a copy of the original papers filed in the transferring [~~county~~] court; [~~and~~]

(3) a copy of the order of transfer signed by the transferring court;

(4) a copy of each final order;

(5) a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6) a bill of any [~~the~~] costs that have accrued in the transferring [~~county~~] court.

(a-1) The clerk of the transferring court shall use the standardized transfer certificate and index of transferred documents form created by the Office of Court Administration of the Texas Judicial System under Section 72.037 when transferring a case under this section.

(a-2) The clerk of the transferee court shall accept documents transferred under Subsection (a) and docket the case.

(a-3) The clerk of the transferee court shall physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (a-2), but may not physically or electronically mark or stamp any other document transferred under Subsection (a).

(b) If civil or criminal jurisdiction of a county court is transferred to a district court, the clerk of the county court shall send using the electronic filing system established under Section 72.031 a certified copy of the judgments rendered in the county court that remain unsatisfied[~~, in electronic or paper form,~~] to the district clerks of the appropriate counties.

(c) Sections 80.001 and 80.002 do not apply to the transfer of documents under this section.

SECTION 7.04. Subchapter C, Chapter 72, Government Code, is amended by adding Section 72.037 to read as follows:

Sec. 72.037. TRANSFER CERTIFICATE AND INDEX OF TRANSFERRED DOCUMENTS FORM. (a) The office shall develop and make available a standardized transfer certificate and an index of transferred documents form to be used for the transfer of cases and proceedings under Section 155.207, Family Code, and Sections 51.3071 and 51.403 of this code.

(b) In developing a form under this section, the office shall consult with representatives of county and district clerks.

SECTION 7.05. As soon as practicable after the effective date of this Act, the Office of Court Administration of the Texas Judicial System shall adopt rules and develop and make available all forms and materials required by Section 72.037, Government Code, as added by this Act.

ARTICLE 8. HABEAS CORPUS

SECTION 8.01. Section 3(b), Article 11.07, Code of Criminal Procedure, is amended to read as follows:

(b) An application for writ of habeas corpus filed after final conviction in a felony case, other than a case in which the death penalty is imposed, must be filed with the clerk of the court in which the conviction being challenged was obtained, and the clerk shall assign the application to that court. When the application is received by that court, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. The clerk of that court shall make appropriate notation thereof, assign to the case a file number (ancillary to

that of the conviction being challenged), and forward a copy of the application by certified mail, return receipt requested, by secure electronic mail, or by personal service to the attorney representing the state in that court, who shall answer the application not later than the 30th [~~15th~~] day after the date the copy of the application is received. Matters alleged in the application not admitted by the state are deemed denied.

SECTION 8.02. Section 5(a), Article 11.072, Code of Criminal Procedure, is amended to read as follows:

(a) Immediately on filing an application, the applicant shall serve a copy of the application on the attorney representing the state[~~,~~] by:

(1) [~~either~~] certified mail, return receipt requested;

(2) [~~, or~~] personal service;

(3) electronic service through the electronic filing manager authorized by Rule 21, Texas Rules of Civil Procedure; or

(4) a secure electronic transmission to the attorney's e-mail address filed with the electronic filing system as required under Section 80.003, Government Code.

SECTION 8.03. Section 3(b), Article 11.07, Code of Criminal Procedure, as amended by this Act, applies only to an application for a writ of habeas corpus filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 8.04. Section 5(a), Article 11.072, Code of

Criminal Procedure, as amended by this Act, applies only to an application for a writ of habeas corpus filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

ARTICLE 9. PUBLICATION OF CITATION FOR RECEIVERSHIP

SECTION 9.01. Section 64.101(c), Civil Practice and Remedies Code, is amended to read as follows:

(c) Except as provided by Section 17.032, the [~~The~~] citation shall be published on the public information Internet website maintained as required by Section 72.034, Government Code, as added by Chapter 606 (S.B. 891), Acts of the 86th Legislature, Regular Session, 2019, and in a newspaper of general circulation:

(1) once in the county in which the missing person resides; and

(2) once in each county in which property of the missing person's estate is located.

SECTION 9.02. Section 51.103(b), Estates Code, is amended to read as follows:

(b) Proof of service consists of:

(1) if the service is made by a sheriff or constable, the return of service;

(2) if the service is made by a private person, the person's affidavit;

(3) if the service is made by mail:

(A) the certificate of the county clerk making

the service, or the affidavit of the personal representative or other person making the service, stating that the citation or notice was mailed and the date of the mailing; and

(B) the return receipt attached to the certificate or affidavit, as applicable, if the mailing was by registered or certified mail and a receipt has been returned; and

(4) if the service is made by publication:

(A) a statement [~~an affidavit~~]:

(i) made by the Office of Court Administration of the Texas Judicial System or an employee of the office;

(ii) that contains or to which is attached a copy of the published citation or notice; and

(iii) that states the date of publication on the public information Internet website maintained as required by Section 72.034, Government Code, as added by Chapter 606 (S.B. 891), Acts of the 86th Legislature, Regular Session, 2019; and

(B) an affidavit:

(i) made by the publisher of the newspaper in which the citation or notice was published or an employee of the publisher;

(ii) that contains or to which is attached a copy of the published citation or notice; and

(iii) that states the date of publication printed on the newspaper in which the citation or notice was published.

SECTION 9.03. Section 1051.153(b), Estates Code, is amended

to read as follows:

(b) Proof of service consists of:

(1) if the service is made by a sheriff or constable, the return of service;

(2) if the service is made by a private person, the person's affidavit;

(3) if the service is made by mail:

(A) the certificate of the county clerk making the service, or the affidavit of the guardian or other person making the service that states that the citation or notice was mailed and the date of the mailing; and

(B) the return receipt attached to the certificate, if the mailing was by registered or certified mail and a receipt has been returned; and

(4) if the service is made by publication:

(A) a statement [~~an affidavit~~] that:

(i) is made by the Office of Court Administration of the Texas Judicial System or an employee of the office;

(ii) contains or to which is attached a copy of the published citation or notice; and

(iii) states the date of publication on the public information Internet website maintained as required by Section 72.034, Government Code, as added by Chapter 606 (S.B. 891), Acts of the 86th Legislature, Regular Session, 2019; and

(B) an affidavit that:

(i) is made by the publisher of the

newspaper in which the citation or notice was published or an employee of the publisher;

(ii) contains or to which is attached a copy of the published citation or notice; and

(iii) states the date of publication printed on the newspaper in which the citation or notice was published.

ARTICLE 10. EVIDENCE

SECTION 10.01. Section 2, Article 38.01, Code of Criminal Procedure, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Forensic examination or test not subject to accreditation" means an examination or test described by Article 38.35(a)(4)(A), (B), (C), or (D) that is exempt from accreditation.

SECTION 10.02. Article 38.01, Code of Criminal Procedure, is amended by adding Section 3-b to read as follows:

Sec. 3-b. CODE OF PROFESSIONAL RESPONSIBILITY. (a) The commission shall adopt a code of professional responsibility to regulate the conduct of persons, laboratories, facilities, and other entities regulated under this article.

(b) The commission shall publish the code of professional responsibility adopted under Subsection (a).

(c) The commission shall adopt rules establishing sanctions for code violations.

(d) The commission shall update the code of professional responsibility as necessary to reflect changes in science, technology, or other factors affecting the persons, laboratories,

facilities, and other entities regulated under this article.

SECTION 10.03. Sections 4(a), (a-1), (b-1), and (c), Article 38.01, Code of Criminal Procedure, are amended to read as follows:

(a) The commission shall:

(1) develop and implement a reporting system through which a crime laboratory may report professional negligence or professional misconduct;

(2) require a crime laboratory that conducts forensic analyses to report professional negligence or professional misconduct to the commission; and

(3) investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of:

(A) the results of a forensic analysis conducted by a crime laboratory;

(B) an examination or test that is conducted by a crime laboratory and that is a forensic examination or test not subject to accreditation; or

(C) testimony related to an analysis, examination, or test described by Paragraph (A) or (B).

(a-1) The commission may initiate [~~for educational purposes~~] an investigation of a forensic analysis or a forensic examination or test not subject to accreditation, without receiving a complaint[~~,~~] submitted through the reporting system implemented under Subsection (a)(1), [~~that contains an allegation of professional negligence or professional misconduct involving the~~

~~forensic analysis conducted~~] if the commission determines by a majority vote of a quorum of the members of the commission that an investigation of the [~~forensic~~] analysis, examination, or test would advance the integrity and reliability of forensic science in this state.

(b-1) If the commission conducts an investigation under Subsection (a)(3) of a crime laboratory that is not accredited under this article or the investigation involves a forensic examination or test not subject to accreditation [~~is conducted pursuant to an allegation involving a forensic method or methodology that is not an accredited field of forensic science~~], the investigation may include the preparation of a written report that contains:

(1) observations of the commission regarding the integrity and reliability of the applicable [~~forensic~~] analysis, examination, or test conducted;

(2) best practices identified by the commission during the course of the investigation; or

(3) other recommendations that are relevant, as determined by the commission.

(c) The commission by contract may delegate the duties described by Subsections (a)(1) and (3) and Sections 4-d(b)(1), (b-1), and (d) to any person the commission determines to be qualified to assume those duties.

SECTION 10.04. Section 4-a(c), Article 38.01, Code of Criminal Procedure, is amended to read as follows:

(c) The commission by rule may establish voluntary

licensing programs for forensic examinations or tests [~~disciplines that are~~] not subject to accreditation [~~under this article~~].

SECTION 10.05. Section 4-d(b-1), Article 38.01, Code of Criminal Procedure, is amended to read as follows:

(b-1) As part of the accreditation process established and implemented under Subsection (b), the commission may:

(1) establish minimum standards that relate to the timely production of a forensic analysis to the agency requesting the analysis and that are consistent with this article and applicable laws;

(2) validate or approve specific forensic methods or methodologies; and

(3) establish procedures, policies, standards, and practices to improve the quality of forensic analyses conducted in this state.

SECTION 10.06. Article 38.01, Code of Criminal Procedure, is amended by adding Section 14 to read as follows:

Sec. 14. FUNDING FOR TRAINING AND EDUCATION. The commission may use appropriated funds for the training and education of forensic analysts.

SECTION 10.07. Section 2254.002(2), Government Code, is amended to read as follows:

(2) "Professional services" means services:

(A) within the scope of the practice, as defined by state law, of:

(i) accounting;

(ii) architecture;

(iii) landscape architecture;

(iv) land surveying;

(v) medicine;

(vi) optometry;

(vii) professional engineering;

(viii) real estate appraising; [~~or~~]

(ix) professional nursing; or

(x) forensic science;

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

(i) a certified public accountant;

(ii) an architect;

(iii) a landscape architect;

(iv) a land surveyor;

(v) a physician, including a surgeon;

(vi) an optometrist;

(vii) a professional engineer;

(viii) a state certified or state licensed real estate appraiser; [~~or~~]

(ix) a registered nurse; or

(x) a forensic analyst or forensic science expert; or

(C) provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Chapter 1053, Occupations Code.

ARTICLE 11. JURY SERVICE

SECTION 11.01. Sections 61.003(a) and (c), Government Code,

are amended to read as follows:

(a) Each person who reports for jury service shall be personally provided a form letter that when signed by the person directs the county treasurer to donate all, or a specific amount designated by the person, of the person's daily reimbursement under this chapter to:

(1) the compensation to victims of crime fund established under Subchapter J, Chapter 56B, Code of Criminal Procedure;

(2) the child welfare, child protective services, or child services board of the county appointed under Section 264.005, Family Code, that serves abused and neglected children;

(3) any program selected by the commissioners court that is operated by a public or private nonprofit organization and that provides shelter and services to victims of family violence;

(4) any other program approved by the commissioners court of the county, including a program established under Article 56A.205, Code of Criminal Procedure, that offers psychological counseling in criminal cases involving graphic evidence or testimony; [~~or~~]

(5) a veterans treatment court program established by the commissioners court as provided by Chapter 124; or

(6) a veterans county service office established by the commissioners court as provided by Subchapter B, Chapter 434.

(c) The county treasurer shall:

(1) send all donations made under Subsection (a)(1) to the comptroller, at the time and in the manner prescribed by the

attorney general, for deposit to the credit of the compensation to victims of crime fund;

(2) deposit donations made to the county child welfare board under Subsection (a)(2) in a fund established by the county to be used by the child welfare board in a manner authorized by the commissioners court of the county; and

(3) send all donations made under Subsection (a)(3), [~~or~~] (a)(4), or (a)(6) directly to the program or office, as applicable, specified on the form letter signed by the person who reported for jury service.

SECTION 11.02. Section 62.202(b), Government Code, is amended to read as follows:

(b) The district judge may draw a warrant on the jury fund or other appropriate fund of the county in which the civil case is tried to cover the cost of buying and transporting the meals to the jury room. The judge may spend a reasonable amount [~~Not more than $3~~] per meal [~~may be spent~~] for a juror serving on a jury in a civil case.

SECTION 11.03. Section 434.032, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The commissioners court of a county that maintains an office:

(1) may not consider a juror's donation to the office of the juror's daily reimbursement under Section 61.003 for purposes of determining the county's budget for the office; and

(2) may use donations described by Subdivision (1) only to supplement, rather than supplant, amounts budgeted by the

county for the office.

ARTICLE 12. SPECIALTY COURT PROGRAMS

SECTION 12.01. Chapter 121, Government Code, is amended by adding Sections 121.003 and 121.004 to read as follows:

Sec. 121.003. APPOINTMENT OF PRESIDING JUDGE OR MAGISTRATE FOR REGIONAL SPECIALTY COURT PROGRAM. A judge or magistrate of a district court or statutory county court who is authorized by law to hear criminal cases may be appointed to preside over a regional specialty court program recognized under this subtitle only if:

(1) the local administrative district and statutory county court judges of each county participating in the program approve the appointment by majority vote or another approval method selected by the judges; and

(2) the presiding judges of each of the administrative judicial regions in which the participating counties are located sign an order granting the appointment.

Sec. 121.004. JURISDICTION AND AUTHORITY OF JUDGE OR MAGISTRATE IN REGIONAL SPECIALTY COURT PROGRAM. (a) A judge or magistrate appointed to preside over a regional specialty court program may hear any misdemeanor or felony case properly transferred to the program by an originating trial court participating in the program, regardless of whether the originating trial court and specialty court program are in the same county. The appointed judge or magistrate may exercise only the authority granted under this subtitle.

(b) The judge or magistrate of a regional specialty court program may for a case properly transferred to the program:

(1) enter orders, judgments, and decrees for the case;

(2) sign orders of detention, order community service, or impose other reasonable and necessary sanctions;

(3) send recommendations for dismissal and expunction to the originating trial court for a defendant who successfully completes the program; and

(4) return the case and documentation required by this subtitle to the originating trial court for final disposition on a defendant's successful completion of or removal from the program.

(c) A visiting judge assigned to preside over a regional specialty court program has the same authority as the judge or magistrate appointed to preside over the program.

SECTION 12.02. Section 124.003(b), Government Code, is amended to read as follows:

(b) A veterans treatment court program established under this chapter shall make, establish, and publish local procedures to ensure maximum participation of eligible defendants in the program [~~county or counties in which those defendants reside~~].

SECTION 12.03. Sections 124.006(a) and (d), Government Code, are amended to read as follows:

(a) A veterans treatment court program that accepts placement of a defendant may transfer responsibility for supervising the defendant's participation in the program to another veterans treatment court program that is located in the county where the defendant works or resides or in a county adjacent to the county where the defendant works or resides. The defendant's supervision may be transferred under this section only with the

consent of both veterans treatment court programs and the defendant.

(d) If a defendant is charged with an offense in a county that does not operate a veterans treatment court program, the court in which the criminal case is pending may place the defendant in a veterans treatment court program located in the county where the defendant works or resides or in a county adjacent to the county where the defendant works or resides, provided that a program is operated in that county and the defendant agrees to the placement. A defendant placed in a veterans treatment court program in accordance with this subsection must agree to abide by all rules, requirements, and instructions of the program.

SECTION 12.04. (a) Section 121.003, Government Code, as added by this Act, applies only to the appointment of a judge or magistrate to preside over a regional specialty court program that occurs on or after the effective date of this Act.

(b) Section 121.004, Government Code, as added by this Act, applies to a case pending in a regional specialty court program on or after the effective date of this Act.

ARTICLE 13. PROTECTIVE ORDERS

SECTION 13.01. Section 72.151(3), Government Code, is amended to read as follows:

(3) "Protective order" means:

(A) an order issued by a court in this state under Chapter 83 or 85, Family Code, to prevent family violence, as defined by Section 71.004, Family Code;

(B) an order issued by a court in this state under

Subchapter A, Chapter 7B, Code of Criminal Procedure, to prevent sexual assault or abuse, stalking, trafficking, or other harm to the applicant; or

(C) [~~. The term includes~~] a magistrate's order for emergency protection issued under Article 17.292, Code of Criminal Procedure, with respect to a person who is arrested for an offense involving family violence.

SECTION 13.02. Section 72.152, Government Code, is amended to read as follows:

Sec. 72.152. APPLICABILITY. This subchapter applies only to:

(1) an application for a protective order filed under:

(A) Chapter 82, Family Code;

(B) Subchapter A, Chapter 7B, Code of Criminal Procedure; or

(C) [~~(B)~~] Article 17.292, Code of Criminal Procedure, with respect to a person who is arrested for an offense involving family violence; and

(2) a protective order issued under:

(A) Chapter 83 or 85, Family Code;

(B) Subchapter A, Chapter 7B, Code of Criminal Procedure; or

(C) [~~(B)~~] Article 17.292, Code of Criminal Procedure, with respect to a person who is arrested for an offense involving family violence.

SECTION 13.03. Sections 72.154(b) and (d), Government Code, are amended to read as follows:

(b) Publicly accessible information regarding each protective order must consist of the following:

(1) the court that issued the protective order;

(2) the case number;

(3) the full name, county of residence, birth year, and race or ethnicity of the person who is the subject of the protective order;

(4) the dates the protective order was issued and served; and

(5) [~~the date the protective order was vacated, if applicable; and~~

[~~(6)~~] the date the protective order expired or will expire, as applicable.

(d) The office may not allow a member of the public to access through the registry any information related to:

(1) a protective order issued under Article 7B.002 or 17.292, Code of Criminal Procedure, or Chapter 83, Family Code; or

(2) a protective order that was vacated.

SECTION 13.04. Section 72.155(a), Government Code, is amended to read as follows:

(a) The registry must include a copy of each application for a protective order filed in this state and a copy of each protective order issued in this state, including an [~~a vacated or~~] expired order, or a vacated order other than an order that was vacated as the result of an appeal or bill of review from a district or county court. Only an authorized user, the attorney general, a district attorney, a criminal district attorney, a county attorney, a

municipal attorney, or a peace officer may access that information under the registry.

SECTION 13.05. Section 72.157, Government Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1), for [~~For~~] a protective order that is vacated or that has expired, the clerk of the applicable court shall modify the record of the order in the registry to reflect the order's status as vacated or expired. The clerk shall ensure that a record of a vacated order is not accessible by the public.

(b-1) For a protective order that is vacated as the result of an appeal or bill of review from a district or county court, the clerk of the applicable court shall notify the office not later than the end of the next business day after the date the protective order was vacated. The office shall remove the record of the order from the registry not later than the third business day after the date the notice from the clerk was received.

SECTION 13.06. Section 72.158(a), Government Code, is amended to read as follows:

(a) The office shall ensure that the public may access information about protective orders, other than information about vacated orders or orders under Article 7B.002 or 17.292, Code of Criminal Procedure, or Chapter 83, Family Code, through the registry, only if:

(1) a protected person requests that the office grant the public the ability to access the information described by

Section 72.154(b) for the order protecting the person; and

(2) the office approves the request.

SECTION 13.07. Section 72.152, Government Code, as amended by this Act, applies only to an application for a protective order filed or a protective order issued on or after the effective date of this Act.

SECTION 13.08. As soon as practicable after the effective date of this Act, the Office of Court Administration of the Texas Judicial System shall:

(1) remove the record of any protective orders that have been vacated as the result of an appeal or bill of review from a district or county court from the protective order registry established under Subchapter F, Chapter 72, Government Code, as amended by this Act; and

(2) ensure that the records of vacated orders, other than orders described by Subdivision (1) of this section that are removed from the registry, are not accessible by the public.

ARTICLE 14. DISTRICT AND COUNTY ATTORNEYS

SECTION 14.01. Section 43.137, Government Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) In addition to exercising the duties and authority conferred on district attorneys by general law, the district attorney represents the state in the district and inferior courts in Ector County in all criminal cases, juvenile matters under Title 3, Family Code, and matters involving children's protective services.

(d) The district attorney has no power, duty, or privilege

in any civil matter, other than civil asset forfeiture and civil bond forfeiture matters.

SECTION 14.02. Subchapter B, Chapter 45, Government Code, is amended by adding Section 45.168 to read as follows:

Sec. 45.168. ECTOR COUNTY. (a) It is the primary duty of the county attorney in Ector County to represent the state, Ector County, and the officials of the county in all civil matters, other than asset forfeiture and bond forfeiture matters for which the district attorney is responsible, pending before the courts of Ector County and any other court in which the state, Ector County, or the county officials have matters pending.

(b) The county attorney has no power, duty, or privilege in Ector County relating to criminal matters, juvenile matters under Title 3, Family Code, or matters involving children's protective services.

SECTION 14.03. Section 43.137, Government Code, as amended by this Act, and Section 45.168, Government Code, as added by this Act, apply only to a proceeding commenced on or after the effective date of this Act. A proceeding commenced before the effective date of this Act is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

ARTICLE 15. APPELLATE COURTS

SECTION 15.01. Subchapter A, Chapter 22, Government Code, is amended by adding Section 22.0042 to read as follows:

Sec. 22.0042. RULES REGARDING EXEMPTIONS FROM SEIZURE OF PROPERTY; FORM. (a) The supreme court shall adopt rules that:

(1) establish a simple and expedited procedure for a judgment debtor to assert an exemption to the seizure of personal property by a judgment creditor or a receiver appointed under Section 31.002, Civil Practice and Remedies Code;

(2) require a court to stay a proceeding, for a reasonable period, to allow for the assertion of an exemption under Subdivision (1); and

(3) require a court to promptly set a hearing and stay proceedings until a hearing is held, if a judgment debtor timely asserts an exemption under Subdivision (1).

(b) Rules adopted under this section shall require the provision of a notice in plain language to a judgment debtor regarding the right of the judgment debtor to assert one or more exemptions under Subsection (a)(1). The notice must:

(1) be in English with an integrated Spanish translation that can be readily understood by the public and the court;

(2) include the form promulgated under Subsection (c);

(3) list all exemptions under state and federal law to the seizure of personal property; and

(4) provide information for accessing free or low-cost legal assistance.

(c) Rules adopted under this section shall include the promulgation of a form in plain language for asserting an exemption under Subsection (a)(1). A form promulgated under this subsection must:

(1) be in English with an integrated Spanish

translation that can be readily understood by the public and the court; and

(2) include instructions for the use of the form.

(d) A court shall accept a form promulgated under Subsection (c) unless the form has been completed in a manner that causes a substantive defect that cannot be cured.

SECTION 15.02. Not later than May 1, 2022, the Supreme Court of Texas shall adopt rules and promulgate forms under Section 22.0042, Government Code, as added by this article.

ARTICLE 16. MISDEMEANOR CASES

SECTION 16.01. The heading to Article 45.0445, Code of Criminal Procedure, is amended to read as follows:

Art. 45.0445. RECONSIDERATION OF SATISFACTION OF FINE OR COSTS.

SECTION 16.02. Article 66.252, Code of Criminal Procedure, is amended by adding Subsection (b-1) to read as follows:

(b-1) At any time before final disposition of the case, the justice or judge of a court having jurisdiction of the case of a misdemeanor described by Subsection (b)(3) may order a law enforcement officer to use the uniform incident fingerprint card to take the fingerprints of an offender who is charged with the misdemeanor, but was not placed under custodial arrest at the time of the offense.

SECTION 16.03. The changes in law made by this article apply only to a misdemeanor case that is initially filed in a justice or municipal court on or after the effective date of this Act, regardless of whether the offense for which the case is filed

occurred before, on, or after the effective date of this Act.

ARTICLE 17. COURT REPORTERS

SECTION 17.01. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.25 to read as follows:

Art. 42.25. FILING OF REPORTER NOTES. A court reporter may comply with Rule 13.6, Texas Rules of Appellate Procedure, by electronically filing with the trial court clerk not later than the 20th day after the expiration of the time the defendant is allotted to perfect the appeal the untranscribed notes created by the court reporter using computer-aided software.

SECTION 17.02. Section 52.001(a)(4), Government Code, is amended to read as follows:

(4) "Shorthand reporter" and "court reporter" mean a person who is certified as a court reporter, apprentice court reporter, or provisional court reporter under Chapter 154 to engage [~~engages~~] in shorthand reporting.

SECTION 17.03. Section 52.011, Government Code, is amended to read as follows:

Sec. 52.011. PROVISION OF SIGNED DEPOSITION CERTIFICATE; CERTIFICATE REQUIREMENTS [~~CERTIFICATION~~]. (a) A court reporting firm representative or a court reporter who reported a deposition for a case shall complete and sign a deposition certificate, known as the further certification.

(b) On request of a court reporter who reported a deposition for a case, a court reporting firm shall provide the reporter with a copy of the deposition certificate [~~document related to the deposition, known as the further certification,~~] that the reporter

has signed or to which the reporter's signature has been applied.

(c) The deposition certificate must include:

(1) a statement that the deposition transcript was submitted to the deponent or the deponent's attorney for examination and signature;

(2) the date the transcript was submitted to the deponent or the deponent's attorney;

(3) the date the deponent returned the transcript, if returned, or a statement that the deponent did not return the transcript;

(4) a statement that any changes the deponent made to the transcript are reflected in a separate document attached to the transcript;

(5) a statement that the transcript was delivered in accordance with Rule 203.3, Texas Rules of Civil Procedure;

(6) the amount charged for preparing the original deposition transcript;

(7) a statement that a copy of the certificate was served on all parties to the case; and

(8) the date the copy of the certificate was served on the parties to the case.

SECTION 17.04. Section 52.046(d), Government Code, is amended to read as follows:

(d) A judge of a county court or county court at law shall appoint a [~~certified~~] shorthand reporter to report the oral testimony given in any contested probate matter in that judge's court.

SECTION 17.05. Section 154.001(a)(4), Government Code, is amended to read as follows:

(4) "Shorthand reporter" and "court reporter" mean a person who is certified as a court reporter, apprentice court reporter, or provisional court reporter under this chapter to engage [~~engages~~] in shorthand reporting.

SECTION 17.06. Section 154.101(e), Government Code, is amended to read as follows:

(e) A person may not assume or use the title or designation "court recorder," "court reporter," or "shorthand reporter," or any abbreviation, title, designation, words, letters, sign, card, or device tending to indicate that the person is a court reporter or shorthand reporter, unless the person is certified as a shorthand reporter or provisional court reporter by the supreme court. Nothing in this subsection shall be construed to either sanction or prohibit the use of electronic court recording equipment operated [~~by a noncertified court reporter pursuant and~~] according to rules adopted or approved by the supreme court.

SECTION 17.07. Section 154.105, Government Code, is amended by amending Subsection (b) and adding Subsections (c), (d), and (e) to read as follows:

(b) A [~~certified~~] shorthand reporter may administer oaths to witnesses:

(1) anywhere in this state;

(2) in a jurisdiction outside this state if:

(A) the reporter is at the same location as the witness; and

(B) the witness is or may be a witness in a case filed in this state; and

(3) at any location authorized in a reciprocity agreement between this state and another jurisdiction under Section 152.202(b).

(c) Notwithstanding Subsection (b), a shorthand reporter may administer an oath as provided under this subsection to a person who is or may be a witness in a case filed in this state without being at the same location as the witness:

(1) if the reporter is physically located in this state at the time the oath is administered; or

(2) as authorized in a reciprocity agreement between this state and another jurisdiction under Section 152.202(b) if:

(A) the witness is at a location in the other jurisdiction; and

(B) the reporter is at a location in the same jurisdiction as the witness.

(d) The identity of a witness who is not in the physical presence of a shorthand reporter may be proven by:

(1) a statement under oath on the record by a party to the case stating that the party has actual knowledge of the witness's identity;

(2) a statement on the record by an attorney for a party to the case, or an attorney for the witness, verifying the witness's identity;

(3) a statement on the record by a notary who is in the presence of the witness verifying the witness's identity; or

(4) the witness's presentation for inspection by the court reporter of an official document issued by this state, another state, a federal agency, or another jurisdiction that verifies the witness's identity.

(e) A shorthand reporter to which this section applies shall state on the record and certify in each transcript of the deposition the physical location of:

(1) the witness; and

(2) the reporter.

SECTION 17.08. Section 154.112, Government Code, is amended to read as follows:

Sec. 154.112. EMPLOYMENT OF NONCERTIFIED PERSON FOR SHORTHAND REPORTING [~~REPORTERS~~]. (a) A person who is not certified as a court [~~noncertified shorthand~~] reporter may be employed to engage in shorthand reporting until a certified shorthand reporter is available.

(b) A person who is not certified as a court [~~noncertified shorthand~~] reporter may engage in shorthand reporting to report an oral deposition only if:

(1) the person [~~noncertified shorthand reporter~~] delivers an affidavit to the parties or to their counsel present at the deposition stating that a certified shorthand reporter is not available; or

(2) the parties or their counsel stipulate on the record at the beginning of the deposition that a certified shorthand reporter is not available.

(c) This section does not apply to a deposition taken

outside this state for use in this state.

SECTION 17.09. The changes in law made by this article apply only to a deposition taken on or after the effective date of this Act. A deposition taken before that date is governed by the law in effect on the date the deposition was taken, and the former law is continued in effect for that purpose.

ARTICLE 18. TRANSITION

SECTION 18.01. A state agency subject to this Act is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the state agency may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

ARTICLE 19. EFFECTIVE DATE

SECTION 19.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 3774 was passed by the House on May 7, 2021, by the following vote: Yeas 141, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3774 on May 28, 2021, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3774 on May 30, 2021, by the following vote: Yeas 134, Nays 3, 2 present, not voting; and that the House adopted H.C.R. No. 118 authorizing certain corrections in H.B. No. 3774 on May 31, 2021, by the following vote: Yeas 134, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3774 was passed by the Senate, with amendments, on May 26, 2021, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3774 on May 30, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate adopted H.C.R. No. 118 authorizing certain corrections in H.B. No. 3774 on May 31, 2021, by the following vote: Yeas 31, Nays 0.

_____

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

Fourteenth Court of Appeals
301 Fannin Room 245
Houston, Texas 77002

May 4, 2021

Chief Justice Nathan Hecht
Justice Jane Bland
Justice Brett Busby
Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711

Sent via email and not mail

Dear Chief Justice Hecht and Justices Bland and Busby,

The Task Force on Remote Proceedings provides the Court with this status report. The Task Force split into four subcommittees to review the constitution and laws of the State to see if any legislation was needed to remove barriers to continuing remote proceedings after the pandemic. We previously provided the court with four subcommittee interim reports for your review, along with our suggestions for potential language for legislation.

Our four subcommittees and chairs were: Juvenile/Child Welfare Subcommittee—Judge Hofmann chair; Civil/Family/Probate Committee—Judge Miskel chair; Criminal Subcommittee—Judge Westfall chair; Courtroom Access/Government Code Subcommittee—Judge Ferguson chair. These four trial judges used remote proceedings successfully during the pandemic and provide a wealth of experience to draw on.

In addition to judges on the Task Force, we had lawyers from various practice areas, clerks and court reporters. Our Task Force reached out to bar groups for their comments and concerns.

We also understand that there may be legislation from this session about remote proceedings. The Task Force has not been asked to support this legislation although some members of our committee have been resources for the legislation.

In reviewing the statutes, we noted first that each statute uses slightly different

terminology for appearing in court. Second, some statutes require consent before allowing a virtual hearing or impose other limits such as maintaining a copy of the video conference. Third, current statutes define remote proceedings differently. Fourth, for some statutes, we may want "in person" to mean in person. And fifth, we may need to address jurisdictional complications from appearing by virtual means.

We have also noted in our interim report some existing caselaw that may impact remote proceedings. Since the date of that report, we have had at least one criminal case that limited remote proceedings without the consent of the parties, even during the pandemic. *See Lira v. State*, No. 11-20-00148-CR, ___S.W.3d ___, 2021 WL 1134801 (Tex. App.—Eastland Mar. 25, 2021, pet. filed)

Even without new legislation, the Supreme Court can amend the Rules of Civil Procedure to allow for more remote proceedings. Some older caselaw is instructive. In 1998, the Texas Supreme Court held: "unless required by the express language or the context of the particular rule, the term "hearing" does not necessarily contemplate either a personal appearance before the court or an oral presentation to the court." *Martin v. Martin, Martin & Richards, Inc*., 989 S.W.2d 357, 359 (Tex. 1998) (per curiam) (motion for summary judgment hearing). *Contra Gulf Coast Inv. Corp. Nasa 1 Business Center*, 754 S.W.2d 152 (Tex. 1988) (per curiam) (language of rule 165a requires an oral hearing rather than submission).

As noted in the Civil Subcommittee Report, Rule 7 of the Rules of Judicial Administration encourage district court judges to use telephone and mail in lieu of personal appearance by attorneys for motion hearings, pretrial conferences, scheduling and the setting of trial dates. This rule can be easily updated to include remote proceedings.

All members of the Task Force believe that remote proceedings should be encouraged in the future. Based on our research, most members of the bar want to see remote hearings continue. Remote proceedings save attorney time, making the judicial system more affordable. They also allow litigants to attend a short hearing more easily, without having to take an entire day off work. Many judges have found that defaults decrease with remote proceedings. Judges who have cases in multiple districts can also save travel time and expense. When a defendant is incarcerated, a remote proceeding saves the expense of transporting the defendant to the courthouse and can allow a defendant to see more hearings in his case. In juvenile cases, the judge can more easily interact with the child remotely, saving the foster families time and expense.

Our Task Force stands ready to assist the court in the future on whatever the court needs us to do. Thank you for allowing us to be of assistance to the court.

Sincerely,
Tracy Christopher

STATE BAR OF TEXAS COURT RULES COMMITTEE

PROPOSED AMENDMENT TO

TEXAS RULE OF CIVIL PROCEDURE 199.2(b)(1)

I. Exact Language of Existing Rule

199.2 Procedure for Noticing Oral Deposition

(a) Time to notice deposition. A notice of intent to take an oral deposition must be served on the witness and all parties a reasonable time before the deposition is taken. An oral deposition may be taken outside the discovery period only by agreement of the parties or with leave of court.

(b) Content of notice.

(1) Identity of witness; organizations. The notice must state the name of the witness, which may be either an individual or a public or private corporation, partnership, association, governmental agency, or other organization. If an organization is named as the witness, the notice must describe with reasonable particularity the matters on which examination is requested. In response, the organization named in the notice must - a reasonable time before the deposition - designate one or more individuals to testify on its behalf and set forth, for each individual designated, the matters on which the individual will testify. Each individual designated must testify as to matters that are known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized by these rules.

(2) Time and place. The notice must state a reasonable time and place for the oral deposition. The place may be in:

(A) the county of the witness's residence;

(B) the county where the witness is employed or regularly transacts business in person;

(C) the county of suit, if the witness is a party or a person designated by a party under Rule 199.2(b)(1);

(D) the county where the witness was served with the subpoena, or within 150 miles of the place of service, if the witness is not a resident of Texas or is a transient person; or

(E) subject to the foregoing, at any other convenient place directed by the court in which the cause is pending.

(3) Alternative means of conducting and recording. The notice must state whether the deposition is to be taken by telephone or other remote electronic means and identify the means. If the deposition is to be recorded by nonstenographic means, the notice may include the notice required by Rule 199.1(c).

(4) Additional attendees. The notice may include the notice concerning additional attendees required by Rule 199.5(a)(3).

(5) Request for production of documents. A notice may include a request that the witness produce at the deposition documents or tangible things within the scope of discovery and within the witness's possession, custody, or control. If the witness is a nonparty, the request must comply with Rule 205 and the designation of materials required to be identified in the subpoena must be attached to, or included in, the notice. The nonparty's response to the request is governed by Rules 176 and 205. When the witness is a party or subject to the control of a party, document requests under this subdivision are governed by Rules 193 and 196.

II. Proposed Amendment to Existing Rule

199.2 Procedure for Noticing Oral Deposition

(a) Time to notice deposition. A notice of intent to take an oral deposition must be served on the witness and all parties a reasonable time before the deposition is taken. An oral deposition may be taken outside the discovery period only by agreement of the parties or with leave of court.

(b) Content of notice.

(1) Identity of witness; organizations. The notice must state the name of the witness, which may be either an individual or a public or private corporation, partnership, association, governmental agency, or other organization. If an organization is named as the witness, the notice must describe with reasonable particularity the matters on which examination is requested. In response, the organization named in the notice must - a reasonable time before the deposition - designate one or more individuals to testify on its behalf and set forth, for each individual designated, the matters on which the individual will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination and documents requested to be produced, if any. Each individual designated must testify as to matters that are known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized by these rules.

(2) Time and place. The notice must state a reasonable time and place for the oral deposition. The place may be in:

(A) the county of the witness's residence;

(B) the county where the witness is employed or regularly transacts business in person;

(C) the county of suit, if the witness is a party or a person designated by a party under Rule 199.2(b)(1);

(D) the county where the witness was served with the subpoena, or within 150 miles of the place of service, if the witness is not a resident of Texas or is a transient person; or

(E) subject to the foregoing, at any other convenient place directed by the court in which the cause is pending.

(3) Alternative means of conducting and recording. The notice must state whether the deposition is to be taken by telephone or other remote electronic means and identify the means. If the deposition is to be recorded by nonstenographic means, the notice may include the notice required by Rule 199.1(c).

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III. Brief Statement of Reasons for Requested Amendments and Advantages Served by Them

The purpose of the proposed change is for parties to discuss issues regarding the scope of the examination of the corporate representative and documents being requested in advance of the deposition and thereby reduce discovery disputes and avoid the need to file motions requiring court intervention. Requiring this conference to occur before the deposition will also help define the scope of the examination so that the organization can identify the proper witness(es) to be designated. Requiring this conference to occur before the deposition will help the parties identify issues which cannot be resolved and while those issues may require motions and court intervention, it can be done prior to the deposition and thereby avoid the necessity of re-deposing a corporate witness. Lastly, the revision would follow FRCP 30(b)(6) requiring the parties to confer with the addition that the parties also confer regarding documents requested, if any.

STATE BAR OF TEXAS COURT RULES COMMITTEE
PROPOSED AMENDMENT TO
TEXAS RULE OF CIVIL PROCEDURE 226a, §§2 AND 3

I. Exact Language of Existing Rule

Tex. R. Civ. P. 226a, §§ 2 and 3

II.

That the following oral and written instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the jury immediately after the jurors are selected for the case:

Members of the Jury [or Ladies and Gentlemen]:

You have been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

[Hand out the written instructions.]

You have each received a set of written instructions. I am going to read them with you now. Some of them you have heard before and some are new.

1. Turn off all phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on the Internet before these court proceedings end and you are released from jury duty. Do not record or photograph any part of these court proceedings, because it is prohibited by law.

2. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like “hello” and “good morning.” Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.

3. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.

4. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social

networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.

5. Do not discuss this case with anyone during the trial, not even with the other jurors, until the end of the trial. You should not discuss the case with your fellow jurors until the end of the trial so that you do not form opinions about the case before you have heard everything.
After you have heard all the evidence, received all of my instructions, and heard all of the lawyers' arguments, you will then go to the jury room to discuss the case with the other jurors and reach a verdict.

6. Do not investigate this case on your own. For example, do not:

a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;

b. go to places mentioned in the case to inspect the places;

c. inspect items mentioned in this case unless they are presented as evidence in court;

d. look anything up in a law book, dictionary, or public record to try to learn more about the case;

e. look anything up on the Internet to try to learn more about the case; or

f. let anyone else do any of these things for you.

This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial.

7. Do not tell other jurors about your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another similar case. Do not tell the other jurors about it. Telling other jurors about it is wrong because it means the jury will be considering things that were not admitted in court.

8. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.

9. Do not consider or guess whether any party is covered by insurance unless I tell you to.

10. During the trial, if taking notes will help focus your attention on the evidence, you may take notes using the materials the court has provided. Do not use any personal electronic devices to take notes. If taking notes will distract your attention from the evidence, you should not take notes. Your notes are for your own personal use. They are not evidence. Do not show or read your notes to anyone, including other jurors.

You must leave your notes in the jury room or with the bailiff. The bailiff is instructed not to read your notes and to give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone.

[You may take your notes back into the jury room and consult them during deliberations. But keep in mind that your notes are not evidence. When you deliberate, each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. After you complete your deliberations, the bailiff will collect your notes.]

When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

11. I will decide matters of law in this case. It is your duty to listen to and consider the evidence and to determine fact issues that I may submit to you at the end of the trial. After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked and you should not consider which side will win. Instead, you will need to answer the specific questions I give you.

Every juror must obey my instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I may have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.

Do you understand these instructions? If you do not, please tell me now.

Please keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.

III.

COURT'S CHARGE

Before closing arguments begin, the court must give to each member of the jury a copy of the charge, which must include the following written instructions, with such modifications as the circumstances of the particular case may require:

Members of the Jury [or Ladies & Gentlemen of the Jury]:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. [I will give you a number where others may contact you in case of an emergency.]

[Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.]

[You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.]

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer “yes” or “no” to all questions unless you are told otherwise. A “yes” answer must be based on a preponderance of the evidence [unless you are told otherwise]. Whenever a question

requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence [unless you are told otherwise].

The term “preponderance of the evidence” means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, “I will answer this question your way if you answer another question my way.”

11. [Unless otherwise instructed] The answers to the questions must be based on the decision of at least 10 of the 12 [5 of the 6] jurors. The same 10 [5] jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 [5] jurors, even if it would be a majority. As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

[Definitions, questions, and special instructions given to the jury will be transcribed here. If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D1 and D2, instructions in substantially the following form must immediately precede such questions:

Preceding question (ii):

Answer Question (ii) for D1 only if you unanimously answered “Yes” to Question[s] (i) regarding D1. Otherwise, do not answer Question (ii) for D1. [Repeat for D2.]

You are instructed that in order to answer "Yes" to [any part of] Question (ii), your answer must be unanimous. You may answer "No" to [any part of] Question (ii) only upon a vote of 10 [5] or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

Answer Question (iii) for D1 only if you answered "Yes" to Question (ii) for D1. Otherwise, do not answer Question (iii) for D1. [Repeat for D2.]

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

These examples are given by way of illustration.]

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

a. have the complete charge read aloud if it will be helpful to your deliberations;

b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;

c. give written questions or comments to the bailiff who will give them to the judge;

d. write down the answers you agree on;

e. get the signatures for the verdict certificate; and

f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. [Unless otherwise instructed] You may answer the questions on a vote of 10 [5] jurors. The same 10 [5] jurors must agree on every answer in the charge. This means you may not have one group of 10 [5] jurors agree on one answer and a different group of 10 [5] jurors agree on another answer.

2. If 10 [5] jurors agree on every answer, those 10 [5] jurors sign the verdict.

If 11 jurors agree on every answer, those 11 jurors sign the verdict.

If all 12 [6] of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 [6] of you agreeing on some answers, while only 10 [5] or 11 of you agree on other answers. But when you sign the verdict, only those 10 [5] who agree on every answer will sign the verdict.

4. [Added if the charge requires some unanimity] There are some special instructions before Questions ___ explaining how to answer those questions. Please follow the instructions. If all 12 [6] of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

_____
Judge Presiding

Verdict Certificate

Check one:

___Our verdict is unanimous. All 12 [6] of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 [6] of us.

_____
Signature of Presiding Juror Printed Name of Presiding Juror

___Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

___Our verdict is not unanimous. Ten [Five] of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE NAME PRINTED
1._____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

11. _____

If you have answered Question No. ___ [the exemplary damages amount], then you must sign this certificate also.

Additional Certificate

[Used when some questions require unanimous answers]

I certify that the jury was unanimous in answering the following questions. All 12 [6] of us agreed to each of the answers. The presiding juror has signed the certificate for all 12 [6] of us.

[Judge to list questions that require a unanimous answer, including the predicate liability question.]

_____

Signature of Presiding Juror Printed Name of Presiding Juror

II. Proposed Amendment to Existing Rule

Tex. R. Civ. P. 226a, §§ 2 and 3

II.

That the following oral and written instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the jury immediately after the jurors are selected for the case:

Members of the Jury [or Ladies and Gentlemen]:

You have been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

[Hand out the written instructions.]

You have each received a set of written instructions. I am going to read them with you now. Some of them you have heard before and some are new.

1. Turn off all phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on the

Internet before these court proceedings end and you are released from jury duty. Do not record or photograph any part of these court proceedings, because it is prohibited by law.

2. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like “hello” and “good morning.” Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.

3. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.

4. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.

5. Do not discuss this case with anyone during the trial, not even with the other jurors, until the end of the trial. You should not discuss the case with your fellow jurors until the end of the trial so that you do not form opinions about the case before you have heard everything.
After you have heard all the evidence, received all of my instructions, and heard all of the lawyers' arguments, you will then go to the jury room to discuss the case with the other jurors and reach a verdict.

6. Do not investigate this case on your own. For example, do not:

a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;

b. go to places mentioned in the case to inspect the places;

c. inspect items mentioned in this case unless they are presented as evidence in court;

d. look anything up in a law book, dictionary, or public record to try to learn more about the case;

e. look anything up on the Internet to try to learn more about the case; or

f. let anyone else do any of these things for you.

This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so

the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial.

7. Do not let bias, prejudice, or sympathy play any part in your evaluation of the evidence admitted or testimony heard in this case. [As we discussed in jury selection,] [E]veryone, including me, has feelings, assumptions, perceptions, fears, and stereotypes that we may not be aware of but that can affect what we see and hear, how we remember what we see and hear, and how we make decisions. Because you are making important decisions as the jurors in this case, you must evaluate the evidence carefully, and you must not jump to conclusions based on personal likes or dislikes, generalizations, prejudices, sympathies, stereotypes, or biases. Our system of justice is counting on you to render a just verdict based on the evidence, not on biases.

8. ~~7.~~ Do not tell other jurors about your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another similar case. Do not tell the other jurors about it. Telling other jurors about it is wrong because it means the jury will be considering things that were not admitted in court.

9. ~~8.~~ Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.

10. ~~9.~~ Do not consider or guess whether any party is covered by insurance unless I tell you to.

11. ~~10.~~ During the trial, if taking notes will help focus your attention on the evidence, you may take notes using the materials the court has provided. Do not use any personal electronic devices to take notes. If taking notes will distract your attention from the evidence, you should not take notes. Your notes are for your own personal use. They are not evidence. Do not show or read your notes to anyone, including other jurors.

You must leave your notes in the jury room or with the bailiff. The bailiff is instructed not to read your notes and to give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone.

[You may take your notes back into the jury room and consult them during deliberations. But keep in mind that your notes are not evidence. When you deliberate, each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. After you complete your deliberations, the bailiff will collect your notes.]

When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

12. ~~11.~~ I will decide matters of law in this case. It is your duty to listen to and consider the evidence and to determine fact issues that I may submit to you at the end of the trial. After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked and you should not consider which side will win. Instead, you will need to answer the specific questions I give you.

Every juror must obey my instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I may have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.

Do you understand these instructions? If you do not, please tell me now.

Please keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.

III.

COURT'S CHARGE

Before closing arguments begin, the court must give to each member of the jury a copy of the charge, which must include the following written instructions, with such modifications as the circumstances of the particular case may require:

Members of the Jury [or Ladies & Gentlemen of the Jury]:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. [I will give you a number where others may contact you in case of an emergency.]

[Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.]

[You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in

a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.]

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision. As we discussed at the beginning of your jury service, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes that we may not be aware of but that can affect what we see and hear, how we remember what we see and hear, and how we make decisions. Because you are making important decisions as the jurors in this case, you must evaluate the evidence carefully, and you must not jump to conclusions based on personal likes or dislikes, generalizations, prejudices, sympathies, stereotypes, or biases. Our system of justice is counting on you to render a just verdict based on the evidence, not on biases.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence [unless you are told otherwise]. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence [unless you are told otherwise].

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, “I will answer this question your way if you answer another question my way.”

11. [Unless otherwise instructed] The answers to the questions must be based on the decision of at least 10 of the 12 [5 of the 6] jurors. The same 10 [5] jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 [5] jurors, even if it would be a majority. As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

[Definitions, questions, and special instructions given to the jury will be transcribed here. If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D1 and D2, instructions in substantially the following form must immediately precede such questions:

Preceding question (ii):

Answer Question (ii) for D1 only if you unanimously answered “Yes” to Question[s] (i) regarding D1. Otherwise, do not answer Question (ii) for D1. [Repeat for D2.]
You are instructed that in order to answer “Yes” to [any part of] Question (ii), your answer must be unanimous. You may answer “No” to [any part of] Question (ii) only upon a vote of 10 [5] or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

Answer Question (iii) for D1 only if you answered “Yes” to Question (ii) for D1. Otherwise, do not answer Question (iii) for D1. [Repeat for D2.]

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

These examples are given by way of illustration.]

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

a. have the complete charge read aloud if it will be helpful to your deliberations;

b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;

c. give written questions or comments to the bailiff who will give them to the judge;

d. write down the answers you agree on;

e. get the signatures for the verdict certificate; and

f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. [Unless otherwise instructed] You may answer the questions on a vote of 10 [5] jurors. The same 10 [5] jurors must agree on every answer in the charge. This means you may not have one group of 10 [5] jurors agree on one answer and a different group of 10 [5] jurors agree on another answer.

2. If 10 [5] jurors agree on every answer, those 10 [5] jurors sign the verdict.

If 11 jurors agree on every answer, those 11 jurors sign the verdict.
If all 12 [6] of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 [6] of you agreeing on some answers, while only 10 [5] or 11 of you agree on other answers. But when you sign the verdict, only those 10 [5] who agree on every answer will sign the verdict.

4. [Added if the charge requires some unanimity] There are some special instructions before Questions ___ explaining how to answer those questions. Please follow the instructions. If all 12 [6] of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

_____

Judge Presiding

Verdict Certificate

Check one:

___Our verdict is unanimous. All 12 [6] of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 [6] of us.

_____

Signature of Presiding Juror Printed Name of Presiding Juror

___Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

___Our verdict is not unanimous. Ten [Five] of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE NAME PRINTED

1._____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____

If you have answered Question No. ___ [the exemplary damages amount], then you must sign this certificate also.

Additional Certificate

[Used when some questions require unanimous answers]

I certify that the jury was unanimous in answering the following questions. All 12 [6] of us agreed to each of the answers. The presiding juror has signed the certificate for all 12 [6] of us.

[Judge to list questions that require a unanimous answer, including the predicate liability question.]

_____

Signature of Presiding Juror

Printed Name of Presiding Juror

III. Brief Statement of Reasons for Requested Amendments to Tex. R. Civ. P. 226a §§ 2 and 3 and Advantages Served by Them

Implicit bias is an important issue that needs to be, but is not, addressed in Tex. R. Civ. P. 226a. This proposed instruction is intended to address implicit bias through instructions given to jurors. The proposed instruction is designed to instruct jurors on the appropriate basis to weigh the evidence presented to them and the importance of making an unbiased and just decision through their verdict. The proposed addition is designed to help jurors better understand bias and provide trial judges and advocates a basis to better discuss biases and prejudices in voir dire should they desire or think it appropriate. The Committee chose not to use "implicit" in the proposed instruction to avoid alienation of potential jurors or imply any current public or political interpretation of the term. The Committee also sought to avoid language that may lead to a politically or emotionally charged interpretation of the overall instruction.

The Committee spent considerable time over the past year reviewing other examples of "implicit bias" instructions from other jurisdictions including federal, state, and various Texas counties. The Committee also actively solicited, received, and considered suggestions from various stakeholders with an interest in the proposed instruction. These stakeholders included local bar associations and judges, as well as State Bar of Texas committees, sections, and members. Critical focus was paid to removing surplus or duplicative words that impacted the clarity and length of the instruction. The Committee limited the use of words or terms that might imply to a juror that they could not use their personal judgment or common sense.

Further, the proposed addition is based on efforts by the Travis County Bar Association and members of the Dallas Bar Association to implement such instructions in civil cases. The Dallas Civil District Courts engaged in a pilot program where a similar instruction was given in smaller civil matters by agreement of the parties. Ninety-four percent of the jurors surveyed following the trials in which this instruction was used indicated that they considered the instruction in their deliberations. Fifty-four percent of the jurors surveyed following the trials in which this instruction was used reported that the instruction influenced the way in which they processed evidence and deliberated. Strong evidence, through this Dallas pilot program, shows that an instruction on implicit bias, as the one the committee now proposes, increases juror self-awareness during trial about how they processed the evidence and motived them to be fair in their deliberations.

The proposed instruction is consistent with the September 2020 charge from the Public Trust & Confidence Committee of the Texas Judicial Council (chaired by Chief Justice Hecht) that "implicit bias" be addressed in the Texas legal system, including through annual training for judges on that topic.

This proposed instruction is consistent with many such instructions given across the United States, including those provided in the United States District Court for the Northern District of the State of Iowa,[1] the United States District Court for the Northern

[1] Judge Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The*

District of the State of California[2] the State of Missouri, the State of Washington, and the United States Court of Appeals for the Ninth Circuit.

The proposed instruction is consistent with the 2019 ABA resolution calling on all states to implement an "implicit bias" instruction in their jury instructions.

The proposed instruction is calculated to be impartial and applicable to all cases without comment on the evidence.

Problems of Judge-Dominated Voir Dire, The Failed Promise of Batson, and Proposed Solutions, 4 Harv. L. & Pol'y Rev. 149 (2010). See also, www.perception.org (Emphasis added) (Last visited 03/18/2018) (defining implicit bias as "an *attitude* toward, preference for, aversion against or the phenomena of associating *stereotypes* with people *without conscious knowledge*.")

[2] https://www.cand.uscourts.gov/attorneys/unconscious-bias-video-for-potential-jurors/

Tab B

Zamen, Shiva

From: Richard Orsinger <richard@ondafamilylaw.com>
Sent: Thursday, August 19, 2021 9:17 PM
To: Levy, Robert L; jperduejr (jperduejr@perdueandkidd.com); Elaine Carlson (elainecarlson@comcast.net); pschenkkan (pschenkkan@gdhm.com); evansdavidl (evansdavidl@msn.com)
Cc: Babcock, Chip
Subject: RE: 2021-08-17 Letter to Legislative Subcommittee re June 2, 2021 Assignment [IMAN-JWDOCS.FID961666]--Proposed change to jury instructions

7. Do not let bias, prejudice, or sympathy play any part in your evaluation of the evidence admitted or testimony heard in this case. [As we discussed in jury selection,] [E]veryone, including me, has feelings, assumptions, perceptions, fears, and stereotypes that we may not be aware of but that can affect what we see and hear, how we remember what we see and hear, and how we make decisions. Because you are making important decisions as the jurors in this case, you must evaluate the evidence carefully, and you must not jump to conclusions based on personal likes or dislikes, generalizations, prejudices, sympathies, stereotypes, or biases. Our system of justice is counting on you to render a just verdict based on the evidence, not on biases.

Dear Subcommittee member: as long as we are talking about the reasoning process for jurors, the biggest problem in a trial is omitted from the suggested language, and that is making up your mind before you have heard both sides.

Possible instruction: “You should not decide a question without seeing and considering evidence from both sides of the case.”

Or

“You should not make up your mind until you have heard all the evidence and have deliberated with your other Jurors.”

Wikipedia definition of bias: “Bias is a disproportionate weight in favor of or against an idea or thing, usually in a way that is closed-minded, prejudicial, or unfair. Biases can be innate or learned. People may develop biases for or against an individual, a group, or a belief.” https://en.wikipedia.org/wiki/Bias

Wikipedia definition of prejudice, https://en.wikipedia.org/wiki/Prejudice

> “Prejudice[1][need quotation to verify] can be an affective feeling towards a person based on their perceived group membership.[citation needed] The word is often used to refer to a preconceived (usually unfavourable) evaluation or classification of another person based on that person's perceived political affiliation, sex, gender, beliefs, values, social class, age, disability, religion, sexuality, race, ethnicity, language, nationality, complexion, beauty, height, occupation, wealth, education, criminality, sport-team affiliation, music tastes or other personal characteristics.[2][need quotation to verify]
>
> The word "prejudice" can also refer to unfounded or pigeonholed beliefs[3][4] and it may apply to "any unreasonable attitude that is unusually resistant to rational influence".[5] Gordon Allport defined prejudice as a "feeling, favorable or unfavorable, toward a person or thing, prior to, or not based on, actual experience".[6] Auestad (2015) defines prejudice as characterized by "symbolic transfer", transfer of a value-laden meaning content onto a socially-formed category and then on to individuals who are taken to belong to that category, resistance to change, and overgeneralization.[7]”

Wikipedia definition of sympathy: “Sympathy is the perception, understanding, and reaction to the distress or need of another life form.[1] According to David Hume, this sympathetic concern is driven by a switch in viewpoint from a personal perspective to the perspective of another group or individual who is in need. Hume explained that this is the case because "the minds of all men are similar in their feelings and operations" and that "the motion of one communicates itself to the rest" so that as affectations readily pass from one to another, they beget corresponding movements.”
https://en.wikipedia.org/wiki/Sympathy

As long as we are talking about errors in judgment formation, here is a list of cognitive biases.
https://en.wikipedia.org/wiki/List_of_cognitive_biases. This is the scientifically-based analysis of problems with the way that humans form judgments. There is a large body of psychological research and publications on cognitive biases.

We can’t address all cognitive biases in jury instructions, but we can address some. The biggest cognitive bias I have encountered inf 45 years of practicing law and trying many jury trials is confirmation bias. Here is what Wikipedia says about confirmation bias, https://en.wikipedia.org/wiki/Confirmation_bias:

> “Confirmation bias is the tendency to search for, interpret, favor, and recall information in a way that confirms or supports one's prior beliefs or values.[1] People display this bias when they select information that supports their views, ignoring contrary information, or when they interpret ambiguous evidence as supporting their existing attitudes. The effect is strongest for desired outcomes, for emotionally charged issues, and for deeply entrenched beliefs. Confirmation bias cannot be eliminated entirely, but it can be managed, for example, by education and training in critical thinking skills.

Confirmation bias is a broad construct covering a number of explanations. Biased search for information, biased interpretation of this information, and biased memory recall, have been invoked to explain four specific effects: 1) attitude polarization (when a disagreement becomes more extreme even though the different parties are exposed to the same evidence); 2) belief perseverance (when beliefs persist after the evidence for them is shown to be false); 3) the irrational primacy effect (a greater reliance on information encountered early in a series); and 4) illusory correlation (when people falsely perceive an association between two events or situations).

A series of psychological experiments in the 1960s suggested that people are biased toward confirming their existing beliefs. Later work re-interpreted these results as a tendency to test ideas in a one-sided way, focusing on one possibility and ignoring alternatives (myside bias, an alternative name for confirmation bias). In general, current explanations for the observed biases reveal the limited human capacity to process the complete set of information available, leading to a failure to investigate in a neutral, scientific way."

Flawed decisions due to confirmation bias have been found in political, organizational, financial and scientific contexts. These biases contribute to overconfidence in personal beliefs and can maintain or strengthen beliefs in the face of contrary evidence. For example, confirmation bias produces systematic errors in scientific research based on inductive reasoning (the gradual accumulation of supportive evidence). Similarly, a police detective may identify a suspect early in an investigation, but then may only seek confirming rather than disconfirming evidence. A medical practitioner may prematurely focus on a particular disorder early in a diagnostic session, and then seek only confirming evidence. In

social media, confirmation bias is amplified by the use of filter bubbles, or "algorithmic editing", which display to individuals only information they are likely to agree with, while excluding opposing views."

Another problem that arises in making judgments is called heuristics. Here is the Wikipedia definition of heuristics, https://en.wikipedia.org/wiki/Heuristic

> "A heuristic or heuristic technique (/hjʊəˈrɪstɪk/; Ancient Greek: εὑρίσκω, heurískō, 'I find, discover'), is any approach to problem solving or self-discovery that employs a practical method that is not guaranteed to be optimal, perfect, or rational, but is nevertheless sufficient for reaching an immediate, short-term goal or approximation. Where finding an optimal solution is impossible or impractical, heuristic methods can be used to speed up the process of finding a satisfactory solution. Heuristics can be mental shortcuts that ease the cognitive load of making a decision.[1][2]"
>
> Examples that employ heuristics include using trial and error, a rule of thumb or an educated guess."

Merely saying not to let "bias, prejudice, or sympathy" play a part in your verdict is pretty worthless as an instruction. I think that it is a great idea to go down this path of making the jury instructions more meaningful and more beneficial to the litigants, but I suggest that we give some thought to what the biggest problems are with juries and addressing them in the instructions. There is a lot of research about judgment formation generally and jury decision-making in particular.

Richard

Tab C

Memorandum

To: Jim M. Perdue Jr.

From: Rich Tomlinson
Director of Litigation
Lone Star Legal Aid

Ann Baddour
Director, Fair Financial Services Project
Texas Appleseed

Mary Spector
Professor of Law, Associate Dean of Clinics
SMU Dedman School of Law[1]

Re: Proposed garnishment and turnover rules, notices, and forms in compliance with H.B. 3774

Date: August 25, 2021

Introduction

Debt claim cases filed in Texas have been on the rise in recent years. Increases are most pronounced in justice courts, where new cases increased by 162% over the 5-year period ending in 2019.[2] County and district courts saw a lower, but still meaningful increase of 88% over the same period.[3] Though court closures and temporary stays on default judgment and garnishment proceedings during 2020 paralleled a 4% decrease in debt claim cases filed in justice courts, the Office of Court Administration still noted a trend of increasing debt claim caseloads in its 2020 annual report.[4] The report stated, "Despite a 27% decline in county court filings and a drop of

[1] Institutional affiliation for identification purposes only.
[2] *Annual Statistical Report for the Texas Judiciary, Fiscal Year 2019*, Texas Office of Court Administration (2020) at B4.
[3] *Id.*
[4] In response to hardships created by the stay at home orders, starting in March of 2020, the Texas Supreme Court adopted the Tenth Supreme Court Order Regarding the COVID State of Disaster, which went into effect on April 9, 2020 and continued through May 7 placed a hold on the issuance of default judgments and writs of garnishment in debt claim cases. The order was renewed on April 29 through the Fourteenth Supreme Court Order Regarding the COVID State of Disaster and extended through May 18, 2020.

15% in district court filings, the level of new debt cases filed in 2020 still exceeded the number filed in 2018."[5]

Another notable trend for 2020 debt claim cases in justice court is that default judgments continued to increase despite court closures and other pandemic-related impacts on courts. Default judgments made up 65% of all debt collection judgments in Texas justice courts in 2020.[6] This high rate of default judgments indicates that just 35% of the judgments received full judicial scrutiny. Default judgments also often result in a subsequent writ of garnishment or appointment of a turnover receiver to collect the judgments. Based on practitioner experiences, including feedback from legal aid providers, there is a growing problem of Texans losing exempt income to garnishment and turnover receivers.

Current rules make it extremely difficult for pro se defendants and judgment debtors to assert their rights in the collections process, including rights to protect exempt income from seizure. For recipients of certain government benefits, such as Social Security and Veterans Benefits, a rule from the U.S. Department of Treasury establishes a self-executing exemption with a two payment look back period.[7] When the Treasury issues these payments, it puts an "XX" and the number 2 in particular positions related to the electronic transfer to enable a financial institution to identify those payments as exempt.[8] This system has worked well but unfortunately, does not apply to a wide range of exempt funds. For example, it only protects two months of Social Security payments, even though all Social Security payments are exempt, meaning that savings generated by Social Security payments could be frozen or seized and the impacted person would have to engage with the court to release or retrieve the funds. Spousal support, child support, and unemployment benefits are other common categories of exempt funds that are not marked and could be frozen or seized, causing great financial hardship.

The Civil Justice Committee of the Texas Judicial Council examined these trends and data and adopted a series of recommendations in August 2020 to address access to justice concerns related to debt claim cases in Texas.[9] Items number 5, 6, and 7 in the report recommend new rules to ensure that defendants and judgment debtors have an accessible mechanism to assert exemptions from the seizure of personal property in debt collection proceedings.[10]

The Civil Justice Committee recommendations were presented to the full Texas Judicial Council on September 24, 2020 and adopted as resolutions. They are included in Civil Justice Resolutions

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[5] *Annual Statistical Report for the Texas Judiciary, Fiscal Year 2020*, Texas Office of Court Administration (2020) at i.

[6] Ann Baddour and Ellen Stone, *Debt, Access to Justice and Racial Equity: An Analysis of Consumer Debt Collection Lawsuits in Texas and Recommended Reforms*, Texas Appleseed (April 2021) at i.

[7] 31 C.F.R. § 212.

[8] 31 C.F.R § 212.3.

[9] Texas Judicial Council Civil Justice Committee, "Report and Recommendations," (Sept. 2020).

[10] *Id. at 4.*

for the 87th Legislative Session, items 7, 8, and 9.[11] The recommendations led to the drafting of language that became Section 15 of H.B. 3774.

H.B. 3774, which was passed in the 87th Texas Legislative Session, adds Tex. Gov't Code § 22.0042. The new section requires the adoption of rules by May 2022 to provide a clear, expedited, and user-friendly procedure for asserting exemptions from seizure of personal property by a judgment creditor or turnover receiver.

The following sections detail a proposal for changes to garnishment rules and for adding new rules related to turnover receivers to comply with the newly enacted law.

I. Proposed Changes to Garnishment Rules

A. Background

Rule changes are needed to address the inadequacies of the current garnishment procedures. The current process for judgment debtors to raise exemptions is cumbersome, not user-friendly for the unrepresented judgment debtor, and rarely used without the benefit of counsel. For example, current Rule 663a only provides that judgment debtors are entitled to a post-execution notice that they may file a bond or a motion to dissolve, concepts that make no sense to anyone other than lawyers.

Rule 663a also makes no explicit mention of exemptions, an important substantive right that might be raised to protect judgment debtors from seizure. In fact, exemptions cannot practically be raised at this time without the assistance of an attorney who drafts and files a motion to dissolve the writ of garnishment under Rule 664a, hardly a procedure that could be navigated by a pro se judgment debtor. The failure to give explicit notice of the right to assert exemptions in post-judgment garnishment proceedings and provide a simple pro se friendly procedure for asserting such exemptions has been found to violate fundamental tenets of due process. See *Strickland v. Alexander*, 772 F.3d 876 (11th Cir. 2014); 2015 WL 5256836 (N.D. Ga. 2015) (entry of judgment on remand); 2015 WL 5916003 (N.D. Ga. 2015) (amending judgment); 2015 WL 103221498 (N.D. Ga. 2015)(amending judgment again). In short, current garnishment rules are subject to constitutional attack unless they are amended to address these deficiencies.

Partly in response to *Strickland*, a subcommittee of the Supreme Court Advisory Committee considered garnishment rule changes back in 2016, but no amended rules were issued at that time. HB 3774 requires rules to be issued no later than May 1, 2022, highlighting the urgent need to amend Texas rules.

[11] Texas Judicial Council, "Civil Justice Resolutions," (Sept. 24, 2020).

B. Proposed Rule Changes to Rules 661, 662, 663a, and 664a

The proposed changes to Rules 661, 662, 663a and 664a are attached to this memo. Recognizing that the garnishment rules are well established, these amendments only revise the rules to the extent necessary to address the mandate of H.B. 3774. Otherwise, the proposal retains the current language of the rules.

1. Revised notice of rights to be given to judgment debtors (Rule 663a)

Rule 663a is substantially changed to comply with Tex. Gov't. Code §22.0042(b). First, the amended language requires that notice of garnishment be given to a defendant or a judgment debtor. The reference to a notice given to a "defendant" relates to pre-judgment garnishment, while the reference to a notice given to a "judgment debtor" relates to post-judgment garnishment.

Second, the form of the notice given to defendants in pre-judgment garnishments and to judgment debtors in post-judgment garnishment is totally redone and placed in new subsections (a) and (b). The current notice (placed on the face of the writ of garnishment to be delivered to defendants) only advises defendants or judgment debtors that they can regain possession of their garnished property by filing a replevy bond or by filing a motion to dissolve the writ of garnishment. This notice is difficult for lawyers to understand, let alone a pro se litigant. It also does not tell defendants and judgment debtors about their exemption rights, which is now required under the new law.

In accordance with the standards set forth in Tex. Gov't Code §22.0042(b), the proposed rules provide that a notice of garnishment includes the giving of the writ of garnishment, the application for the writ, and three Supreme Court-approved forms (one explaining exemption rights, an exemption claim form, and instructions on how to fill out that form). This change ensures that defendants, and particularly judgment debtors, will have notice about exemption rights and a form for asserting such rights. This approach addresses what H.B. 3774 and *Strickland* require.

Third, a new subsection (d) requires that notice be given by the plaintiff or judgment creditor to the defendant or judgment debtor within one day after service of the writ of garnishment (usually on a financial institution). The current rule requires such notice to be given "as soon as practicable" which has been construed to mean within 14 days. *Arriaga v. Jess Enterprises*, 2014 WL 1875917, *2 (N.D. Tex. 2014)(applying Texas law); *Lease Finance Group, LLC v. Childers*, 310 S.W.3d 120, 127 (Tex. App. – Fort Worth 2010, no pet.); *Requena v. Salomon Smith Barney, Inc*., 2002 WL 356696, *3-4 (Tex. App. – Houston [1st Dist.] 2002, no pet.). However, 14 days is an unconscionably long time, given that judgment debtors often learn about the garnishment when they are refused access to their accounts (as service of the writ of garnishment freezes accounts at financial institutions) – for example, when they're attempting to pay for groceries. Because the information being provided is all form-based, it is not difficult for plaintiffs and judgment creditors to give more prompt notice. By giving faster notice, defendants and

judgment debtors will then be given notice of how to exercise their exemption rights more quickly.

When a judgment debtor lives on exempt income, such as social security, and the entire amount on deposit is frozen by a writ of garnishment, those parties are entitled to prompt notice of how they can quickly seek access to their exempt funds. The exemptions have no real meaning if parties cannot exercise them promptly, which turns on giving prompt notice. This faster notice standard complies with Tex. Gov't Code §22.0042(a)(1), which requires the Court to adopt rules that, "establish a simple and expedited procedure," for a judgment debtor to assert exemptions in the garnishment process.

Fourth, a new subsection (d) prescribes the order of documents to be sent to a defendant or judgment debtor to make sure the garnishment notice is on top, promptly followed by an exemption claim form. That way, notice of exemption rights is prioritized. This approach aligns with the current rule that requires essential information for the judgment debtor to be included, "on the face of the copy of the writ served on the defendant." (TCRP Rule 663a). It also comports with the requirement in statute for a simple procedure and one that provides information in plain language. (Tex. Gov't Code §§22.0042(a)(1) and (b))

The manner of service, i.e. either by service or notice under Rule 21a, is set out in a new subsection (c), and the language is unchanged from the current rule.

2. Changes to Rules 661 and 662

Rule 661 sets out the form of the notice of the writ of garnishment, and Rule 662 requires the writ to be served on the garnishee. The proposed changes to these rules are modest.

First, the language about the form of the writ of garnishment in Rule 661 is unchanged and placed in a new subsection (a).

Second, a new subsection (b) to Rule 661 requires that the attachments provided by Rule 663a be attached to the writ. The changes to Rule 661 enable compliance with the notice provision and requirements under Tex. Gov't Code § 22.0042(b). This subsection requires that the judgment debtor be provided with a plain language notice that includes a form to assert exemptions, along with required instructions. The language of the required notice, instructions, and form are included with this memo and described in detail under Section C below. The notice, instructions, and form are presented in English in this proposal. A Spanish translation is required to comply with the statute.

Third, the minor change to Rule 662 states that the documents required to be attached to the writ be served on the garnishee (usually a financial institution). The idea here is to take advantage of the fact that many financial institutions, as a courtesy and not as requirement of law, provide copies of the writ to their customers whose account(s) was frozen

by a writ. It also facilitates compliance with federal rules, where applicable.[12] Often judgment debtors receive notice about the garnishment from their financial institution well before any notice arrives in the mail from the judgment creditor under Rule 663a. This proposed change aligns with the requirement under Tex. Gov't Code § 22.0042(a) for an expedited process, by creating an additional avenue to share information about the garnishment with the judgment debtor.

By making these minor changes to Rules 661 and 662, the rules are assuring a second means by which defendants (in pre-judgment garnishments) and judgment debtors (in post-judgment garnishments) learn of their exemption rights, all without imposing any duties upon financial institutions.

3. Simpler procedure for raising exemption claims

Current Rule 664a provides for the procedures associated with motions to dissolve writs of garnishment. Like Rule 663a, this rule is substantially changed to comply with the provisions in H.B. 3774. First, the language of the rule applicable only to pre-judgment garnishment[13] has been placed in subsection (a) and been labeled as "General Rule for Pre-Judgment Garnishment." The first two sentences of the current rule are the source of the language for this subsection.

Second, a new subsection (b) sets forth a "General Rule for Post-Judgment Garnishment" and it provides that a judgment debtor and interested third parties can file a motion to dissolve writ of garnishment or an exemption claim form (or its substantial equivalent). This new subsection retains the current language on who can file a challenge to a garnishment writ, but it provides basically two ways in which to challenge a garnishment writ – through either an exemption claim form or a motion to dissolve or modify the writ. The exemption claim form is intended as a pro se friendly way to challenge the garnishment, unlike the motion which would likely need a lawyer to be effectively drafted and filed.

Third, the current language on when to conduct the hearing was placed in a new subsection (b). The only change was a reference to the hearing being on a motion under subsection (a) or a motion or claim under subsection (b).

Fourth, a new subsection (d) entitled "Motion for Dissolution of the Writ" is created to contain mostly the existing language about how the hearing should be conducted. On the

[12] 31 CFR §§ 212.6 and 212.7 requires a financial institution to send a notice to the account holder named in the garnishment order when funds from the Social Security Administration, the Department of Veterans Affairs, the Office of Personnel Management, or the Rail Rod Retirement Board are protected in an account. These are common categories of protected funds.

[13] The second sentence of the current rule has been held to be only applicable to pre-judgment garnishments. *Simulis, L.L.C. v. G.E. Capital Corporation*, 276 S.W.3d 10, 115-116 (Tex. App. – Houston [1st Dist.] 2008, no pet.).

need for an affidavit, this subsection offers a declaration as an alternative as permitted by CPRC § 132.001.

Fifth, a new subsection (e) entitled "Claim to Exemption" is added to set forth what should occur at a hearing on an exemption claim raised by an exemption claim form or its substantial equivalent. In essence, the trial court is supposed to decide whether any of the personal property, including funds, are exempt and if so, order its return within 3 days. In short, this subsection provides for a simple and expedited procedure that a pro se judgment debtor could navigate.

4. Proposed Notice, Instructions, and Form

HB 3774 requires three plain language items to be sent out with the writ to defendants in pre-judgment garnishment and to judgment debtors in post-judgment garnishment. One is a notice of garnishment generally describing the recipient's rights. According to Tex. Gov't Code § 22.0042(b)1-5, the notice must be in plain language, in English with an integrated Spanish translation that can be easily read and understood by the public, list all exemptions under state and federal law, and provide information for accessing free and low-cost legal assistance. The proposed notice form includes all of the requirements, with the exception that it must still be translated into Spanish. The list of exempt personal property that is included in the notice is the same as the list included in the proposed exemption claim form. The statutory basis for each included exemption is presented in the form discussion.

In addition to the notice, the packet served on the defendant or judgment debtor must also include an exemption claim form, which list exemptions, and instructions to fill out the form. The proposed form and instructions are designed to be easy to use and understand. The proposed form allows the recipient to mark a box for each applicable exemption and to file the form (and serve the plaintiff or judgment creditor) to start the process of challenging the writ of garnishment.

H.B. 3774 requires the form to include all existing exemptions. The proposed form provides a full list of exemptions and the statutory citation that covers most personal property exemptions under state law. The legal source for each exemption included is set forth below:

1. Social Security Retirement income --- 42 U.S.C. § 407(a) and *Philpot v. Essex County Welfare Board*, 409 U.S. 413, 417 (1973);
2. Social Security Disability income --- 42 U.S.C. § 407(a); *Philpot v. Essex County Welfare Board*, 409 U.S. 413, 417 (1973);
3. SSI or Supplemental Security Income --- 42 U.S.C. § 407(a); *Philpot v. Essex County Welfare Board*, 409 U.S. 413, 417 (1973);
4. Alimony, child or spousal support --- Tex. Prop. Code 42.001(b)(3);
5. Veterans' benefits --- 38 U.S.C. § 5301(a) and *Ruby v. Ryan*, 2016 WL 11448151, *8 (S.D. Calif. 2016);
6. Unemployment compensation --- Tex. Labor Code § 207.079(c);

7. Workers' compensation --- Tex. Labor Code § 408.201;
8. FEMA benefits --- 44 C.F.R. § 206.110(g);
9. Railroad retirement benefits --- 45 U.S.C. § 231m(a);
10. Pension and retirement benefits --- 29 U.S.C. § 1056(d) and Tex. Prop. Code § 42.0021(a) and (g);
11. Money belonging to a joint account holder --- Tex. Estates Code § 113.004(2), *Bechem v. Reliant Energy Retail Services, LLC*, 441 S.W.3d 839, 845 (Tex. App. – Houston [14th Dist.] 2014, no pet.) and *In re Marriage of McNelly*, 2014 WL 2039855, *7 (Tex. App. – Houston [14th Dist.] 2014, pet. denied);
12. Money from the sale of a homestead for a period of six --- months after the sale --- Tex. Prop. Code § 41.001(5)(c);
13. Tax-deferred accounts like a 401(k) or an IRA account --- 29 U.S.C. § 1056(d) and Tex. Prop. Code § 42.0021(a) and (g);
14. Education and health savings accounts such as 529 accounts or other qualified accounts --- 29 U.S.C. § 1056(d) and Tex. Prop. Code § 42.0021(a) and (g); and
15. Proceeds of a life, health or accident insurance policy, including related annuities --- Tex. Ins. Code § 1108.051 and *Rotella v. Cutting*, 2011 WL 3836456, *2-3 (Tex. App. – Fort Worth 2011, no pet.).
16. Temporary Assistance for Needy Families (TANF)--- Tex. Human Res. Code § 31.040.

Item number 11 is not technically an exemption, but it is an important category of funds that are legally protected from garnishment, which is why it is included. It is important to note that money in joint accounts does not always belong to all of the account holders. A "joint account" as defined by Tex. Estates Code § 113.004(2) is one that is "payable on request to one or more of two or more parties, regardless of whether there is a right of survivorship." *Id*. As such, if all of the account holders are currently alive, the funds in the joint account belong to the parties in proportion to the net contributions by each party to sums on deposit, absent clear and convincing contrary evidence. Tex. Estates Code § 113.102. If the judgment debtor made no contribution to the funds in the joint account subject to garnishment, she actually owns none of the money in the joint account. *Bechem v. Reliant Energy Retail Services, LLC*, 441 S.W.3d 839, 845 (Tex. App. – Houston [14th Dist.] 2014, no pet.); *In re Marriage of McNelly*, 2014 WL 2039855, *7 (Tex. App. – Houston [14th Dist.] 2014, pet. denied). This is true, even though she had the right to withdraw funds from that account. *Id*. Under these circumstances, the garnishor/judgment creditor is not entitled to garnish any of the funds in the joint account. *Republic Bank Dallas v. National Bank of Daingerfield*, 705 S.W.2d 310, 311-312 (Tex. App. – Texarkana 1986, no writ) (applying the predecessor statute, Tex. Probate Code § 438). See *Enright v. Lehmann*, 735 N.W.2d 326, 330-336 and n. 5 (Minn. 2007) (applying similar Minn. statute, court held that funds in joint account not deposited by judgment debtor were not subject to garnishment) (Note: *Enright* is cited affirmatively in *Bechem*). In fact, a bank that allows money belonging to other joint account holders may be liable for breach of contract for failing to use ordinary care in allowing disbursements from the account. *Strobach v. WesTex Community Credit Union*, 621 S.W.3d 856, 870-877 (Tex. App. – El Paso 2021, pet. pending).

Wrongful garnishment of the funds of a joint account holder occurs most often with older and younger individuals. In the case of older individuals, adult children may be joint account holders for the purpose of assisting a parent with the management of funds, though all of the funds are deposited by the parent. For minors, a parent is required as a joint account holder even when all the funds deposited are provided by the minor, often through a job. Wrongful freezing or seizure of such funds can lead to substantial financial hardship causing seniors or young people to lose necessary income for a debt that is not theirs.

II. Proposed Turnover Rules and Forms

A. Background

Unlike garnishment proceedings that are heavily regulated by statutes and rules, turnover proceedings are far less regulated, largely because there are no procedural rules governing how they are conducted. Currently, there is no recognized procedure in turnover proceedings for asserting exemption rights. Some attorneys have filed motions to return exempt funds in those proceedings, but there is no procedure for giving judgment debtors notice of their exemption rights in turnover proceedings and there are no directions by which they could easily assert such rights.

Like garnishment procedures, the failure to give explicit notice of the right to assert exemptions in post-judgment turnover proceedings and provide a simple pro se friendly procedure for asserting such exemptions could well be found to violate fundamental tenets of due process. See *Strickland v. Alexander*, 772 F.3d 876 (11th Cir. 2014); 2015 WL 5256836 (N.D. Ga. 2015) (entry of judgment on remand); 2015 WL 5916003 (N.D. Ga. 2015)(amending judgment); 2015 WL 103221498 (N.D. Ga. 2015)(amending judgment again). In short, the absence of any rules makes turnover proceedings ripe for constitutional attack. H.B. 3774 now requires that rules be adopted to address these concerns.

B. Proposed New Rules

Given that the issues relating to the procedure for raising exemption rights is similar in garnishment and turnover proceedings, the proposed new turnover procedural rules mimic the revised rules that are proposed for garnishment proceedings. (Note: Rule 660 is used as the rule number in this proposal, because the prior rule using that number was repealed, leaving that number available. Using 660 as the rule number is also helpful, as it would put these rules in the vicinity of the garnishment rules.)

1. New Rule 660

Rule 660 provides that all funds seized by a turnover receiver are kept for 60 days before distribution to the judgment creditor and the turnover receiver for her fees.[14] It also

[14] Turnover receivers typically take a fee equal to 25% of the amount collected for the judgment creditor.

provides that such funds should be remain in escrow if a claim to exemption or motion for return exempt funds is filed until such time as the claim or motion is decided. By holding the funds in escrow, they can be more easily refunded promptly to a judgment debtor if a court finds any of the seized funds are exempt.

This proposal for Rule 660 is consistent with Tex. Gov't Code § 22.0042(a)(1), which requires "a simple and expedited procedure to assert an exemption to the seizure of personal property by a judgment creditor." Once the seized funds have been distributed, it likely would be difficult to retrieve exempt funds as they could be in the hands of multiple parties. In addition, it is unclear if funds taken as fees for the turnover receiver could be retrieved. Therefore, holding the funds in escrow for a period of time is necessary for an expedited process. Sixty days was selected to ensure enough time for the judgment debtor to receive service of the notice and forms, to engage with the legal process, and to complete a hearing.

2. New Rule 660a

When a turnover receiver makes a demand for funds under CPRC § 31.002(g) to a financial institution, Rule 660a provides that copies of approved forms explaining exemption rights and an exemption claim form should be provided to the financial institution as well as the underlying turnover order. Like amended Rules 661 and 662, this gives financial institutions information about exemption rights. Since some financial institutions commonly provide courtesy copies of what they receive from turnover receivers, this provision establishes another method by which judgment debtors can be informed about their exemption rights shortly after the seizure. The proposed rule does not impose a duty on financial institutions to pass on this information, but it enables financial institutions to provide such information as a courtesy.

Similar to the garnishment process, this provision could also assist financial institutions in complying with federal notice requirements if the turnover impacts certain federal government benefits.[15] It also support the legislative requirement for a simple and expedited process.

3. New Rule 660b

Rule 660b provides for the same type of notice that is required by the revised Rule 663a that is being proposed, except that turnover receivers are required to give the notice (whereas judgment creditors are required to do so in post-judgment garnishment proceedings). Like the proposal for revised Rule 663a, this new rule provides for 3 forms to be approved by the Texas Supreme Court: (a) a turnover notice, (b) a turnover exemption claim form, and (c) directions on how to fill out and file the claim form. See subsections (a) and (b) of both Rule 660b and revised

[15] 31 CFR §§ 212.6 and 212.7 requires a financial institution to send a notice to the account holder named in the garnishment order when funds from the Social Security Administration, the Department of Veterans Affairs, the Office of Personnel Management, or the Rail Rod Retirement Board are protected in an account. These are common categories of protected funds. Under federal law, a garnishment order is broadly defined to include a seizing of funds by a turnover receiver. See 31 CFR § 212.3.

Rule 663a. Rule 660b also adopts the same language as revised Rule 663a on the manner and timing of service as well as the order of documents.

This reference to court-approved forms is similar to Rule 145(b) which calls for the use of Supreme Court-approved statements of inability to afford court costs or their equivalent.

4. New Rule 660c

This new rule is substantially similar to revised Rule 664a. Like revised Rule 664a, it establishes a process for the judgment debtor to raise exemption claims, provides for an expedited hearing process, specifies the nature of the hearing for motions to return exempt funds, and details the basis of the court determination.

Subsection (f) is new. It makes any ruling on a claim form or a motion for return exempt funds a final order so that it can be appealed. Since most of these cases arise in justice court, there may be no mechanism short of mandamus for challenging a justice of the peace who rules against a party on an exemption issue unless this provision is provided. Some justice courts have refused to treat their denial of motions for return of exempt funds as final orders entitled to be appealed, so counsel representing judgment debtors have had to seek review either by writ of certiorari or mandamus, a difficult and clumsy methods of review. The proposal establishes that rulings on exemption issues should be treated as final orders, so that they can be easily reviewed by higher courts.

5. New Rule 660d

This new rule simply requires strict compliance with these rules and finds that non-compliance requires the return of seized funds.

This rule mirrors the standard in garnishment proceedings. More specifically, Texas Supreme Court has held that garnishment proceedings "cannot be sustained unless they are in strict compliance with statutory requirements." *Beggs v. Fite*, 106 S.W.2d 1039, 1042 (Tex. 1937). The Texas Rules of Civil Procedure have the same force and effect as statutes. *In re City of Georgetown*, 53 S.W.3d 328, 332 (Tex. 2001). Thus, the courts have found that failing to comply with the garnishment statutes or rules provide a basis for dissolving the writ of garnishment. *Strobach v. WesTex Community Credit Union*, 621 S.W.3d 856, 870 (Tex. App. – El Paso 2021, pet. pending); *BBX Operating, LLC v. American Fluorite, Inc*., 2021 WL 3196513, *2 (Tex. App. – Beaumont 2021, no pet. history); *Aycock v. EECU*, 510 S.W.3d 636, 638 (Tex. App. – El Paso 2016, no pet.); *Pallida, LLC v. Uballe*, 2018 WL 6816680, *1 (Tex. App. – Austin 2018, no pet.); *In re Tasty Moments, LLC*, 2011 Tex. App. LEXIS 2377, *13-20 (Tex. App. – Corpus Christi 2011, orig. proc.); *Lease Finance Group, LLC v. Childers*, 310 S.W.3d 120, 124-128 (Tex. App. – Fort Worth 2010, no pet.); *Zeecon Wireless Internet, LLC v. American Bank of Texas, N.A*., 305 S.W.3d 813, 816-820 (Tex. App. – Austin 2010, no pet.); *Abdullah v. State of Texas*, 211 S.W.3d 938, 942-943 (Tex. App. – Texarkana 2007, no pet.); *Requena v. Salomon Smith Barney, Inc*., 2002 WL 356696, *3 (Tex. App. – Houston [1st Dist.] 2002, no pet.); *Mendoza v. Fruia Investments, Inc*., 962

S.W.2d 650, 651-652 (Tex. App. – Corpus Christi 1998, no pet.); *Walnut Equipment Leasing v. J-V Dirt & Loam*, 907 S.W.2d 912, 915 (Tex. App. – Austin 1995, writ denied).

As observed by one appellate court, "[i]t has long been the law of the State that if a judgment-creditor intends to avail himself of the State's aid in effecting a deprivation of property, he must strictly comply with the pertinent rules." *Hering v. Norbanco Austin I, Ltd*., 735 S.W.2d 638, 641 (Tex. App. – Austin 1987, writ denied). Likewise, another court has found that a judgment of garnishment should be set aside if there was an absence of strict compliance with Rule 663a. *Childers*, 310 S.W.3d at 123-128.

This proposed rule assures compliance and ensures that the standard of compliance is the same in both garnishment and turnover proceedings.

C. Proposed Notice, Instructions, and Form

The notice, instructions, and form for turnover are almost identical to those proposed for garnishment with only a few major substantive differences. There are differences because there are more exemptions to turnover than to garnishment.

Specifically, CPRC § 31.002(f) provides an exemption from turnover of "the proceeds of, or the disbursement of, property exempt under any statute, including Section 42.0021, Property Code." Through this provision, the Legislature ". . . intended to specifically exempt [from the turnover statute] paychecks, retirement checks, individual retirement accounts and other such property exempt under the bankruptcy code." *Caulley v. Caulley*, 806 S.W.2d 795, 798 (Tex. 1991). Accord: *Goebel v. Brandley*, 174 S.W.3d 359, 364-365 (Tex. App. – Houston [14th Dist.] 2005, pet. denied); *Burns v. Miller, Hiersche, Martens & Hayward, P.C*., 948 S.W.2d 317, 323 (Tex. App. – Dallas 1997, writ denied)(holding disbursements from spendthrift trusts to be exempt from turnover). In other words, once wages are paid to a judgment debtor, they become the proceeds of exempt property and thereby not subject to turnover. *Marrs v. Marrs*, 401 S.W.3d 122, 124-127 (Tex. App. – Houston [14th Dist.] 2011, no pet.). In addition, at least two courts of appeal have assumed that taking the proceeds of a paycheck from a judgment debtor's bank account by way of a *turnover order* might violate section 31.002(f), but the more limited exemption for current wages did not preclude *garnishment* of those proceeds. *Guiberson v. Bohnefeld*, 1993 WL 175242, *1-2 (Tex. App. – Dallas 1993, no writ); *American Express Travel Related Services v. Harris*, 831 S.W.2d 531, 532-533 (Tex. App. – Houston [14th Dist.] 1992, no writ).

Normally, "current wages" in the hands of employers are exempt from seizure under Tex. Prop. Code § 42.001(b)(1) but are subject to garnishment once they are received by the judgment debtor. *American Express Travel Related Services v. Harris*, 831 S.W.2d 531, 532-533 (Tex. App. – Houston [14th Dist.] 1992, no writ). Likewise, spendthrift trust funds remaining in the trust are exempt from seizure under Tex. Trusts Code § 112.035. The use of the terms "proceeds" and "disbursements" in section 31.002(f) means the funds are distributed to a judgment debtor and they remain exempt from turnover even though they are subject to seizure by garnishment.

In short, wages and spendthrift trust proceeds are subject to garnishment after receipt by a judgment debtor, but not by turnover. This standard is established in statute, because turnover is a far more imposing remedy and one that is largely unregulated. As a result, wages and proceeds from spendthrift trusts are included as exemptions on the turnover forms.

Conclusion

Section 15 of H.B. 3774 was adopted in the 87th Texas Legislative Session to ensure that Texans have access to a simple and expedited process to protect exempt funds from seizure in debt collections. These proposed rules implement the provisions of the new law. We look forward to discussions about this proposal and working with the Supreme Court Advisory Committee on this important process.

EXHIBIT A

RULE 661. FORM OF WRIT; ATTACHMENTS

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

(b) *Attachments.* The clerk shall attach to the writ the following documents approved by the Texas Supreme Court:

(1) The Garnishment Notice in Plain Language;
(2) Instructions to fill out the Garnishment Exemption Claim form;
(3) Two copies of the Garnishment Exemption Claim Form;

RULE 662. DELIVERY OF WRIT

The writ of garnishment shall be dated and tested as other writs, and may be delivered, with required attachments to the sheriff or constable by the officer who issued it, or he may deliver it to the plaintiff or judgment creditor, his agent or attorney, for that purpose.

RULE 663a. NOTICE TO DEFENDANT OR JUDGMENT DEBTOR

(a) *General Rule.* The defendant or judgment debtor shall be served with the following documents by the plaintiff or judgment creditor:

(1) The Garnishment Notice in Plain Language;
(2) Instructions to fill out the garnishment exemption claim form;
(3) Two copies of the Garnishment Exemption Claim Form;
(4) The writ of garnishment;
(5) The application for the writ of garnishment; and

(6) Accompanying affidavits and orders of the court.

(b) *Supreme Court Form*; *Clerk to Provide*. The plaintiff or judgment creditor must serve the Garnishment Notice in Plain Language form in at least eleven-point type, the Garnishment Exemption Claim Form, and the related instructions approved by the Supreme Court. In asserting an exemption or exemptions, the defendant or judgment debtor must use the Garnishment Exemption Claim Form approved by the Supreme Court, or any document claiming an exemption that substantially provides the information required by the Court-approved form. The clerk must make the Court-approved forms available to all persons without charge or request.

(c) *Manner of Service.* The documents referenced in subsection (a) shall be served by service of citation or as provided in Rule 21a.

(d) *Timing of Service.* Service under Subsection (a) by the plaintiff or judgment creditor must occur not later than one day after the date of service of the writ of garnishment on the garnishee.
(e) *Order of Required Documents.* Any service of the documents in Subsection (a) shall be in the specific order designated in Subsection (a).

RULE 664a. CLAIM TO EXEMPTION; DISSOLUTION OF WRIT

(a) *General Rule for Pre-Judgment Garnishment.* A defendant whose property or account has been garnished pre-judgment or any intervening party who claims an interest in such property or account, may by sworn written motion, seek to vacate, dissolve or modify the writ of garnishment, and the order directing its issuance, for any grounds or cause, extrinsic or intrinsic. Such motion shall admit or deny each finding of the order directing the issuance of the writ except where the movant is unable to admit or deny the finding, in which case movant shall set forth the reasons why he cannot admit or deny.

(b) *General Rule for Post-Judgment Garnishment.* A judgment debtor whose property or account has been frozen under a writ of garnishment after judgment or any intervening party who claims an interest in such property or account may seek to vacate, dissolve or modify the writ of garnishment, and the order directing its issuance, for any grounds or cause, extrinsic or intrinsic by filing one or more of the following documents:

(1) The Garnishment Exemption Claim Form;
(2) A substantial equivalent to the Garnishment Exemption Claim form; or
(3) A sworn motion to dissolve or modify the writ of garnishment.

(c) *Hearing.* Unless the parties agree to an extension of time, a hearing on the motion under Subsection (a) or on the motion and/or claim to exemption filed under Subsection (b) shall be

heard promptly, after reasonable notice to the plaintiff or judgment creditor (which may be less than three days), and a hearing shall be scheduled and the issue determined not later than ten days after the motion or exemption claim is filed. The filing of the motion or exemption claim shall stay any further proceedings under the writ, except for any orders concerning the care, preservation or sale of any perishable property, until a hearing is had, and the issue is determined.

(d) *Motion for Dissolution of the Writ.*
(1) The writ shall be dissolved unless, at such hearing, the plaintiff or judgment creditor shall prove the grounds relied upon for its issuance and that all required procedures have been followed, but the court may modify its previous order granting the writ and the writ issued pursuant thereto.

(2) The movant shall, however, have the burden to prove that:

(i) All or part of the value of the personal property is exempt;
(ii) The reasonable value of the property garnished exceeds the amount necessary to secure the debt, interest for one year, and probable costs; and/or
(iii) Justification for the substitution of property.

(3) The court's determination may be made upon the basis of affidavits or declarations, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court may make all such orders including orders concerning the care, preservation or disposition of the property (or the proceeds therefrom if the same has been sold), as justice may require. If the movant has given a replevy bond, an order to vacate or dissolve the writ shall vacate the replevy bond and discharge the sureties thereon, and if the court modifies its order or the writ issued pursuant thereto, it shall make such further orders with respect to the bond as may be consistent with its modification.

(e) *Claim to Exemption.* On a hearing of a claim to exemption or a claim by an intervening party, the court shall determine whether the defendant or judgment debtor has an applicable exemption to all or part of the personal property being garnished. Any personal property found to be exempt shall be ordered to be returned to the defendant or judgment debtor within no more than three business days. In addition, the court may determine that certain garnished personal property belongs to a third party or third parties and order its return within no more than three business days.

EXHIBIT B

NOTICE REGARDING: [Case Number]

[Name of Garnishor]	§	Name of court
Garnishor	§	**Address**
Address	§	City, State, Zip Code
City, State, Zip Code	§	
email	§	
v.	§	
[Name of Garnishee]	§	
Garnishee	§	
Address	§	
City, State, Zip Code	§	
email	§	
	§	
[Name of Defendant or Judgment Debtor]	§	
Defendant or Judgment Debtor	§	Name of County, Texas

NOTICE TO _____, DEFENDANT OR JUDGMENT DEBTOR, OF YOUR RIGHTS TO GET MONEY BACK THAT HAS BEEN FROZEN

You are receiving this notice because money you have in an account at [name of garnishee] has been frozen by [name of garnishor] and may be seized to pay a debt judgment against you. This means that you cannot use the money in this account right now and it could be used to pay the debt judgment. **HOWEVER, YOU MAY BE ABLE TO KEEP YOUR MONEY, SO READ THIS NOTICE CAREFULLY.**

State and federal law protects certain money and property from garnishment. **If the money in your account at [name of garnishee] was any of the following, it is protected and you can get this money back:**

1. Social Security Retirement income
2. Social Security Disability Income (SSDI),
3. Supplemental Security Income (SSI),
4. Alimony, child support, or spousal support,
5. Veterans benefits,
6. Unemployment compensation benefits,
7. Workers' compensation benefits,
8. FEMA disaster benefits,
9. Railroad Retirement benefits,
10. Pension and retirement benefits,
11. Money that belongs to a joint account holder,
12. Proceeds from the sale of a homestead (but only for six months after the sale),
13. Tax-deferred retirement accounts, like a 401(k) or an IRA account,

14. Education and health savings accounts, such as 529 accounts, an education savings account (ESA), or other qualified accounts,
15. Proceeds of a life, health, or accidental death insurance policy, including related annuities,
16. Temporary Assistance for Needy Families (TANF), or
17. Other funds and property that are exempt under Chapter 42 of the Texas Property Code or other state or federal laws.

Your money may also be protected if there is a problem with the judgment against you. For example, if you were not notified in writing about the original lawsuit that was filed against you to collect the debt, you can contest this garnishment (the freezing and seizing of your money).

TO GET THE PROTECTED MONEY BACK MONEY, YOU MUST:

- Fill out the exemption claim form that is included with this notice, and
- File the form immediately with the court at the address listed on the first page of this notice, and
- Mail the form (and email it, if the email address is listed) to the garnishor, and the garnishee listed in the heading of this notice as soon as possible.

If you would like to talk with a lawyer, here is information on free and low-cost services: https://www.txcourts.gov/programs-services/legal-aid. Legal Aid offices in Texas include Texas RioGrande Legal Aid at (800) 369-0574, Lone Star Legal Aid at (800) 733-8394, and Legal Aid of Northwest Texas at (800) 955-3959.

REMEMBER: FILE YOUR COMPLETED EXEMPTION CLAIM FORM IMMEDIATELY.

Garnishment Exemption Claim Form Instructions

The Garnishment Exemption Claim Form is a form that you can fill out and deliver to the court to get back protected money in your account that has been frozen. It is best to take the form to the court to make sure it is filed quickly and doesn't get lost in the mail. If you mail it to the court, it is best to send it certified mail with return receipt requested. **You are called the "Defendant or Judgment Debtor" on the form.**

To fill out the Garnishment Exemption Claim Form:

1. If the top of the form it is not already filled out, copy the information from the top of the notice you received that told you of your rights to get back any protected money that was frozen and might be taken from you.
2. Check all the boxes of protected income that apply to you. If you check the "other" box, write your explanation down in the space provided.
3. Write your address (address, city, state, and zip code), your phone number, and your email address in the space provided.
4. Sign the form in the space marked "Your Signature," and print your name and the date in the spaces provided. **Keep a copy of the form.**
5. Fill out the **Certificate of Service** at the end of the form.
6. **Take the original form to the clerk of the court** at address listed at the top of the notice that you received with this form.
7. Mail copies of the form by first class mail (or email, if an email address is provided on the notice) to the garnishor and garnishee. Their addresses are also at the top of the notice that you received with this form.
8. You can call the clerk of the court for more information at [insert phone number of court clerk].

The court will hold a hearing within 10 days from the date it receives your claim form to decide if the money in your account is protected. The court will mail you the time and date of the hearing at the address that you provide on your claim form. Make sure to attend the hearing. If you do not attend, the court is likely to rule against you. You can attend with or without an attorney.

At the hearing, tell the court why your money is protected. Bring any supporting documents to the hearing, such as:

- A copy of pay stubs and account statements showing deposits of protected money,
- A letter from a government agency awarding benefits such as social security or other protected benefit,
- A divorce decree for alimony, child support, or spousal support, or
- Any other information or document(s) that shows that your money is protected.

EXHIBIT C

CASE NUMBER: [Case Number]

[Name of Garnishor]	§	Name of court
Garnishor	§	**Address**
Address	§	City, State, Zip Code
City, State, Zip Code	§	
email	§	
v.	§	
[Name of Garnishee]	§	
Garnishee	§	
Address	§	
City, State, Zip Code	§	
email	§	
	§	
[Name of Defendant or Judgment Debtor]	§	
Defendant or Judgment Debtor	§	Name of County, Texas

GARNISHMENT EXEMPTION CLAIM FORM FOR DEFENDANT OR JUDGMENT DEBTOR

I CLAIM PROTECTION from garnishment. Some of my money or property held by the garnishee should be returned to be, because it is: (check all that apply)

- Social Security Retirement income
- Social Security Disability income (SSDI)
- Supplemental Security Income (SSI)
- Alimony, child support, or spousal support
- Veterans' benefits
- Unemployment compensation benefits
- Workers' compensation
- FEMA disaster benefits
- Railroad Retirement benefits
- Pension and retirement benefits
- Money that belongs to a joint account holder
- Money from the sale of a homestead less than six months ago
- Tax-deferred retirement accounts, like a 401(k) or an IRA account
- Education and health savings accounts, such as 529 accounts, educational savings accounts (ESA), or other qualified accounts
- Proceeds of a life, health, or accident insurance policy, including related annuities
- Temporary Assistance for Needy Families (TANF)
- Other (explain below)

I also state: (check if it applies)

- There is a problem with the judgment against me that the garnishor is using to collect money from me. *For example: I never got notice of the lawsuit to collect this debt.*

Explain, if needed: *(attach extra sheets if needed)*

_____

_____

_____

_____

_____

Send the notice of the hearing on my claim to me at:

Address: _____

Phone Number: _____

E-mail Address: _____

The statements made in this claim form are true to the best of my knowledge and belief.

_____ _____ _____

Your Signature Print Your Name Date

CERTIFICATE OF SERVICE

I certify that on this day, I have: (check all that apply)

☐ mailed
☐ emailed

the garnishor and the garnishee with a copy of this form.

_____ _____

Your Signature Today's Date

Part VI, Section 4. Garnishment and Turnover

RULE 660. FUNDS SEIZED BY TURNOVER RECEIVER

After a turnover receiver seizes funds belonging to a judgment debtor, such funds shall be held in escrow and not disbursed for a period of 60 days after service of notice to judgment debtor under Rule 660b. If a judgment debtor files a Turnover Exemption Claim Form, similar instrument, or a motion to return exempt funds, the funds shall remain in escrow until such time as the court has ruled on the judgment debtor's claim of exemption.

RULE 660a. DELIVERY OR SERVICE OF TURNOVER CLAIM TO A FINANCIAL INSTITUTION

Delivery or service of a turnover claim to a financial institution must include the following attachments in addition to the documents so required by Civil Practices and Remedies Code § 31.002(g):

(1) The Turnover Notice in Plain Language;
(2) Instructions to fill out the Turnover Exemption Claim Form;
(3) Two copies of the Turnover Exemption Claim Form;
(4) An additional copy of any letter, with accompanying attachments, sent by the turnover receiver to the financial institution.

RULE 660b. NOTICE TO JUDGMENT DEBTOR

(a) *General Rule.* The judgment debtor shall be served with the following documents by the turnover receiver:

(1) The Turnover Notice in Plain Language;
(2) Instructions to fill out the Turnover Exemption Claim Form;
(3) Two copies of the Turnover Exemption Claim Form;
(4) A copy of any letter, with accompanying attachments, sent by the turnover receiver to the financial institution.

(b) *Supreme Court Form*; *Clerk to Provide*. The turnover receiver must serve the Turnover Notice in Plain Language form in at least eleven-point type, the Turnover Exemption Claim Form, and the related instructions approved by the Supreme Court. In asserting an exemption or exemptions, the judgment debtor must use the Turnover Exemption Claim Form approved by the Supreme Court, or any document claiming an exemption that substantially provides the information required by the Court-approved form. The clerk must make the Court-approved forms available to all persons without charge or request.

(c) *Manner of Service.* The documents referenced in Subsection (a) shall be served by service of citation or as provided in Rule 21a.

(d) *Timing of Service.* Service under Subsection (a) by the turnover receiver must occur within one business day after receipt of any amount seized from a judgment debtor's funds at a financial institution.

(e) *Order of Required Documents.* Any service of the documents in Subsection (a) shall be in the specific order designated in Subsection (a).

RULE 660c. CLAIM TO EXEMPTION; RETURN OF EXEMPT FUNDS

(a) *General Rule for Post-Judgment Turnover Receivership.* A judgment debtor whose property or account has been seized post-judgment or any intervening party who claims an interest in such property or account may file one or more of the following documents:

(1) The Turnover Exemption Claim Form;
(2) A substantial equivalent to the Turnover Exemption Claim form; or
(3) A motion to return exempt funds or funds owned by a third party.

(b) *Hearing.* Unless the parties agree to an extension of time, a hearing on the motion and/or claim to exemption filed under Subsection (a) shall be heard promptly, after reasonable notice to the judgment creditor and the turnover receiver (which may be less than three days), and a hearing shall be scheduled and the issue determined not later than ten days after the motion or exemption claim is filed. The filing of the motion or exemption claim shall stay any disbursement of seized funds until a hearing is held and the issue is determined.

(c) *Motion for Return of Exempt Funds or Funds Owned by a Third Party.*

(1) Any funds seized by a turnover receiver shall be returned to the judgment debtor unless, at such hearing, the turnover receiver shall prove that all required procedures have been followed.

(2) The movant shall, however, have the burden to prove that all or part of the value of the personal property is exempt.

(3) The court's determination may be made upon the basis of affidavits or declarations, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence.

(e) *Claim to Exemption.* On a hearing of a claim to exemption, the court shall determine whether the judgment debtor has an applicable exemption to all or part of the personal property being seized by the turnover receiver. Any personal property found to be exempt shall be ordered to be returned to the judgment debtor within no more than three business days. In addition, the court

may determine that certain personal property seized by a turnover receiver belongs to a third party or third parties and order its return within no more than three business days.

(f) *Finality.* A decision on an exemption claim or a motion to return exempt funds is a final order that can be appealed.

RULE 660d. STRICT COMPLIANCE REQUIRED

Before disbursing any funds seized from a judgment debtor, turnover receivers shall strictly comply with all of the procedures imposed by Rules 660, 660a, 660b, and 660c, as well as any other applicable rules or statutes. Upon a finding that a turnover receiver failed to strictly comply with all procedures and applicable statutes, the court which appointed the turnover receiver shall order the return of all seized personal property, including seized funds.

EXHIBIT D

NOTICE REGARDING: [Case Number]

[Name of Judgment Creditor]	§	Name of Court
Judgment Creditor	§	**Address**
Address	§	City, State, Zip Code
City, State, Zip Code	§	
email (optional)	§	
v.	§	
[Name of Judgment Debtor]	§	
Judgment Debtor	§	
	§	
[Name of Turnover Receiver]	§	
Turnover Receiver	§	
Address	§	
City, State, Zip Code	§	
email (optional)	§	Name of County, Texas

NOTICE TO _____, JUDGMENT DEBTOR, OF YOUR RIGHTS TO GET YOUR MONEY BACK THAT WAS TAKEN BY A TURNOVER RECEIVER

You are receiving this notice because the money you had in an account at [name of financial institution or other holder of the account] has been taken by [name of turnover receiver] to pay a debt judgment against you. The court appointed [name of turnover receiver] to help [name of judgment creditor] collect this debt judgment. **YOU MAY BE ABLE TO GET YOUR MONEY BACK, SO READ THIS NOTICE CAREFULLY.**

State and federal law protects certain money and property from being taken by a turnover receiver. **If the money in your account at [name of financial institution or other holder of the account] was any of the following, it is protected and you can get this money back:**

1. Wages deposited into an account by an employer,
2. Social Security Retirement income,
3. Social Security Disability Income (SSDI),
4. Supplemental Security Income (SSI),
5. Alimony, child support, or spousal support,
6. Veterans benefits,
7. Unemployment compensation benefits,
8. Workers' compensation benefits,
9. FEMA disaster benefits,
10. Railroad Retirement benefits,
11. Pension and retirement benefits,
12. Money that belongs to a joint account holder,
13. Proceeds from the sale of a homestead (but only for six months after the sale),

14. Tax-deferred retirement accounts, like a 401(k) or an IRA account,
15. Education and health savings accounts, such as 529 accounts, an education savings account (ESA), or other qualified accounts,
16. Proceeds of a life, health, or accidental death insurance policy, including related annuities,
17. Temporary Assistance for Needy Families (TANF)
18. Proceeds from a spendthrift trust, or
19. Other funds and property that are exempt under Chapter 42 of the Texas Property Code or other state or federal laws.

Your money may also be protected if there is a problem with the judgment against you. For example, if you were not notified in writing about the original lawsuit that was filed against you to collect the debt, you can contest the turnover (the seizing of your money).

TO GET THE PROTECTED MONEY BACK, YOU MUST:

- Fill out the exemption claim form that is included with this notice, and
- File the form immediately with the court at the address listed on the first page of this notice, and
- Mail the form (and email it, if the email address is listed) to the turnover receiver and the plaintiff listed in the heading of this notice as soon as possible.

If you would like to talk with a lawyer, you can find free and low-cost legal information here: https://www.txcourts.gov/programs-services/legal-aid. Legal Aid offices in Texas include Texas RioGrande Legal Aid at (800) 369-0574, Lone Star Legal Aid at (800) 733-8394, and Legal Aid of Northwest Texas at (800) 955-3959.

REMEMBER: FILE YOUR COMPLETED EXEMPTION CLAIM FORM IMMEDIATELY.

Turnover Exemption Claim Form Instructions

The Turnover Exemption Claim Form is a form that you can fill out and deliver to the court to get back the protected money that has been taken from you. It is best to take the form to the court to make sure it is filed quickly and doesn't get lost in the mail. If you mail it to the court, it is best to send it certified mail with return receipt requested. **You are called the "Judgment Debtor" on the form.**

To fill out the Turnover Exemption Claim Form:

1. If the top of the form it is not already filled out, copy the information from the top of the notice you received that told you of your rights to get back any protected money that was taken from you.
2. Check all the boxes of protected income that apply to you. If you check the "other" box, write your explanation down in the space provided.
3. Write your address (address, city, state, and zip code), your phone number, and your email address in the space provided.
4. Sign the form in the space marked "Your Signature," and print your name and the date in the spaces provided. **Keep a copy of the form.**
5. Fill out the **Certificate of Service** at the end of the form.
6. **Take the original form to the clerk of the court** at address listed at the top of the notice that you received with this form.
7. Mail copies of the form by first class mail (or email, if an email address is provided on the notice) to the turnover receiver and the judgment creditor. Their addresses are at the top of the notice that you received with this form.
8. You can call the clerk of the court for more information at [insert phone number of court clerk].

The court will hold a hearing within 10 days from the date it receives your claim form to decide if the money in your account is protected. The court will mail you the time and date of the hearing at the address that you provide on your claim form. Make sure to attend the hearing. If you do not attend, the court is likely to rule against you. You can attend with or without an attorney.

At the hearing, tell the court why your money is protected. Bring any supporting documents to the hearing, such as:

- A copy of pay stubs and account statements showing deposits of protected money,
- A letter from a government agency awarding benefits, such as social security or other protected benefit,
- A divorce decree for alimony, child support, or spousal support, or
- Any other information or document(s) that shows that your money is protected.

CASE NUMBER: [Case Number]

[Name of Judgment Creditor]	§	Name of court
Judgment Creditor	§	**Address**
Address	§	City, State, Zip Code
City, State, Zip Code	§	
email (optional)	§	
v.	§	
[Name of Judgment Debtor]	§	
Judgment Debtor	§	
	§	
[Name of Turnover Receiver]	§	
Turnover Receiver	§	
Address	§	
City, State, Zip Code	§	
email (optional)	§	Name of County, Texas

TURNOVER EXEMPTION CLAIM FORM
FOR JUDGMENT DEBTOR

I CLAIM PROTECTION from seizure. Some of my money or property taken by the turnover receiver is protected and should be returned to me, because it is: (check all that apply)

- Wages
- Social Security Retirement income
- Social Security Disability income (SSDI)
- Supplemental Security Income (SSI)
- Alimony, child support, or spousal support
- Veterans' benefits
- Unemployment compensation benefits
- Workers' compensation
- FEMA disaster benefits
- Railroad Retirement benefits
- Pension and retirement benefits
- Money that belongs to a joint account holder
- Money from the sale of a homestead less than six months ago
- Tax-deferred retirement accounts, like a 401(k) or an IRA account
- Education and health savings accounts, such as 529 accounts, educational savings accounts (ESA), or other qualified accounts
- Proceeds of a life, health, or accident insurance policy, including related annuities
- Temporary Assistance for Needy Families (TANF)
- Proceeds from a spendthrift trust
- Other (explain below)

I also state: (check if it applies)

- There is a problem with the judgment against me that the turnover receiver is using to collect money from me. *For example: I never got notice of the lawsuit to collect this debt.*

Explain, if needed: *(attach extra sheets if needed)*

_____

_____

_____

_____

Send the notice of the hearing on my claim to me at:

Address: _____

Phone Number: _____

E-mail Address: _____

The statements I made in this claim form are true to the best of my knowledge and belief.

_____	_____	_____
Your Signature	Print Your Name	Date

CERTIFICATE OF SERVICE

I certify that on this day, I have: (check all that apply)

- ☐ mailed
- ☐ emailed

the turnover receiver and the judgment creditor a copy of this form.

_____	_____
Your Signature	Today's Date

Tab D

PROPOSAL BY TEXAS CREDITORS BAR ASSOCIATION ("TXCBA") AND TEXAS ASSOCIATION OF TURNOVER RECEIVERS ("TATR") TO EFFECTUATE HOUSE BILL 3774 RELATING TO EXEMPTIONS

Summary

HB 3774 requires a simple and expedited procedure for a judgment debtor to assert an exemption to the procedure of personal property, a process to stay a proceeding for a reasonable period to allow for the assertion and consideration of the exemption, and a form notice to be provided.

The TXCBA and TATR organizations have contemplated this Legislative mandate, and believe that this bill impacts many post-judgment procedures outlined in the Texas Rules of Civil Procedure. Writs of execution, writs of garnishment, turnover receiverships, attachments and turnover orders are all affected by this process. Rather than attempt a massive re-write of each section of Part VI of the Texas Rules of Civil Procedure, we recommend the creation of a new Rule 717a in Section 9 of Part VI that can be applied to the appropriate ancillary proceedings. This Section already applies to the claims of third parties to personal property levied upon by judicial process. Adding a rule related to the assertion of property exemptions fits within the heading of the Section – "Trial of Right of Property" – and the addition of one rule should accomplish what is needed.

The proposed exemption notice claim form must similarly work in many situations, and in all forms of courts, including justice courts. It must also take into account the legislative mandate that the hearing occur promptly and the burden of the defendant to prove their entitlement to the exemption[1], so the form should walk an unsophisticated defendant through the relevant potential exemptions, prompt them to attach relevant proof, ask them to attest to their claim, and provide notice to all relevant parties. Additional prompts for notification by email and participation in remote proceedings if available can help a hearing occur quickly if needed.

Proposed New Rules

PART VI. RULES RELATING TO ANCILLARY PROCEEDINGS

SECTION 9. TRIAL OF RIGHT OF PROPERTY

TRCP 717a. PERSONAL PROPERTY EXEMPTIONS IN POSTJUDGMENT PROCEEDINGS

Whenever a postjudgment warrant, turnover order, writ of garnishment, execution, attachment or other like writ is levied upon personal property of an individual defendant, the plaintiff or receiver making the levy shall, as soon as practicable following notice that the property has been seized, mail a notice to the defendant regarding their right to assert an exemption. The notice shall be in the form promulgated by the Texas Supreme Court, and shall include a form for asserting an exemption. The notice and form may be sent in conjunction with other notices required by these rules.

A court, receiver or officer having the property in possession shall not cause or order the disposition or delivery of personal property to the plaintiff for ten days after the notice and form are mailed, to allow for the assertion of an exemption by the defendant. When the defendant fails to assert an

[1] *Beaumont Bank, N.A. v. Buller, 806 S.W.2d 223, 226 (Tex.1991)*; *Roosth v. Roosth*, 889 S.W.2d 445, 459 (Tex.App.-Houston [14th Dist.] 1994, writ denied).

exemption within ten days after the levy and notice, the officer or receiver having the property in possession may at any time thereafter deliver the same to plaintiff.

If the defendant timely files a form asserting an exemption, on reasonable notice to the opposing party (which may be less than three days), the court shall promptly set a hearing on the exemption. The court, receiver or officer having the property in possession shall not cause or order the disposition or delivery of personal property to the plaintiff until the hearing is held. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order allowing or denying the exemption, or may defer ruling on the exemption if additional evidence or discovery is required.

Commentary:

Reference is made to an "individual defendant" because corporate defendants do not have personal property exemptions. See Tex. Prop. Code. §42.001 et seq. This process should not be required for post-judgment processes against corporate defendants without personal property exemptions.

The notice regarding exemptions should be able to be sent at the same time as other notices to the judgment debtor, such as Rules 663a & 700a regarding the right of replevy for execution and garnishment. When a notice can be sent after a seizure or levy changes depending on the property seized and the process by which the seizure occurs. While a notice may be promptly sent when funds are seized and a bank is prompt in notifying the creditor or receiver, a deputy seizing a vehicle under a writ of execution over a weekend may not notify a creditor for several days. Additionally, a notice should not be sent that funds or property has been frozen if no funds were frozen or property captured.

The ten-day period allowing for the assertion of an exemption is designed to match up with other reasonable periods in enforcement proceedings for the delivery of property. See Tex, R. Civ. P. 705, 708.

Language for the first paragraph was modelled after Tex. R. Civ. P. 717 and 700a. Language for the second paragraph was pulled from the statute itself and Tex. R. Civ. P. 708. Language for the third paragraph was modeled on the prompt review language of Tex. R. Civ. P. 701.

The current Rule 717 will need to be renumbered, and additional clarifying language may need to be added to the other rules in Section 9 to clarify that they only apply to the current Rule 717.

CAUSE NO. _____

[PLAINTIFF NAME],	§	IN THE _____ COURT
PLAINTIFF	§	
	§	
	§	
v.	§	_____
	§	
	§	
	§	
_____,	§	
DEFENDANT	§	_____ COUNTY, TEXAS

PERSONAL PROPERTY SEIZURE
EXEMPTION NOTICE AND CLAIM FORM

To _____, Defendant:

You are hereby notified that certain funds or property alleged to be claimed by you have been seized. If you claim any rights in such property, you are advised:

YOU MAY HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY ASSERTING AN APPLICABLE EXEMPTION UNDER FEDERAL OR STATE LAW. YOU MAY SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A COMPLETED COPY OF THIS FORM.

To assert an exemption, please mark the exemption(s) you are asserting below, attach any evidence documenting your exemption(s), complete the form, and file a copy with the Court designated below within ten (10) days from the date this notice was mailed to you.

I hereby assert that the following FEDERAL personal property exemption(s) apply to currently seized property [check all that apply]:

___ - Social Security Administration benefit payments protected under 42 USC 407 and 42 USC 1383(d)(1);
___ - Veterans Administration benefit payments protected under 38 USC 5301(a);
___ - Railroad Retirement Board benefit payments protected under 45 USC 231m(a) and 45 USC 352(e);
___ - Office of Personnel Management benefit payments protected under 5 USC 8346 and 5 USC 8470;
___ - Federal Emergency Management Agency benefits protected under 44 CFR 206.110(g);

I hereby assert that the following TEXAS personal property exemption(s) apply to currently seized property [check all that apply]:

___ - funds from Temporary Assistance for Needy Families (TANF);
___ - proceeds from the sale of homestead property, where the sale occurred less than six months from the date the proceeds were seized;
___ - distributions from a qualified savings plan under Tex. Property Code § 42.0021, where the distribution occurred less than sixty days from the date the proceeds were seized;
___ - rights to workers' compensation benefits;

___ - rights to unemployment benefits, or unemployment benefits that have not been comingled with other funds of the individual except for debts incurred for necessaries furnished to the individual or the individual's spouse or dependents during the time that the individual was unemployed;

___ - property that has an aggregate fair market value of not more than $100,000 (for a family) or $50,000 (for an individual), exclusive of the amount of any liens, security interests, or other charges encumbering the property, and consisting of:

- ___ - home furnishings, including family heirlooms;
- ___ - provisions for consumption;
- ___ - farming or ranching vehicles and implements;
- ___ - tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;
- ___ - wearing apparel;
- ___ - jewelry not to exceed 25% of the aggregate limitations prescribed above;
- ___ - two firearms;
- ___ - athletic and sporting equipment, including bicycles;
- ___ - a two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person;
- ___ - the following animals and forage on hand for their consumption;
  - Two horses, mules or donkeys and a saddle, blanket, and bridle for each;
  - 12 head of cattle;
  - 60 head of other types of livestock; and
  - 120 fowl;
- ___ - household pets;
- ___ - unpaid commissions not to exceed 25% of the aggregate limitations prescribed above;

___ - current wages for personal services, except for the enforcement of court-ordered child support payments;

___ - professionally prescribed health aids of a debtor or a dependent of a debtor;

___ - alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor;

___ - a religious bible or other book containing sacred writings of a religion that is seized by a creditor other than a lessor of real property who is exercising the lessor's contractual or statutory right to seize personal property after a tenant breaches a lease;

___ - rights to a qualified savings plan such as a retirement, pension, IRA, health savings account, prepaid tuition contract, annuity, or other plan as set forth in Tex. Property Code 42.0021;

___ - insurance or annuity benefits as described in Tex. Insurance Code §1108.051(a).

Information on free and low-cost legal services can be found at https://www.txcourts.gov/programs-services/legal-aid, or by contacting your local bar organization. Legal aid offices in Texas include Texas Rio Grande Legal Aid (800-369-0574), Lone Star Legal Aid (800-733-8394) and Legal Aid of Northwest Texas (800-955-3959.

My contact information is as follows:

Name: _____
Address: _____
_____
_____
Phone: _____
Email: _____

___ - Yes, I am willing to receive court notices and correspondence via email.
___ - No, I am not willing to receive court notices and correspondence via email. All notices should be sent to me by mail.

___ - Yes, I am willing and able to participate in a hearing remotely via telephone, video or other technological means if available.
___ - No, I am not willing or able to participate in a hearing remotely. I will attend in person.

___ - Yes, I would like the plaintiff or receiver to contact me to discuss resolving this matter using the contact information provided above.
___ - No, I would not like the plaintiff or receiver to contact me to discuss resolving this matter.

___ - I have attached documentation in support of my exemption claim.

I hereby swear that the above is true and correct, and request that the Court set a hearing on my exemption claim as set forth above. I further declare that I sent copies of this exemption form to the Court and the parties below.

_____
Claimant

NOTIFIED PARTIES

Court

_____
_____
_____

Plaintiff or Plaintiff's Attorney

_____
_____
_____

Receiver/Levying Officer:
_____
_____
_____

(Translation in Spanish)

Commentary:

The first part of the notice is modeled after existing notices in Tex. R. Civ. P. 663a, 699, and 700a.

Summarizing all personal property exemptions in one document is a daunting task, especially given the mandate that the notice be in plain language. The exemptions are most easily organized by listing first federal exemptions, then state exemptions, and simply quoting the provision. Care must be taken between an exemption to garnishment of a *right* to a benefit, versus the benefit after it has been paid and deposited into a bank account.[2]

All property exemptions subject to the personal property value limits of Tex. Prop. Code § 42.001(a) were grouped together so that a judgment debtor would understand that the subsections were governed by those limitations.

Given the need for a speedy hearing, an option should be provided for the judgment debtor to elect to receive notices electronically, to participate remotely in a hearing, to indicate a desire to discuss resolution with the judgment plaintiff or court-appointed receiver, and to attach evidence supporting their claim. This can prompt the parties to resolve the property seizure sooner than the court can schedule a hearing.

[2] For example, unpaid commissions for personal services are protected, but not once they are paid. Tex. Prop. Code § 42.001(d); *Mass. Mut. Life Ins. Co. v. Shoemaker*, 849 F. Supp. 30, 33 (S.D.Tex. 1994). Tex. Labor Code § 408.201 is in "Subchapter K. Protection of Rights to Benefits", and does not protect workers' compensations funds after deposit. Tex. Labor Code § 207.075 provides an absolute exemption for the right to unemployment benefits, but only protects received benefits if not commingled with other funds except in certain circumstances. "Current wages" have also long fallen into this category – they are protected from garnishment while in the hands of the employer or while in the form of a paycheck, but once deposited they are no longer "current" or exempt. Tex. Prop. Code § 42.001(b)(1); *Sutherland v. Young*, 292 S.W. 581 (Tex.Civ.App.--Waco 1927, no writ); *Bandy v. First State Bank, Overton, Tex*., 835 S.W.2d 609, 620 (1992); *American Express Travel Related Services v. O.L. Harris*, 831 S.W.2d 531 (Tex.App.-- Houston [14th Dist.] 1992, no writ)

Tab E

PROPOSAL BY TEXAS CREDITORS BAR ASSOCIATION ("TXCBA") AND TEXAS ASSOCIATION OF TURNOVER RECEIVERS ("TATR") TO EFFECTUATE HOUSE BILL 3774 RELATING TO EXEMPTIONS

Summary

HB 3774 requires a simple and expedited procedure for a judgment debtor to assert an exemption to the procedure of personal property, a process to stay a proceeding for a reasonable period to allow for the assertion and consideration of the exemption, and a form notice to be provided.

The TXCBA and TATR organizations have contemplated this Legislative mandate, and believe that this bill impacts many post-judgment procedures outlined in the Texas Rules of Civil Procedure. Writs of execution, writs of garnishment, turnover receiverships, attachments and turnover orders are all affected by this process. Rather than attempt a massive re-write of each section of Part VI of the Texas Rules of Civil Procedure, we recommend the creation of a new Rule 717a in Section 9 of Part VI that can be applied to the appropriate ancillary proceedings. This Section already applies to the claims of third parties to personal property levied upon by judicial process. Adding a rule related to the assertion of property exemptions fits within the heading of the Section – "Trial of Right of Property" – and the addition of one rule should accomplish what is needed.

The proposed exemption notice claim form must similarly work in many situations, and in all forms of courts, including justice courts. It must also take into account the legislative mandate that the hearing occur promptly and the burden of the defendant to prove their entitlement to the exemption[1], so the form should walk an unsophisticated defendant through the relevant potential exemptions, prompt them to attach relevant proof, ask them to attest to their claim, and provide notice to all relevant parties. Additional prompts for notification by email and participation in remote proceedings if available can help a hearing occur quickly if needed.

Proposed New Rules

PART VI. RULES RELATING TO ANCILLARY PROCEEDINGS

SECTION 9. TRIAL OF RIGHT OF PROPERTY

TRCP 717a. PERSONAL PROPERTY EXEMPTIONS IN POSTJUDGMENT PROCEEDINGS

Whenever a postjudgment warrant, turnover order, writ of garnishment, execution, attachment or other like writ is levied upon personal property of an individual defendant, the plaintiff or receiver making the levy shall, as soon as practicable following notice that the property has been seized, mail a notice to the defendant regarding their right to assert an exemption. The notice shall be in the form promulgated by the Texas Supreme Court, and shall include a form for asserting an exemption. The notice and form may be sent in conjunction with other notices required by these rules.

A court, receiver or officer having the property in possession shall not cause or order the disposition or delivery of personal property to the plaintiff for ten days after the notice and form are mailed, to allow for the assertion of an exemption by the defendant. When the defendant fails to assert an

[1] *Beaumont Bank, N.A. v. Buller, 806 S.W.2d 223, 226 (Tex.1991)*; *Roosth v. Roosth*, 889 S.W.2d 445, 459 (Tex.App.-Houston [14th Dist.] 1994, writ denied).

exemption within ten days after the levy and notice, the officer or receiver having the property in possession may at any time thereafter deliver the same to plaintiff.

If the defendant timely files a form asserting an exemption, on reasonable notice to the opposing party (which may be less than three days), the court shall promptly set a hearing on the exemption. The court, receiver or officer having the property in possession shall not cause or order the disposition or delivery of personal property to the plaintiff until the hearing is held. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order allowing or denying the exemption, or may defer ruling on the exemption if additional evidence or discovery is required.

Commentary:

Reference is made to an "individual defendant" because corporate defendants do not have personal property exemptions. See Tex. Prop. Code. §42.001 et seq. This process should not be required for post-judgment processes against corporate defendants without personal property exemptions.

The notice regarding exemptions should be able to be sent at the same time as other notices to the judgment debtor, such as Rules 663a & 700a regarding the right of replevy for execution and garnishment. When a notice can be sent after a seizure or levy changes depending on the property seized and the process by which the seizure occurs. While a notice may be promptly sent when funds are seized and a bank is prompt in notifying the creditor or receiver, a deputy seizing a vehicle under a writ of execution over a weekend may not notify a creditor for several days. Additionally, a notice should not be sent that funds or property has been frozen if no funds were frozen or property captured.

The ten-day period allowing for the assertion of an exemption is designed to match up with other reasonable periods in enforcement proceedings for the delivery of property. See Tex, R. Civ. P. 705, 708.

Language for the first paragraph was modelled after Tex. R. Civ. P. 717 and 700a. Language for the second paragraph was pulled from the statute itself and Tex. R. Civ. P. 708. Language for the third paragraph was modeled on the prompt review language of Tex. R. Civ. P. 701.

The current Rule 717 will need to be renumbered, and additional clarifying language may need to be added to the other rules in Section 9 to clarify that they only apply to the current Rule 717.

CAUSE NO. _____

[PLAINTIFF NAME], PLAINTIFF	§	IN THE _____ COURT
v.	§	_____
_____, DEFENDANT	§	_____ COUNTY, TEXAS

PERSONAL PROPERTY SEIZURE
EXEMPTION NOTICE AND CLAIM FORM

To _____, Defendant:

You are hereby notified that certain funds or property alleged to be claimed by you have been seized. If you claim any rights in such property, you are advised:

YOU MAY HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY ASSERTING AN APPLICABLE EXEMPTION UNDER FEDERAL OR STATE LAW. YOU MAY SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A COMPLETED COPY OF THIS FORM.

To assert an exemption, please mark the exemption(s) you are asserting below, attach any evidence documenting your exemption(s), complete the form, and file a copy with the Court designated below within ten (10) days from the date this notice was mailed to you.

I hereby assert that the following FEDERAL personal property exemption(s) apply to currently seized property [check all that apply]:

___ - Social Security Administration benefit payments protected under 42 USC 407 and 42 USC 1383(d)(1);
___ - Veterans Administration benefit payments protected under 38 USC 5301(a);
___ - Railroad Retirement Board benefit payments protected under 45 USC 231m(a) and 45 USC 352(e);
___ - Office of Personnel Management benefit payments protected under 5 USC 8346 and 5 USC 8470;
___ - Federal Emergency Management Agency benefits protected under 44 CFR 206.110(g);

I hereby assert that the following TEXAS personal property exemption(s) apply to currently seized property [check all that apply]:

___ - funds from Temporary Assistance for Needy Families (TANF);
___ - proceeds from the sale of homestead property, where the sale occurred less than six months from the date the proceeds were seized;
___ - distributions from a qualified savings plan under Tex. Property Code § 42.0021, where the distribution occurred less than sixty days from the date the proceeds were seized;
___ - rights to workers' compensation benefits;

___ - rights to unemployment benefits, or unemployment benefits that have not been comingled with other funds of the individual except for debts incurred for necessaries furnished to the individual or the individual's spouse or dependents during the time that the individual was unemployed;

___ - property that has an aggregate fair market value of not more than $100,000 (for a family) or $50,000 (for an individual), exclusive of the amount of any liens, security interests, or other charges encumbering the property, and consisting of:

- ___ - home furnishings, including family heirlooms;
- ___ - provisions for consumption;
- ___ - farming or ranching vehicles and implements;
- ___ - tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;
- ___ - wearing apparel;
- ___ - jewelry not to exceed 25% of the aggregate limitations prescribed above;
- ___ - two firearms;
- ___ - athletic and sporting equipment, including bicycles;
- ___ - a two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person;
- ___ - the following animals and forage on hand for their consumption;
  - Two horses, mules or donkeys and a saddle, blanket, and bridle for each;
  - 12 head of cattle;
  - 60 head of other types of livestock; and
  - 120 fowl;
- ___ - household pets;
- ___ - unpaid commissions not to exceed 25% of the aggregate limitations prescribed above;

___ - current wages for personal services, except for the enforcement of court-ordered child support payments;

___ - professionally prescribed health aids of a debtor or a dependent of a debtor;

___ - alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor;

___ - a religious bible or other book containing sacred writings of a religion that is seized by a creditor other than a lessor of real property who is exercising the lessor's contractual or statutory right to seize personal property after a tenant breaches a lease;

___ - rights to a qualified savings plan such as a retirement, pension, IRA, health savings account, prepaid tuition contract, annuity, or other plan as set forth in Tex. Property Code 42.0021;

___ - insurance or annuity benefits as described in Tex. Insurance Code §1108.051(a).

Information on free and low-cost legal services can be found at https://www.txcourts.gov/programs-services/legal-aid, or by contacting your local bar organization. Legal aid offices in Texas include Texas Rio Grande Legal Aid (800-369-0574), Lone Star Legal Aid (800-733-8394) and Legal Aid of Northwest Texas (800-955-3959.

My contact information is as follows:

Name: _____
Address: _____
_____
_____
Phone: _____
Email: _____

___ - Yes, I am willing to receive court notices and correspondence via email.
___ - No, I am not willing to receive court notices and correspondence via email. All notices should be sent to me by mail.

___ - Yes, I am willing and able to participate in a hearing remotely via telephone, video or other technological means if available.
___ - No, I am not willing or able to participate in a hearing remotely. I will attend in person.

___ - Yes, I would like the plaintiff or receiver to contact me to discuss resolving this matter using the contact information provided above.
___ - No, I would not like the plaintiff or receiver to contact me to discuss resolving this matter.

___ - I have attached documentation in support of my exemption claim.

I hereby swear that the above is true and correct, and request that the Court set a hearing on my exemption claim as set forth above. I further declare that I sent copies of this exemption form to the Court and the parties below.

_____
Claimant

NOTIFIED PARTIES

Court

_____
_____
_____

Plaintiff or Plaintiff's Attorney

_____
_____
_____

Receiver/Levying Officer:

_____
_____
_____

(Translation in Spanish)

Commentary:

The first part of the notice is modeled after existing notices in Tex. R. Civ. P. 663a, 699, and 700a.

Summarizing all personal property exemptions in one document is a daunting task, especially given the mandate that the notice be in plain language. The exemptions are most easily organized by listing first federal exemptions, then state exemptions, and simply quoting the provision. Care must be taken between an exemption to garnishment of a *right* to a benefit, versus the benefit after it has been paid and deposited into a bank account.[2]

All property exemptions subject to the personal property value limits of Tex. Prop. Code § 42.001(a) were grouped together so that a judgment debtor would understand that the subsections were governed by those limitations.

Given the need for a speedy hearing, an option should be provided for the judgment debtor to elect to receive notices electronically, to participate remotely in a hearing, to indicate a desire to discuss resolution with the judgment plaintiff or court-appointed receiver, and to attach evidence supporting their claim. This can prompt the parties to resolve the property seizure sooner than the court can schedule a hearing.

[2] For example, unpaid commissions for personal services are protected, but not once they are paid. Tex. Prop. Code § 42.001(d); *Mass. Mut. Life Ins. Co. v. Shoemaker*, 849 F. Supp. 30, 33 (S.D.Tex. 1994). Tex. Labor Code § 408.201 is in "Subchapter K. Protection of Rights to Benefits", and does not protect workers' compensations funds after deposit. Tex. Labor Code § 207.075 provides an absolute exemption for the right to unemployment benefits, but only protects received benefits if not commingled with other funds except in certain circumstances. "Current wages" have also long fallen into this category – they are protected from garnishment while in the hands of the employer or while in the form of a paycheck, but once deposited they are no longer "current" or exempt. Tex. Prop. Code § 42.001(b)(1); *Sutherland v. Young*, 292 S.W. 581 (Tex.Civ.App.--Waco 1927, no writ); *Bandy v. First State Bank, Overton, Tex.*, 835 S.W.2d 609, 620 (1992); *American Express Travel Related Services v. O.L. Harris*, 831 S.W.2d 531 (Tex.App.-- Houston [14th Dist.] 1992, no writ)

Tab F

A BRIEF RESPONSE TO THE TEXAS APPLESEED PROPOSAL[1]

The proposed rules and notices submitted by Lone Star Legal Aid, Texas Appleseed and Professor Spector have significant gaps, errors, and omissions that should be considered by the Supreme Court Advisory Committee. I have attempted to issue spot and briefly cite the relevant case law or actual practice, for further discussion or follow-up as needed:

- The list of exemptions is misleading and inaccurate
    - The right to unemployment compensation is exempt from garnishment or turnover, but after deposit it is only exempt if not mingled with other funds. Tex. Labor Code § 207.075
    - The right to pensions and retirement benefits are exempt, but unless they are federal or state pension benefits, once received they are only exempt for sixty days. Tex. Prop. Code § 42.0021(e)
    - There is no exemption for money belonging to a joint account holder
        - Issues surrounding ownership of a joint account conflate a third party's rights with the judgment debtor's exemptions. A judgment debtor cannot assert a third party's rights in an exemption form; they have no standing.
        - Issues surrounding ownership of funds or property by a third party cannot be resolved on an expedited basis with potentially less than three days' notice. It will require documentation and an analysis of deposits. It cannot be subject to the same process.
        - Tex. Estates Code §113.101 clearly and unambiguously states that the code provision does not affect the withdrawal power of those persons under the terms of an account contract. Because a turnover receiver steps into the shoes of the judgment debtor, they have the same withdrawal power as the judgment debtor as account holder.
    - There is no exemption for "wages deposited into an account by an employer" as stated in the turnover notice
        - This is an attempt to create a new exemption where none exists.
        - Mike Bernstein has done an exhaustive analysis of why this argument – essentially, the "proceeds of wages" argument – is incorrect. I've attached his presentation from 2016 that runs through the whole set of case law on the topic.
- The proposed garnishment rules create an unworkable process
    - Proposed Rule 661(b) directs the clerk to attach the garnishment notice to the writ, but the writ is served on the bank, so it is not needed (especially the two copies)
    - Proposed Rule 663a(b) directs the plaintiff or judgment creditor to serve the defendant with the garnishment notice and mandates font size, but previously directed the clerk to issue the notice, so the creditor will not have any control over the notice.
    - Proposed Rule 663a(d) requires service not later than one day after the date of service of the writ of garnishment. However, service of the writ of garnishment occurs by deputy sheriff or constable, who often does not inform the creditor's attorney for days (if at all). Frequently, the creditor first gets notice of service on the bank when the defendant calls

[1] This response is submitted by Craig Noack in his individual capacity and after a brief review, and has not been endorsed by the Texas Creditors Bar Association or the Texas Association of Turnover Receivers.

the creditor about the frozen account. A creditor could not comply with this provision given their inability to compel deputies to timely report service. An additional issue is that many banks take a number of days after service to freeze a bank account. Notice should not be compelled to occur before the account is frozen.

- Proposed Rule 664a(d)(2) only imposes upon the movant the burden to prove that "all or part of the value of the personal property is exempt" where the law and the promptness of the hearing require the movant to bear the burden to prove the actual character of the property as exempt. *Beaumont Bank, N.A. v. Buller, 806 S.W.2d 223, 226 (Tex.1991)*; *Roosth v. Roosth*, 889 S.W.2d 445, 459 (Tex.App.-Houston [14th Dist.] 1994, writ denied).
- Proposed Rule 664a(e) uses the word "shall" to create a situation where a judge at an expedited hearing cannot continue the hearing to gather more evidence, including documentary evidence from a bank that has not had time to comply with a document request or subpoena.

- The proposed turnover rules demonstrate a lack of knowledge of the process, and also create an unworkable process
  - Proposed Rule 660 creates a holding period of 60 days.
    - First and foremost, sixty days is not a reasonable period as mandated by HB 3774. All other periods for replevies, bonds, and assertions of rights of third parties under the rules center around ten days.
    - Judgment defendants do not want their funds held for sixty days. One of the major benefits of turnover receiverships is that the judgment defendant's money can be released within 48 hours once an agreement is reached, versus the 20-27 days money is on hold while a bank files an answer in a garnishment. This would materially harm judgment defendants.
    - Not all receivers request a remit of all funds immediately. Many freeze the account, determine the defendant's situation, then release a portion of even non-exempt funds back to the judgment debtor in return for a payment plan. This means the funds never actually get remitted to the receiver until after a payment plan is established.
    - This ignores the possibility of seizing actual, physical personal property.
  - Proposed Rule 660a requires delivery to the financial institution of the exemption form
    - This accomplishes nothing. The financial institution does not typically provide the turnover demand to the judgment debtor, and is in fact not authorized to do so when the turnover demand includes a record request. Tex. Fin. Code § 59.006(a)(5).
    - It is not explained why the bank needs two copies of the exemption form and additional copies of the letter, when the receiver is required to send the notices directly to the judgment debtor
  - Proposed Rule 660b requires that the receiver send a copy of the letter sent by the turnover receiver to the financial institution.
    - This is not required by the statute, and acts to harm the judgment creditor's interest. If a turnover receiver accompanies a levy request with a demand for documentation, a judgment debtor may take action to further hide assets, because the turnover receiver's document requests have been disclosed to the defendant before the receiver obtains responses. For example, if a defendant discovers that

a receiver will be obtaining copies of all deposited checks, the defendant may move to close down other accounts with non-exempt assets.

- Proposed Rule 660b(d) requires service of the notice one day after receipt of funds seized.
  - This is impractical for receivers with large volume practices.
  - More importantly, the notice should be going out based on when the funds are frozen. Funds are received by receivers days or weeks after the funds are frozen. Receivers are talking to consumers the day of the account freeze, and working through exemption issues that day, not weeks later.
  - Again, this ignores the concept that actual, physical property can be seized, or funds not at a financial institution.
- Proposed Rule 660c is inflexible and unworkable
  - On potentially less than three days' notice, the receiver must prove that all required procedures have been followed or else all funds returned. What if the proof must be by business records affidavit but not enough time existed to get the records on file? What if the attorney was unavailable on the date of the hearing set for the next day?
  - The movant only has to prove the value of the exempt property, not that the property is actually exempt
  - How can a receiver controvert an affidavit or declaration on less than three days' notice when the bank has not had sufficient time to respond to the records request included in the turnover demand?
  - There is no ability to extend the hearing for additional time to gather documents. There is no ability to allow funds just received by a receiver to clear the bank. There is no contemplation of physical property versus funds.
- Proposed Rule 660d is a punitive provision with no statutory purpose
  - There is no rationale given for this provision, despite the fact that receivers work for the court and are entitled to deference as extensions of the court. Instead, they are made targets. This attempts to create an FDCPA-like "let's see what imagined wrongs we can allege" atmosphere for a straightforward post-judgment process. There is no deadline for how long a defendant has to raise a concern, nor is there any limitation on what potential rules or statutes might have applied in any particular situation.

- The notices attempt to inject other "judgment appeals" into the property exemption claim
  - There is no basis for claiming that someone's property is protected by exemption because of failure to serve. This is legal advice.
  - Moreover, it would trick defendants into thinking they've raised an issue when they have not. Many would check a box stating that they have not been served and file it with the court, which the court could do nothing about because it has lost plenary power. It would not have the effect of a restricted appeal or bill of review, so the judge would set a hearing only to tell the defendant that he could not help them.

Tab G

MEMORANDUM

TO: **Supreme Court Advisory Committee**

FROM: **Judicial Administration Subcommittee**

RE: **Rule of Judicial Administration 7**

DATE: **September 1, 2021**

I. Matter Referred to Subcommittee

The Court's June 2, 2021 letter and Chairman Babcock's August 17, 2021 letter refer the following matter to the Judicial Administration Subcommittee:

> **Rule of Judicial Administration 7.** The Remote Proceedings Task Force recommends updating Rule of Judicial Administration 7 to include remote proceedings. The Committee should make recommendations.

II. Background

The Remote Proceedings Task Force submitted a status report to the Texas Supreme Court in May 2021 containing a number of recommendations aimed at encouraging the continued use of remote proceedings after the exigencies of the pandemic have subsided. Among the recommendations was one to consider including a reference to remote hearings in Rule of Judicial Administration 7, which currently encourages use of telephone and mail in lieu of personal appearances by attorneys for motion hearings, pretrial conferences, and proceedings for scheduling and setting trial dates.

III. Issues for Discussion

As currently drafted, Rule 7 provides that a district or statutory county court judge shall

> to the extent consistent with safeguarding the rights of litigants to the just processing of their causes, utilize methods to expedite the disposition of cases on the docket of the court, including … the use of telephone or mail in lieu of personal appearances by attorneys for motion hearings, pretrial conferences, scheduling and the setting of trial dates.

Tex. R. Jud. Admin. 7(a)(6)(b).

Like the Remote Proceedings Task Force, the Judicial Administration Subcommittee endorses the continued use of remote proceedings in appropriate circumstances to reduce litigation burdens on attorneys and litigants, and to increase efficiency. The subcommittee also endorses revising Rule 7 to update it and bring it into alignment with current practices involving the use of remote proceedings. With respect to the specific referral issue, the subcommittee believes that

updating language can be adapted from that used by the Texas Supreme Court in its series of pandemic-related emergency orders addressing modified court procedures during 2020 and 2021.

Based on this emergency order language, the subcommittee recommends the following revision to Rule 7(a)(6)(b):

> to the extent consistent with safeguarding the rights of litigants to the just processing of their causes, utilize methods to expedite the disposition of cases on the docket of the court, including … the use of teleconferencing, videoconferencing, or any other means ~~telephone or mail~~ in lieu of personal appearances by attorneys for motion hearings, pretrial conferences, scheduling and the setting of trial dates.

The goal behind this proposed revision is to (1) make it broad and inclusive rather than limiting; and (2) avoid tying the rule to any particular modes of communication, which may change as technology rapidly evolves. With this in mind, the proposed language is intended to be broad enough to encompass telephone use without being limited to that mode. There was some uncertainty among the subcommittee's members about whether an explicit reference to "mail" still serves any useful purpose. It is unclear whether "mail" is intended to reference delivery by the U.S. Postal Service; email; or both. Another consideration is whether the amended rule should reference any other "available" means to address the circumstances of self-represented litigants and others who may not have access to the same technology that most lawyers do.

In the course of discussing this proposed update to Rule 7 based on the referral, the subcommittee identified additional potential areas of inquiry that arguably go beyond the subcommittee referral but may warrant further discussion. These areas of inquiry may overlap with initiatives already being undertaken by the Remote Proceedings Task Force, or by other subcommittees of this body.

- Should Rule 7(a)(6)(b)'s authorization for remote participation be expanded beyond "motion hearings, pretrial conferences, scheduling and the setting of trial dates"? What range of proceedings short of trial on the merits should be captured? For example, should remote proceedings be authorized for a hearing on a plea to the jurisdiction, or for a hearing on temporary orders in family law cases?

- Should Rule 7(a)(6)(b)'s reference to remote participation be expanded beyond "attorneys" to encompass litigants?

- Should Rule 7's authorization of remote participation be incorporated into the Texas Rules of Civil Procedure, as opposed to the Rules of Judicial Administration?

Tab H

Zamen, Shiva

From: Tracy Christopher <Tracy.Christopher@txcourts.gov>
Sent: Wednesday, August 4, 2021 9:56 AM
To: Nathan Hecht; Jane Bland; Babcock, Chip
Cc: Emily Miskel
Subject: potential flaw

There is a potential flaw with the service by social media rule. Neither the clerks nor the deputies will do them. Only a private process server will do it and this is more expensive, leaving the indigent out of luck.
Perhaps this is just a matter of proper forms for the clerks/deputies?

Tracy Christopher
Chief Justice, 14th Court of Appeals
301 Fannin
Houston, TX 77002
713-274-2819

Tab I

Memorandum

To: SCAC

From: Members of the 167-206 subcommittee

Date: August 31, 2021

Re: 199.2 proposed change

The State Bar court rules committee has suggested a change to 199.2 that partially tracks a 2020 federal rule change to rule 30(b)(6). Because the court rules committee includes a good faith conferral about documents–that the federal rule does not–we include pertinent document rules in this memorandum. In our review of this proposed change we considered:

1. Whether we had a similar problem in state court.
2. Whether it was good idea in general.
3. Whether good faith should be the standard.
4. Whether the requirement should apply to nonparties.
5. Whether the requirement should apply to documents.

A. The state court rule and suggested addition

The proposed addition from the court rules committee is as follows:

199.2(b) Content of notice.
(1) Identity of witness; organizations. The notice must state the name of the witness, which may be either an individual or a public or private corporation, partnership, association, governmental agency, or other organization. If an organization is named as the witness, the notice must describe with reasonable particularity the matters on which examination is requested. In response, the organization named in the notice must - a reasonable time before the deposition -designate one or more individuals to testify on its behalf and set forth, for each individual designated, the matters on which the individual will testify. Before or promptly after the notice or subpoena is

served, the serving party and the organization must confer in good faith about the matters for examination and documents requested to be produced, if any.

(5) Request for Production of Documents. A notice may include a request that the witness produce at the deposition documents or tangible things within the scope of discovery and within the witness's possession, custody, or control. If the witness is a nonparty, the request must comply with Rule 205 and the designation of materials required to be identified in the subpoena must be attached to, or included in, the notice. The nonparty's response to the request is governed by Rules 176 and 205. When the witness is a party or subject to the control of a party, document requests under this subdivision are governed by Rules 193 and 196.3

B. The federal rules and commentary

The pertinent language of the Federal Rule:

30(b)(2) ***Producing Documents.*** If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34[1] to produce documents and tangible things at the deposition.

30 (b)(6) ***Notice or Subpoena Directed to an Organization*****.** In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

[1] Federal Rule 34 is a request for production of documents and does not include a good faith conferral about documents and applies to parties. It refers nonparty document production to Federal Rule 45. Federal Rule 45 provides for the subpoena to attend a deposition and for the production of documents.

The commentary for the federal rule change:

> Rule 30(b)(6) is amended to respond to *problems that have emerged in some cases*. Particular concerns raised have included overlong or ambiguously worded lists of matters for examination and inadequately prepared witnesses. This amendment directs the serving party and the named organization to confer before or promptly after the notice or subpoena is served about the matters for examination. The amendment also requires that a subpoena notify a nonparty organization of its duty to confer and to designate each person who will testify. It facilitates collaborative efforts to achieve the proportionality goals of the 2015 amendments to Rules 1 and 26(b)(1).
>
> Candid exchanges about the purposes of the deposition and the organization's information structure may clarify and focus the matters for examination, and enable the organization to designate and to prepare an appropriate witness or witnesses, thereby avoiding later disagreements. It may be productive also to discuss "process" issues, such as the timing and location of the deposition, the number of witnesses and the matters on which each witness will testify, and any other issue that might facilitate the efficiency and productivity of the deposition.
>
> The amended rule directs that the parties confer either before or promptly after the notice or subpoena is served. If they begin to confer before service, the discussion may be more productive if the serving party provides a draft of the proposed list of matters for examination, which may then be refined as the parties confer. The process of conferring may be iterative. Consistent with Rule 1, the obligation is to confer in good faith about the matters for examination, but the amendment does not require the parties to reach agreement. In some circumstances, it may be desirable to seek guidance from the court.
>
> When the need for a Rule 30(b)(6) deposition is known early in the case, the Rule 26(f) conference may provide an occasion for beginning discussion of these topics. In appropriate cases, it may also be helpful to include reference to Rule 30(b)(6) depositions in the discovery plan submitted to the court under Rule 26(f)(3) and in the matters considered at a pretrial conference under Rule 16.
>
> Because a Rule 31 deposition relies on written questions rather than a description with reasonable particularity of the matters for examination, the duty to confer about the matters for examination does not apply when an organization is deposed under Rule 31(a)(4).

(emphasis added)

C. Discussion Points

1. Are there similar problems in state court?

Our subcommittee has not seen similar problems in state court litigation. It appears that most parties do confer. Occasionally a corporate witness will lack knowledge, leading to another deposition. A quick review of caselaw does not show any appellate issues on this section.

2. Whether a conferral is a good idea in general?

The commentary to the federal rule indicates that this conferral could be part of a rule 26 conference. The SCAC has discussed many times the idea of a rule 26 conference in all cases. For all of the reasons previously discussed in this committee, requiring conferences can be unnecessary and cost money in simple cases. However, this conferral seems minimal.

3. Should there be a good faith conferral?

Our subcommittee felt that good faith was a useful standard. Good faith conferral is a component of some of the federal rules. Good faith is also used in the Texas Rules but not in connection with conferral with the other side.

Rule 191.2 contains our conference requirements. "Parties and their attorneys are expected to cooperate in discovery and make any agreements reasonably necessary for the efficient disposition of the case." All motions must certify "that a reasonable effort had been made to resolve the dispute." We may prefer to keep that as the standard instead.

If we changed the rule to require good faith–should we also include similar commentary to the change–especially about what good faith means?

4. Whether this rule should apply to nonparties?

As proposed by the court rules committee the change would apply to a nonparty. It appears that the committee focused solely on parties in their rationale for a change. This is from the committee's proposal:

Brief Statement of Reasons for Requested Amendments and Advantages Served by Them

> The purpose of the proposed change is for parties to discuss issues regarding the scope of the examination of the corporate representative and documents being requested in advance of the deposition and thereby reduce discovery disputes and avoid the need to file motions requiring court intervention. Requiring this conference to occur before the deposition will also help define the scope of the examination so that the organization can identify the proper witness(es) to be designated. Requiring this conference to occur before the deposition will help the parties identify issues which cannot be resolved and while those issues may require motions and court intervention, it can be done prior to the deposition and thereby avoid the necessity of re-deposing a corporate witness. Lastly, the revision would follow FRCP 30(b)(6) requiring the parties to confer with the addition that the parties also confer regarding documents requested, if any.

Our committee felt that nonparties may not understand what a good faith conferral is. We were also concerned about the scope of a conferral before the organization received a subpoena. We also wondered whether a nonparty could be sanctioned for not conferring.

The federal rule does apply to nonparties but perhaps only after they have been served with a subpoena. The federal rule added a second sentence to the requirement, underlined above, indicating that the subpoena to a nonparty must contain the conferral requirement. The rule is silent about any sanction for a failure to confer in good faith.

If the SCAC thinks we should include nonparties, we would need to include additional language and perhaps think about what to do for non-compliance.

5. Whether the conferral should apply to document production?

The federal rule conferral does not include a discussion about documents. Our subcommittee is not opposed to including a conferral about documents in the rule change. But this would not conform to the federal rule. In addition, if the SCAC is supportive of this change, we would want to consider whether such a conferral should apply to both parties and nonparties.

Depositions and Subpoenas of Organizations
Richard R. Orsinger
February 14, 2021

The Federal Rule

Federal Rule of Civil Procedure ("FRCP") 30 governs depositions in Federal court proceedings. Adopted in 1970, Rule 30(b)(6) requires a party seeking the deposition of a business organization, or governmental agency, or other entity to serve a notice or subpoena describing the matter for examination with "reasonable particularity." The burden is then on the deponent entity to designate one or more representatives to testify on behalf of the organization.

The Federal Judicial Conference Committee on Rules of Practice and Procedure has perennially studied the issue of depositions of entities.[1] At its meeting on April 15-16, 2017, a subcommittee advanced a proposed change to FRCP 30(b)(6), that would require continuing interaction between a party seeking to depose an entity and the deponent entity to agree on the witnesses to be presented at the deposition and the topics to be discussed. *Id.* A subcommittee report details the pros and cons regarding possible changes. *See* Report of Advisory Committee on Civil Rules (April 25–26, 2017 meeting) ("Report").[2]

In August of 2018, the Committee published a Preliminary Draft of proposed rule changes and solicited public comment.[3] The Draft indicated that the Committee had been considering a change to FRCP 30(b)(6) since April of 2016, discussed a proposed rule change at its November 2017 meeting, restated the proposal at its January 2018 meeting, then arrived at its preliminary proposal after the April 2018 meeting. That proposal added the following language to Rule 30(b)(6): "Before or promptly after the notice or subpoena is served, and continuing as necessary, the serving party and the organization must confer in good faith about the number and description of the matters for examination and the identity of each person the organization will designate to testify. A subpoena must advise a nonparty organization of its duty to make this designation and to confer with the serving party" (the new language is underlined). Excerpt from the May 11, 2018 Report of the Advisory Committee on Civil Rules (revised August 2, 2018) ("Report").[4]

This seemingly minor change triggered a massive response, for when the Committee issued a request for comment on the proposed amendment, the Committee reported that it received 1,780 written comments and more than 80 witnesses testified in two public forums.[5] Organizations criticized the meet-and-confer requirement as time-consuming, and argued that it would permit requesting parties to influence the choice of witnesses and would spawn a motion practice over vague terms in the proposed rule. The public input can be reviewed at uscourt.gov.[6] In response, the Committee softened the language to the following: "Before or promptly after the notice or subpoena is served, ~~and continuing as necessary~~, the serving party and the organization must confer in good faith about ~~the number and description of~~ the matters for examination ~~and the identity of each person the organization will designate to testify~~."

The Committee Note to Rule 30 said in part:

> Rule 30(b)(6) is amended to respond to problems that have emerged in some cases.

> Particular concerns raised have included overlong or ambiguously worded lists of matters for examination and inadequately prepared witnesses. This amendment directs the serving party and the named organization to confer before or promptly after the notice or subpoena is served about the matters for examination. The amendment also requires that a subpoena notify a nonparty organization of its duty to confer and to designate each person who will testify. It facilitates collaborative efforts to achieve the proportionality goals of the 2015 amendments to Rules 1 and 26(b)(1).
>
> Candid exchanges about the purposes of the deposition and the organization's information structure may clarify and focus the matters for examination, and enable the organization to designate and to prepare an appropriate witness or witnesses, thereby avoiding later disagreements. It may be productive also to discuss "process" issues, such as the timing and location of the deposition, the number of witnesses and the matters on which each witness will testify, and any other issue that might facilitate the efficiency and productivity of the deposition.
>
> * * *
>
> Because a Rule 31 deposition relies on written questions rather than a description with reasonable particularity of the matters for examination, the duty to confer about the matters for examination does not apply when an organization is deposed under Rule 31(a)(4).[7]

On October 23, 2019, the Committee Chair forwarded a group of rule changes to the U.S. Supreme Court, including the proposed change to FRCP 10(6)(b).[8] He made this comment about the proposed change to FRCP 30(b)(6):

> The proposed amendment as published for public comment was broader than the proposal ultimately approved by the Advisory Committee in that it required that the parties confer about the number and description of matters for examination and the identity of each witness the organization will designate to testify. In addition, the conferral process was to "continu[e] as necessary." The robust public comments revealed strong opposition to the proposed requirement that the parties confer about the identity of each witness, as well as the directive that the parties confer about the "number and description of" the matters for examination. While divisions among practitioners existed on various aspects of the published proposal, many commenters supported a requirement that the parties confer about the matters for examination. After carefully reviewing the comments and testimony, the Advisory Committee approved a modest amendment that requires the parties to confer about the matters for examination. The amendment codifies a best practice and practitioners across the bar support it.[9]

On April 27, 2020, the U.S. Supreme Court adopted the amendment to FRCP 30(b)(6) and transmitted it to Congress for review. Congress did not overrule the amendment, so to it became effective on December 1, 2020. FRCP 30(b)(6) now provides:

> (6) **Notice or Subpoena Directed to an Organization.** In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a

> governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to make this designation. to confer with the serving party and to designate each person who will testify. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules

Parties to a lawsuit in Federal court have a duty to meet and confer to develop a discovery plan for the case under FRCP 26(f). The amendment to FRCP 10(b)(6) applies the same concept of meeting and conferring to the party and the deponent, organization even when the deponent organization is a nonparty.

Evidentiary or Judicial Admissions

Another issue considered by the Federal Committee was whether testimony of a witness at an entity deposition should constitute a judicial admission or an evidentiary admission. The Committee noted in a Report on its deliberations:

> Conclusions: Courts are not monolithic as to whether Rule 30(b)(6) deponents' statements bind corporations in the sense of "judicial admissions." The strong majority position is that they do not, and may be contradicted at trial like any other evidentiary admission. The courts holding otherwise have done so to effectively "sanction" organizations for failing to prepare their witnesses.

Report, p. 253. The Report explained:

> The distinction between "judicial admissions" and "ordinary evidentiary admissions" is critical. ... "Evidentiary admissions" are statements "by a party-opponent [that] are excluded from the category of hearsay." See FED. R. EVID. 801(d)(2). Practically speaking, evidentiary admissions have been "made by a party" and therefore "can subsequently be used in a trial against that party." ... At trial, the party can "put himself on the stand and explain his former assertion." On the other hand, "[j]udicial admissions are not evidence at all." ... They go further than evidentiary admissions toward establishing a fact, in that "[a] judicial admission concedes a fact, removing [it] from any further possible dispute." [Citations omitted.]

Report, p. 253. The Committee Memo contains extensive analysis of the cases coming down on either side of the issue. Report, pp. 253 - 261.

The Texas Rules

> Texas Rule of Civil Procedure (TRCP) 176.6(b) relates to subpoenas directed to entities. It says:

TRCP 176 Subpoenas

176.6 Response

(b) **Organizations.** If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

TRCP 199.2(b)(1) applies to deposition notices to entities. It provides:

(b) **Content of notice.**

(1) **Identity of witness; organizations.** The notice must state the name of the witness, which may be either an individual or a public or private corporation, partnership, association, governmental agency, or other organization. If an organization is named as the witness, the notice must describe with reasonable particularity the matters on which examination is requested. In response, the organization named in the notice must - a reasonable time before the deposition - designate one or more individuals to testify on its behalf and set forth, for each individual designated, the matters on which the individual will testify. Each individual designated must testify as to matters that are known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized by these rules.

Although TRCP 199.2(b)(1) relating to deposition notices has similar language to TRCP 176.6 relating to subpoenas, Rule 199.1(b)(1) additionally requires the deponent organization to designate its representative "a reasonable time before the deposition." Rule 199.1(b)(1) also gives the noticing party the option to name a specific person as a witness, or to name the organization as the witness which then triggers the deponent organization's duty to designate representative(s). Rule 199.1(b)(1) additionally requires the deponent organization to indicate which matters each representative will testify to. (FRCP 30(b)(6) makes this specification optional)

TRCP 205, which governs discovery from nonparties, requires a party seeking to depose a nonparty to serve on the nonparty both a notice and a subpoena. Rule 205 does not have a provision relating to disclosure to organizations of matters on which examination is requested nor does it give the deponent entity an obligation to designate representatives. However, TRCP 205.3 says that a deposition notice duces tecum to a nonparty must describe "the items to be produced or inspected, either by individual items or by category, describing each item and category with reasonable particularity ...." And Rule 176.6(b)'s requirement that the deposing party's subpoena state the matters on which examination is requested, and the deponent entity's obligation to designate persons to testify, would apply to the subpoena. TRCP 205.3(d) requires the nonparty to respond to the notice and subpoena "in accordance with Rule 176.6."

Depositions on written questions are governed by Rule 200. A notice for deposition on written questions addressed to an entity must comply with Rule 199.2(b), and "[i]f the witness is an

organization, the organization must comply with the requirements of that provision." (This is not true of a deposition on written questions in Federal Court.)

If an organization is requested to produce digital information, TRCP 196.4, Electronic of Magnetic Data," applies.

Unlike newly-amended FRCP 30.6(b)(6), under Texas procedure there is no requirement to meet and confer over a subpoena or deposition notice to an organization.

For a comprehensive CLE article on depositions of entities, see Paul N. Gold, *Deposing the Ventriloquist's Dummy: A Discussion of Fed. R. Civ. P. 30(b)(6) and Texas State Practice*, State Bar of Texas' Prosecuting & Defending Truck & Auto Collision Cases Course 2019.[10]

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1. David G. Campbell, *Summary of Proposed Amendments to the Federal Rules*, p. 2 <https://www.uscourts.gov/sites/default/files/2019-10-23_scotus_package_final_for_posting_0.pdf>.

2. *Report of the Advisory Committee on Civil Rules* (April 25-26, 2017) <https://www.uscourts.gov/sites/default/files/2017-04-civil-agenda_book.pdf>

3. *Preliminary Draft of Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, and Civil Procedure, andthe Federal Rules of Evidence* <https://www.uscourts.gov/sites/default/files/2018_proposed_rules_amendments_published_for_public_comment_0.pdf>.

4. See Endnote 3, p. 33.

5. Thomas Regan, *Only Fix What's Broke: A Guide to the Proposed 2020 Amendments to FRCP 30(b)(6)* <https://lewisbrisbois.com/newsroom/legal-alerts/only-fix-whats-broke-a-guide-to-the-proposed-2020-amendments-to-frcp-30b6>.

6. Public Hearing on Proposed Amendments to The Federal Rules of Civil Procedure <https://www.uscourts.gov/sites/default/files/testimony_package_for_2-8-19_hearing_as_of_2-6-2019.pdf>.

7. Campbell, Endnote 1, pp. 56-68.

8. Campbell, Endnote 1, p. 1.

9. Campbell, Endnote 1, p. 3.

10. < https://www.agtriallaw.com/papers/DeposingVentriloquistDummy_020119.pdf >.

Tab J

MEMO

To: Supreme Court Advisory Committee

From: Jury Rules Subcommittee

Date: August 24, 2021

Re: Amending Rule of Civil Procedure 226a to Address Implicit Bias

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By letter of June 2, 2021, Chief Justice Hecht requested the Supreme Court Advisory Committee review the Proposal of the State Bar of Texas Court Rules Committee to amend Texas Rule of Civil Procedure 226a to add an instruction regarding implicit bias. The recommendation of the State Bar Rules Committee and its statement of reasons is attached.

Our subcommittee recommends that the SCAC recommend adoption of this proposal.

TCR/rd
Attachment

STATE BAR OF TEXAS COURT RULES COMMITTEE
PROPOSED AMENDMENT TO
TEXAS RULE OF CIVIL PROCEDURE 226a, §§2 AND 3

I. Exact Language of Existing Rule

Tex. R. Civ. P. 226a, §§ 2 and 3

II.

That the following oral and written instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the jury immediately after the jurors are selected for the case:

Members of the Jury [or Ladies and Gentlemen]:

You have been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

[Hand out the written instructions.]

You have each received a set of written instructions. I am going to read them with you now. Some of them you have heard before and some are new.

1. Turn off all phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on the Internet before these court proceedings end and you are released from jury duty. Do not record or photograph any part of these court proceedings, because it is prohibited by law.

2. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like “hello” and “good morning.” Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.

3. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.

4. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social

networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.

5. Do not discuss this case with anyone during the trial, not even with the other jurors, until the end of the trial. You should not discuss the case with your fellow jurors until the end of the trial so that you do not form opinions about the case before you have heard everything.
After you have heard all the evidence, received all of my instructions, and heard all of the lawyers' arguments, you will then go to the jury room to discuss the case with the other jurors and reach a verdict.

6. Do not investigate this case on your own. For example, do not:

a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;

b. go to places mentioned in the case to inspect the places;

c. inspect items mentioned in this case unless they are presented as evidence in court;

d. look anything up in a law book, dictionary, or public record to try to learn more about the case;

e. look anything up on the Internet to try to learn more about the case; or

f. let anyone else do any of these things for you.

This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial.

7. Do not tell other jurors about your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another similar case. Do not tell the other jurors about it. Telling other jurors about it is wrong because it means the jury will be considering things that were not admitted in court.

8. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.

9. Do not consider or guess whether any party is covered by insurance unless I tell you to.

10. During the trial, if taking notes will help focus your attention on the evidence, you may take notes using the materials the court has provided. Do not use any personal electronic devices to take notes. If taking notes will distract your attention from the evidence, you should not take notes. Your notes are for your own personal use. They are not evidence. Do not show or read your notes to anyone, including other jurors.

You must leave your notes in the jury room or with the bailiff. The bailiff is instructed not to read your notes and to give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone.

[You may take your notes back into the jury room and consult them during deliberations. But keep in mind that your notes are not evidence. When you deliberate, each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. After you complete your deliberations, the bailiff will collect your notes.]

When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

11. I will decide matters of law in this case. It is your duty to listen to and consider the evidence and to determine fact issues that I may submit to you at the end of the trial. After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked and you should not consider which side will win. Instead, you will need to answer the specific questions I give you.

Every juror must obey my instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I may have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.

Do you understand these instructions? If you do not, please tell me now.

Please keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.

III.

COURT'S CHARGE

Before closing arguments begin, the court must give to each member of the jury a copy of the charge, which must include the following written instructions, with such modifications as the circumstances of the particular case may require:

Members of the Jury [or Ladies & Gentlemen of the Jury]:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. [I will give you a number where others may contact you in case of an emergency.]

[Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.]

[You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.]

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer “yes” or “no” to all questions unless you are told otherwise. A “yes” answer must be based on a preponderance of the evidence [unless you are told otherwise]. Whenever a question

requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence [unless you are told otherwise].

The term “preponderance of the evidence” means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, “I will answer this question your way if you answer another question my way.”

11. [Unless otherwise instructed] The answers to the questions must be based on the decision of at least 10 of the 12 [5 of the 6] jurors. The same 10 [5] jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 [5] jurors, even if it would be a majority. As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

[Definitions, questions, and special instructions given to the jury will be transcribed here. If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D1 and D2, instructions in substantially the following form must immediately precede such questions:

Preceding question (ii):

Answer Question (ii) for D1 only if you unanimously answered “Yes” to Question[s] (i) regarding D1. Otherwise, do not answer Question (ii) for D1. [Repeat for D2.]

You are instructed that in order to answer "Yes" to [any part of] Question (ii), your answer must be unanimous. You may answer "No" to [any part of] Question (ii) only upon a vote of 10 [5] or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

Answer Question (iii) for D1 only if you answered "Yes" to Question (ii) for D1. Otherwise, do not answer Question (iii) for D1. [Repeat for D2.]

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

These examples are given by way of illustration.]

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

a. have the complete charge read aloud if it will be helpful to your deliberations;

b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;

c. give written questions or comments to the bailiff who will give them to the judge;

d. write down the answers you agree on;

e. get the signatures for the verdict certificate; and

f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. [Unless otherwise instructed] You may answer the questions on a vote of 10 [5] jurors. The same 10 [5] jurors must agree on every answer in the charge. This means you may not have one group of 10 [5] jurors agree on one answer and a different group of 10 [5] jurors agree on another answer.

2. If 10 [5] jurors agree on every answer, those 10 [5] jurors sign the verdict.

If 11 jurors agree on every answer, those 11 jurors sign the verdict.

If all 12 [6] of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 [6] of you agreeing on some answers, while only 10 [5] or 11 of you agree on other answers. But when you sign the verdict, only those 10 [5] who agree on every answer will sign the verdict.

4. [Added if the charge requires some unanimity] There are some special instructions before Questions ___ explaining how to answer those questions. Please follow the instructions. If all 12 [6] of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

_____
Judge Presiding

Verdict Certificate

Check one:

___Our verdict is unanimous. All 12 [6] of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 [6] of us.

_____
Signature of Presiding Juror Printed Name of Presiding Juror

___Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

___Our verdict is not unanimous. Ten [Five] of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE NAME PRINTED
1._____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

11. _____

If you have answered Question No. ___ [the exemplary damages amount], then you must sign this certificate also.

Additional Certificate

[Used when some questions require unanimous answers]

I certify that the jury was unanimous in answering the following questions. All 12 [6] of us agreed to each of the answers. The presiding juror has signed the certificate for all 12 [6] of us.

[Judge to list questions that require a unanimous answer, including the predicate liability question.]

_____

Signature of Presiding Juror Printed Name of Presiding Juror

II. Proposed Amendment to Existing Rule

Tex. R. Civ. P. 226a, §§ 2 and 3

II.

That the following oral and written instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the jury immediately after the jurors are selected for the case:

Members of the Jury [or Ladies and Gentlemen]:

You have been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

[Hand out the written instructions.]

You have each received a set of written instructions. I am going to read them with you now. Some of them you have heard before and some are new.

1. Turn off all phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on the

Internet before these court proceedings end and you are released from jury duty. Do not record or photograph any part of these court proceedings, because it is prohibited by law.

2. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like “hello” and “good morning.” Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.

3. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.

4. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.

5. Do not discuss this case with anyone during the trial, not even with the other jurors, until the end of the trial. You should not discuss the case with your fellow jurors until the end of the trial so that you do not form opinions about the case before you have heard everything.
After you have heard all the evidence, received all of my instructions, and heard all of the lawyers' arguments, you will then go to the jury room to discuss the case with the other jurors and reach a verdict.

6. Do not investigate this case on your own. For example, do not:

a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;

b. go to places mentioned in the case to inspect the places;

c. inspect items mentioned in this case unless they are presented as evidence in court;

d. look anything up in a law book, dictionary, or public record to try to learn more about the case;

e. look anything up on the Internet to try to learn more about the case; or

f. let anyone else do any of these things for you.

This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so

the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial.

7. Do not let bias, prejudice, or sympathy play any part in your evaluation of the evidence admitted or testimony heard in this case. [As we discussed in jury selection,] [E]veryone, including me, has feelings, assumptions, perceptions, fears, and stereotypes that we may not be aware of but that can affect what we see and hear, how we remember what we see and hear, and how we make decisions. Because you are making important decisions as the jurors in this case, you must evaluate the evidence carefully, and you must not jump to conclusions based on personal likes or dislikes, generalizations, prejudices, sympathies, stereotypes, or biases. Our system of justice is counting on you to render a just verdict based on the evidence, not on biases.

8. ~~7.~~ Do not tell other jurors about your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another similar case. Do not tell the other jurors about it. Telling other jurors about it is wrong because it means the jury will be considering things that were not admitted in court.

9. ~~8.~~ Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.

10. ~~9.~~ Do not consider or guess whether any party is covered by insurance unless I tell you to.

11. ~~10.~~ During the trial, if taking notes will help focus your attention on the evidence, you may take notes using the materials the court has provided. Do not use any personal electronic devices to take notes. If taking notes will distract your attention from the evidence, you should not take notes. Your notes are for your own personal use. They are not evidence. Do not show or read your notes to anyone, including other jurors.

You must leave your notes in the jury room or with the bailiff. The bailiff is instructed not to read your notes and to give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone.

[You may take your notes back into the jury room and consult them during deliberations. But keep in mind that your notes are not evidence. When you deliberate, each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. After you complete your deliberations, the bailiff will collect your notes.]

When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

12. ~~11.~~ I will decide matters of law in this case. It is your duty to listen to and consider the evidence and to determine fact issues that I may submit to you at the end of the trial. After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked and you should not consider which side will win. Instead, you will need to answer the specific questions I give you.

Every juror must obey my instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I may have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.

Do you understand these instructions? If you do not, please tell me now.

Please keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.

III.

COURT'S CHARGE

Before closing arguments begin, the court must give to each member of the jury a copy of the charge, which must include the following written instructions, with such modifications as the circumstances of the particular case may require:

Members of the Jury [or Ladies & Gentlemen of the Jury]:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. [I will give you a number where others may contact you in case of an emergency.]

[Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.]

[You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in

a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.]

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision. As we discussed at the beginning of your jury service, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes that we may not be aware of but that can affect what we see and hear, how we remember what we see and hear, and how we make decisions. Because you are making important decisions as the jurors in this case, you must evaluate the evidence carefully, and you must not jump to conclusions based on personal likes or dislikes, generalizations, prejudices, sympathies, stereotypes, or biases. Our system of justice is counting on you to render a just verdict based on the evidence, not on biases.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence [unless you are told otherwise]. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence [unless you are told otherwise].

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, “I will answer this question your way if you answer another question my way.”

11. [Unless otherwise instructed] The answers to the questions must be based on the decision of at least 10 of the 12 [5 of the 6] jurors. The same 10 [5] jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 [5] jurors, even if it would be a majority. As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

[Definitions, questions, and special instructions given to the jury will be transcribed here. If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D1 and D2, instructions in substantially the following form must immediately precede such questions:

Preceding question (ii):

Answer Question (ii) for D1 only if you unanimously answered “Yes” to Question[s] (i) regarding D1. Otherwise, do not answer Question (ii) for D1. [Repeat for D2.]
You are instructed that in order to answer “Yes” to [any part of] Question (ii), your answer must be unanimous. You may answer “No” to [any part of] Question (ii) only upon a vote of 10 [5] or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

Answer Question (iii) for D1 only if you answered “Yes” to Question (ii) for D1. Otherwise, do not answer Question (iii) for D1. [Repeat for D2.]

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

These examples are given by way of illustration.]

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

a. have the complete charge read aloud if it will be helpful to your deliberations;

b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;

c. give written questions or comments to the bailiff who will give them to the judge;

d. write down the answers you agree on;

e. get the signatures for the verdict certificate; and

f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. [Unless otherwise instructed] You may answer the questions on a vote of 10 [5] jurors. The same 10 [5] jurors must agree on every answer in the charge. This means you may not have one group of 10 [5] jurors agree on one answer and a different group of 10 [5] jurors agree on another answer.

2. If 10 [5] jurors agree on every answer, those 10 [5] jurors sign the verdict.

If 11 jurors agree on every answer, those 11 jurors sign the verdict.
If all 12 [6] of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 [6] of you agreeing on some answers, while only 10 [5] or 11 of you agree on other answers. But when you sign the verdict, only those 10 [5] who agree on every answer will sign the verdict.

4. [Added if the charge requires some unanimity] There are some special instructions before Questions ___ explaining how to answer those questions. Please follow the instructions. If all 12 [6] of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

_____

Judge Presiding

Verdict Certificate

Check one:

___Our verdict is unanimous. All 12 [6] of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 [6] of us.

_____

Signature of Presiding Juror Printed Name of Presiding Juror

___Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

___Our verdict is not unanimous. Ten [Five] of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE NAME PRINTED

1._____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____

If you have answered Question No. ___ [the exemplary damages amount], then you must sign this certificate also.

Additional Certificate

[Used when some questions require unanimous answers]

I certify that the jury was unanimous in answering the following questions. All 12 [6] of us agreed to each of the answers. The presiding juror has signed the certificate for all 12 [6] of us.

[Judge to list questions that require a unanimous answer, including the predicate liability question.]

_____

Signature of Presiding Juror

Printed Name of Presiding Juror

III. Brief Statement of Reasons for Requested Amendments to Tex. R. Civ. P. 226a §§ 2 and 3 and Advantages Served by Them

Implicit bias is an important issue that needs to be, but is not, addressed in Tex. R. Civ. P. 226a. This proposed instruction is intended to address implicit bias through instructions given to jurors. The proposed instruction is designed to instruct jurors on the appropriate basis to weigh the evidence presented to them and the importance of making an unbiased and just decision through their verdict. The proposed addition is designed to help jurors better understand bias and provide trial judges and advocates a basis to better discuss biases and prejudices in voir dire should they desire or think it appropriate. The Committee chose not to use "implicit" in the proposed instruction to avoid alienation of potential jurors or imply any current public or political interpretation of the term. The Committee also sought to avoid language that may lead to a politically or emotionally charged interpretation of the overall instruction.

The Committee spent considerable time over the past year reviewing other examples of "implicit bias" instructions from other jurisdictions including federal, state, and various Texas counties. The Committee also actively solicited, received, and considered suggestions from various stakeholders with an interest in the proposed instruction. These stakeholders included local bar associations and judges, as well as State Bar of Texas committees, sections, and members. Critical focus was paid to removing surplus or duplicative words that impacted the clarity and length of the instruction. The Committee limited the use of words or terms that might imply to a juror that they could not use their personal judgment or common sense.

Further, the proposed addition is based on efforts by the Travis County Bar Association and members of the Dallas Bar Association to implement such instructions in civil cases. The Dallas Civil District Courts engaged in a pilot program where a similar instruction was given in smaller civil matters by agreement of the parties. Ninety-four percent of the jurors surveyed following the trials in which this instruction was used indicated that they considered the instruction in their deliberations. Fifty-four percent of the jurors surveyed following the trials in which this instruction was used reported that the instruction influenced the way in which they processed evidence and deliberated. Strong evidence, through this Dallas pilot program, shows that an instruction on implicit bias, as the one the committee now proposes, increases juror self-awareness during trial about how they processed the evidence and motived them to be fair in their deliberations.

The proposed instruction is consistent with the September 2020 charge from the Public Trust & Confidence Committee of the Texas Judicial Council (chaired by Chief Justice Hecht) that "implicit bias" be addressed in the Texas legal system, including through annual training for judges on that topic.

This proposed instruction is consistent with many such instructions given across the United States, including those provided in the United States District Court for the Northern District of the State of Iowa,[1] the United States District Court for the Northern

[1] Judge Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The*

District of the State of California[2] the State of Missouri, the State of Washington, and the United States Court of Appeals for the Ninth Circuit.

The proposed instruction is consistent with the 2019 ABA resolution calling on all states to implement an "implicit bias" instruction in their jury instructions.

The proposed instruction is calculated to be impartial and applicable to all cases without comment on the evidence.

Problems of Judge-Dominated Voir Dire, The Failed Promise of Batson, and Proposed Solutions, 4 Harv. L. & Pol'y Rev. 149 (2010). See also, www.perception.org (Emphasis added) (Last visited 03/18/2018) (defining implicit bias as "an *attitude* toward, preference for, aversion against or the phenomena of associating *stereotypes* with people *without conscious knowledge*.")

[2] https://www.cand.uscourts.gov/attorneys/unconscious-bias-video-for-potential-jurors/

CASE IDENTIFICATION:

State Bar of Texas Juror Comprehension Field Testing of Pattern Jury Charges

JURY SIMULATION REPORT

EXECUTIVE SUMMARY

The State Bar of Texas commissioned Jason Bloom and Courtroom Sciences, Inc. to field-test juror comprehension of Pattern Jury Charges and Admonitory Instructions. Trial simulations using a fictitious case fact pattern were conducted on April 25-26, 2006 at Courtroom Sciences' mock courtroom facilities in Irving, TX.

The first simulation (Project A) used existing PJCs (Version A) and the second simulation (Project B) used a modified version (Version B). The modified version was an attempt by the committee to plain language the existing version. The research team and committee were interested in determining juror comprehension of existing PJCs as well as whether the comprehension levels would increase if a modified, or plain language, version was used instead. Surveys were used to measure the correct response rate of True/False/Don't Know questions based on the PJCs and jury instructions. Additionally, a trailer question was added after each survey item to reveal why a research participant chose an answer, or essentially, how the information was learned (i.e. hearing it from the Judge, guessing, or common sense).

The protocol for each project can be found on the Schedule on pp. 3-4 to this report. A copy of Version A and B of the PJCs, Admonitory Instructions and Charge to the Court (PJC 1.3/1.8 and Verdict Form with Instructions) can be found in the Appendix to this report. The surveys administered after each can be found in the Appendix as well. The raw data gathered from the simulations can be found in Tables 1-10 of the Data Section to this report.

The field-testing research indicates that Version B was rated significantly higher with regards to the following criteria:

- Understandability - PJC 1.1 and PJC 1.3;
- Clarity - PJC 1.3;
- Easiness to Follow - PJC 1.1;
- Makes Sense – PJC 1.1.

Based on examining levels of comprehension using correct-response rates to True/False survey items, the field-testing research reveals the following:

- Version B revealed higher correct response rates and thus was better at instructing the following concepts:
  - Civil action;
  - Number of jurors selected;
  - Secret evidence;
  - Discussion of the case by jurors;

- Unanimous;
- A finding is based on multiple elements (e.g. fraud).

- Within both Version A and Version B, there is a need for improved definitions of the following concepts:
  - Unanimous;
  - Preponderance of the evidence;
  - Role of the presiding juror;
  - Distinction between preponderance of the evidence and beyond a reasonable doubt;
  - Proximate cause;
  - Instances where a finding is based on multiple elements being met (e.g. fraud);
  - Instructions for the certificates at the end of the jury charge.

- For both Version A and Version B, mock jurors who chose incorrect responses attribute their answers to hearing the instructions read by the Judge regarding the following concepts:
  - Sympathy;
  - Unanimous;
  - Circumstantial evidence;
  - Purpose of deliberations;
  - Trading answers in deliberations;
  - Level of allowable interaction with lawyers, witnesses or parties during trial;
  - Preponderance of the Evidence.

Specific results and data can be found in the Data and Analysis sections to this report.

Recommendations:

Based on the results of this study, the following improvements are suggested:

- Separate verdict form and jury instructions documents, with a copy of the instructions given to each juror to use during deliberations, and only one copy of the verdict form given to the panel;
- The use of "…;and" after each element in the jury instructions when a verdict interrogatory requires that all elements be met in order to find for the party with the burden of proof;

- The use of language that such as: "All of the following elements must be met in order to find for the plaintiff" to precede the list of elements in the jury instructions;

- Instructions that specifically talk about the number of votes in terms of "a required number" such as 10-2 and 12-0, rather than using "unanimous" and instructions regarding making an attempt to get to the required number of votes and what to do if it is not reached (i.e. when to quit or give up);

- One certificate at the end of the verdict form with a blank for each juror to sign it to simply acknowledge agreement with the answers to the interrogatories;

- Improved instructions on disregarding attorney's fees and insurance from damage awards. The public is aware of these factors and must be discouraged from instilling them into deliberations;

- Improved instructions pertaining to the resolution of damages to dissuade jurors from using a quotient verdict. The instruction should include language detailing that agreement by the jury is more significant than averages, which would be disregarded by the Court;

- A definition of "preponderance of the evidence" that distinguishes the burden of proof in a civil action from one in a criminal action, so as to illustrate that multiple standards do exist.

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Part 1

RESEARCH PROTOCOL

CSI's field testing research consisted of 2 trial simulations on April 25 and April 26, 2006, designed to test juror comprehension of Pattern Jury Charges and in particular, the Admonitory Instructions in 226a

Particular care was conducted to assure that juror demographics for the jury simulations were congruent with a Dallas jury panel. Relevant demographic domains researched by CSI staff include:

- Geographical Location
- Educational Background
- County Population
- City Population
- Cultural Facilities
- Employment Rate
- Manufacturing Analysis
- Ethnic Distribution
- Median Family Income
- Political Affiliation
- Religious Affiliation
- Labor Analysis
- Organized Labor Analysis
- Retail, Wholesale and Trade Analysis

Additional qualitative and quantitative analysis of the Dallas jury pool identified common psychological denominators that assured similar moral, social and political tenets for the particular jurors chosen to participate in this jury simulation.

The mock jurors completed a CSI Demographic Questionnaire, signed a confidentiality statement, and were screened for conflicts prior to being seated. The jurors were presided over by CSI staff, who reviewed juror responsibility, confidentiality, and role functions that were carried out during the jury simulation. A CSI staff facilitator, acting as Judge, presented the Admonitory Instructions to the mock jurors.

Upon completion of each Admonitory Instruction, mock jurors were asked to complete a filler task and then a survey testing comprehension of the instructions previously recited by the Judge.

Following the attorney presentations and Admonitory Instructions, the mock jurors were divided into four separate juries to deliberate over designated questions in a modified jury charge.

Jurors deliberated for approximately 45 minutes. Following deliberations, jurors were merged for a focus group discussion to further elicit and clarify their opinions and thought processes pertaining to the Admonitory Instructions, and instructions used to deliberate the case.

Part 2

PROJECT INFORMATION

The Project Information part of the Jury Simulation Report includes the following:

- Schedule
- Demographics

Jury Simulation Schedule – Project A

State Bar of Texas Juror Comprehension Field Testing of Pattern Jury Charges

April 25, 2006

		hr:min
11:00 AM	Jurors Arrive/Orientation	2:00
1:00 PM	Call to order - Judge Reads PJC1.1	0:05
1:05 PM	**BREAK (Filler Task)**	0:05
1:10 PM	PJC 1.1 Juror Comprehension Questionnaire (orange)	0:10
1:20 PM	Mock Voir Dire conducted by Attorneys	0:10
1:30 PM	Judge reads PJC 1.2	0:10
1:40 PM	**BREAK (Filler Task)**	0:05
1:45 PM	PJC 1.2 Juror Comprehension Questionnaire (pink)	0:10
1:55 PM	Stipulated Facts	0:05
2:00 PM	Plaintiff: Summary Presentation of Evidence	0:30
2:30 PM	**BREAK**	0:20
2:50 PM	Defendant: Summary Presentation of Evidence	0:30
3:20 PM	Judge Reads PJC 1.3	0:25
3:45 PM	**BREAK (Filler Task)**	0:05
3:50 PM	PJC 1.3 Juror Comprehension Questionnaire (purple)	0:10
4:00 PM	Deliberations	0:45
4:45 PM	Verdict Form Comprehension Questionnaire	0:15
5:00 PM	Jury Instruction Confusion Study	0:15
5:15 PM	Focus Group	0:30
5:45 PM	**DISMISS**	

Jury Simulation Schedule – Project B

State Bar of Texas Juror Comprehension Field Testing of Pattern Jury Charges

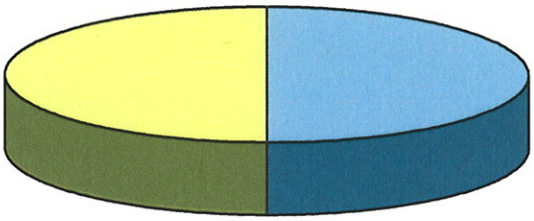
April 26, 2006

		hr:min
7:00 AM	Jurors Arrive/Orientation	2:00
9:00 AM	Call to Order - Judge Reads PJC 1.1	0:05
9:05 AM	**BREAK (Filler Task)**	0:05
9:10 AM	PJC 1.1 Juror Comprehension Questionnaire (orange)	0:10
9:20 AM	Mock Voir Dire conducted by Attorneys	0:10
9:30 AM	Judge Reads PJC 1.2	0:10
9:40 AM	**BREAK (Filler Task)**	0:05
9:45 AM	PJC 1.2 Juror Comprehension Questionnaire (pink)	0:10
9:55 AM	Stipulated Facts	0:05
10:00 AM	Plaintiff: Summary Presentation of Evidence	0:30
10:30 AM	**BREAK**	0.15
10:45 AM	Defendant: Summary Presentation of Evidence	0:30
11:15 AM	**LUNCH**	0:45
12:00 PM	Judge Reads PJC 1.3	0:25
12:25 PM	**BREAK (Filler Task)**	0:05
12:30 PM	PJC 1.3 Juror Comprehension Questionnaire (purple)	0:10
12:40 PM	Deliberations	0:45
1:25 PM	Verdict Form Comprehension Questionnaire	0:15
1:40 PM	Jury Instruction Confusion Study	0:15
1:55 PM	Focus Group	0:30
2:25 PM	**DISMISS**	

Demographics – Project A

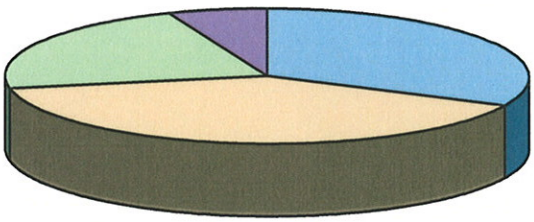
Fifty (50) mock jurors were selected to participate in this jury simulation. The jurors were categorized along the following demographic dimensions:

Sex



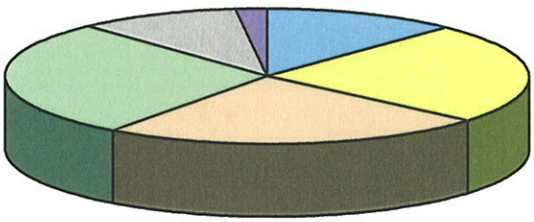
Male	50%
Female	50%

Race



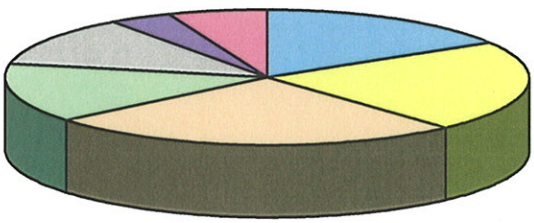
African American	32%
Asian	0%
Caucasian	40%
Hispanic	22%
Native American	0%
Other	6%

Age



18 to 25	12%
26 to 35	24%
36 to 45	24%
46 to 55	28%
56 to 69	10%
70+	2%

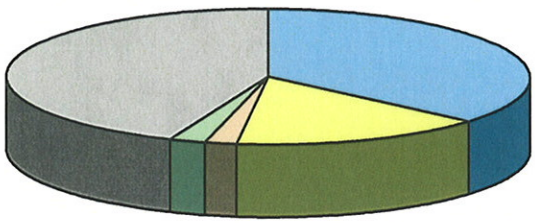
Income (Total Family Income Per Year)



Under $15,000	16%
$15,001 to $25,000	22%
$25,001 to $35,000	26%
$35,001 to $55,000	14%
$55,001 to $75,000	12%
$75,001 to $100,000	4%
Over $100,000	6%

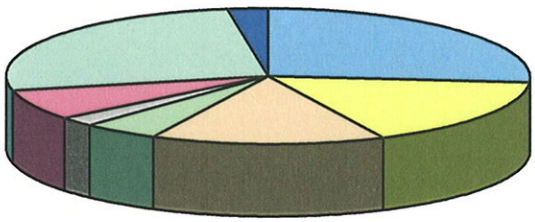
Demographics – Project A, continued

Marital Status



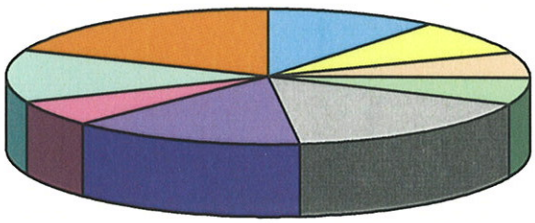
Married	36%
Divorced	16%
Separated	2%
Widowed	2%
Never Married	44%

Employment Status (Current)



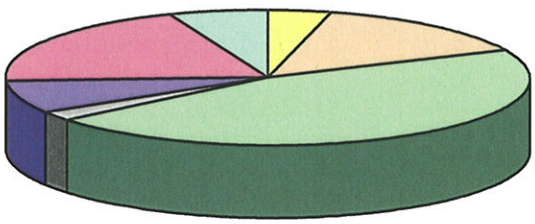
Full-time	22%
Part-time	14%
Self-employed	12%
Homemaker	4%
Disability/worker's comp/welfare	2%
Student	0%
Retired	6%
Unemployed	22%
Other	2%

Occupation (Current/Prior)



General Labor	10%
Clerical/administrative	8%
Helping professions	6%
Service industries	6%
Sales/marketing	16%
Professional	14%
Technical	6%
Managerial	12%
Agricultural/ranching	0%
Other	18%

Education

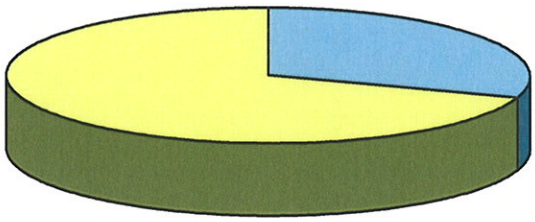


Less than high school diploma	0%
GED	4%
High school diploma	14%
Some college	46%
Trade/vocational school	2%
Associate degree (2 yr degree)	8%
B.A./B.S. (4 yr degree)	20%
Master degree	6%
Doctoral degree	0%

Demographics – Project B

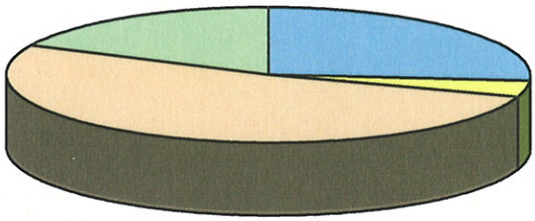
Fifty (50) mock jurors were selected to participate in this jury simulation. The jurors were categorized along the following demographic dimensions:

Sex



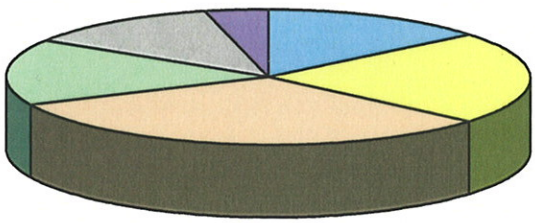
Male	30%
Female	70%

Race



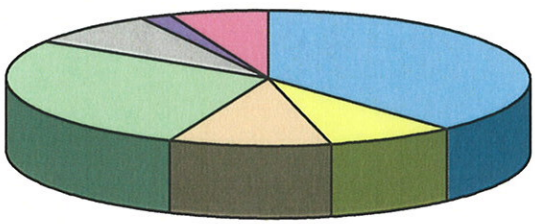
African American	26%
Asian	4%
Caucasian	52%
Hispanic	18%
Native American	0%
Other	0%

Age



18 to 25	14%
26 to 35	22%
36 to 45	32%
46 to 55	16%
56 to 69	12%
70+	4%

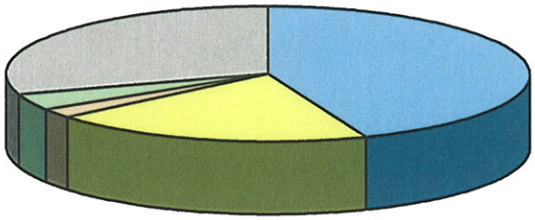
Income (Total Family Income Per Year)



Under $15,000	38%
$15,001 to $25,000	8%
$25,001 to $35,000	10%
$35,001 to $55,000	28%
$55,001 to $75,000	8%
$75,001 to $100,000	2%
Over $100,000	6%

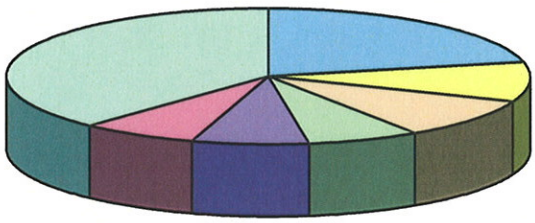
Demographics – Project B, continued

Marital Status



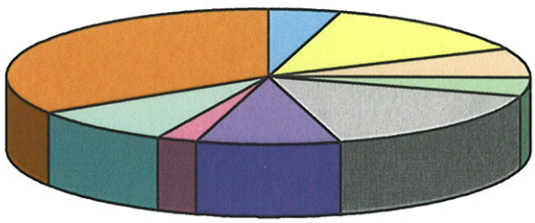
Married	44%
Divorced	20%
Separated	2%
Widowed	4%
Never Married	30%

Employment Status (Current)



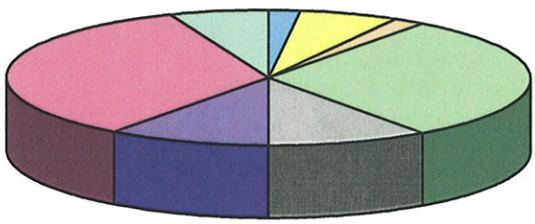
Full-time	18%
Part-time	8%
Self-employed	8%
Homemaker	6%
Disability/worker's comp/welfare	0%
Student	6%
Retired	6%
Unemployed	32%
Other	0%

Occupation (Current/Prior)



General Labor	4%
Clerical/administrative	12%
Helping professions	6%
Service industries	4%
Sales/marketing	14%
Professional	8%
Technical	2%
Managerial	8%
Agricultural/ranching	0%
Other	30%

Education



Less than high school diploma	2%
GED	6%
High school diploma	2%
Some college	30%
Trade/vocational school	10%
Associate degree (2 yr degree)	10%
B.A./B.S. (4 yr degree)	34%
Master degree	6%
Doctoral degree	0%

Part 3

DATA

One Word Association (From Focus Group)– Project A

Preponderance of the evidence is defined as

Juror #	Response:
#01	"Greater amount"
#02	"Weight of the evidence is more than 50%"
#03	"One side has to equal the other"
#04	"How much evidence there is"
#05	"Don't know"
#06	"More than 50%"
#07	"Evidence is greater"
#08	"Evidence is greater"
#09	"More evidence than none"
#10	"50/50"
#11	"Majority of the evidence"
#12	"More evidence"
#13	"The scale is tipped"
#14	"More evidence"
#15	"It has to be more than 51%"
#16	"It has to be more than 51%"
#17	"More than the other side"
#18	"More than the other side"
#19	"More than the other side"
#20	"The weight"
#21	"Greater than 50%"
#22	"Weight of the evidence"

Juror #	Response:
#26	"Greater than 50%"
#27	"Greater than 50%"
#28	"Greater than 50%"
#29	"Greater than 50%"
#30	"I don't know"
#31	"Majority"
#32	"The greater amount"
#33	"Majority"
#34	"The weight of the evidence"
#35	"Majority"
#36	"Majority"
#37	"I don't know"
#38	"Majority"
#39	"One side has more evidence than the other side"
#40	"Weight"
#41	"Weight"
#42	"Majority"
#43	"Majority"
#44	"Majority"
#45	"Enough to really convince me so it has to be more than 50%"
#46	"The greater amount"
#47	"The weight"

#23	"Where you don't have to proof without reasonably doubt"
#24	"Majority of evidence leaves you without a doubt"
#25	"Majority of evidence leaves you without a doubt"

#48	"Majority"
#49	"One side has more evidence than the other side"
#50	"The amount or weight"

One Word Association – Project A (Continued)

Preponderance of the evidence is equal to what amount?

Juror #	Response:
#01	"60%"
#02	"51%"
#03	"50%"
#04	"80%"
#05	"51%"
#06	"50%"
#07	"75%"
#08	"80%"
#09	"82%"
#10	"51%"
#11	"51%"
#12	"60%"
#13	"80%"
#14	"51%"
#15	"51%"
#16	"51%"
#17	"80%"
#18	"80%"
#19	"81%"
#20	"81%"
#21	"80%"
#22	"80%"
#23	"51%"
#24	"80%"
#25	"100%"

Juror #	Response:
#26	"51%"
#27	"65%"
#28	"81%"
#29	"51%"
#30	"51%"
#31	"80%"
#32	"75%"
#33	"51%"
#34	"80%"
#35	"81%"
#36	"81%"
#37	"60%"
#38	"81%"
#39	"90%"
#40	"51%"
#41	"51%"
#42	"51%"
#43	"80%"
#44	"51%"
#45	"75%"
#46	"51%"
#47	"70%"
#48	"51%"
#49	"61%"
#50	"100%"

One Word Association – Project B

Preponderance of the evidence is defined as

Juror #	Response:
#01	"Don't know"
#02	"Not clear"
#03	"Don't know"
#04	"I don't remember"
#05	"All the information"
#06	"No exact evidence"
#07	"One way or another"
#08	"Most of the evidence was shown to be true"
#09	"N/A"
#10	"N/A"
#11	"Collaboration of the evidence"
#12	"N/A"
#13	"More so or not"
#14	"More so or not"
#15	"More likely than not"
#16	"More"
#17	"More than half"
#18	"More than 81%"
#19	"N/A"
#20	"Large amount"
#21	"Majority"
#22	"More likely than not"
#23	"Majority"
#24	"N/A"
#25	"Most of the evidence"

Juror #	Response:
#26	"I don't know"
#27	"Most of the evidence"
#28	"Most of the evidence"
#29	"N/A"
#30	"Larger of the two"
#31	"More likely than not"
#32	"Greater percentage"
#33	"N/A"
#34	"N/A"
#35	"More evidence"
#36	"N/A"
#37	"More than half"
#38	"Most"
#39	"Most"
#40	"N/A"
#41	"Majority"
#42	"Biggest share"
#43	"N/A"
#44	"N/A"
#45	"N/A"
#46	"More than half"
#47	"Most"
#48	"N/A"
#49	"N/A"
#50	"N/A"

One Word Associations, - Project B (continued)

Preponderance of the evidence is equal to what amount?

Juror #	Response:
#01	"51%"
#02	"Over 50%"
#03	"51%"
#04	"51%"
#05	"51%"
#06	"0%"
#07	"51%"
#08	"51%"
#09	"N/A"
#10	"N/A"
#11	"51%"
#12	"N/A"
#13	"51%"
#14	"More than half"
#15	"51%"
#16	"75%"
#17	"More than 50%"
#18	"75%"
#19	"N/A"
#20	"50% and above"
#21	"51%"
#22	"51%"
#23	"60%"
#24	"N/A"
#25	"70%"

Juror #	Response:
#26	"51%"
#27	"51%"
#28	"51%"
#29	"N/A"
#30	"80%"
#31	"80%"
#32	"51%"
#33	"N/A"
#34	"N/A"
#35	"51%"
#36	"N/A"
#37	"51%"
#38	"75%"
#39	"81%"
#40	"75%"
#41	"51%"
#42	"80%"
#43	"N/A"
#44	"N/A"
#45	"N/A"
#46	"75%"
#47	"51%"
#48	"N/A"
#49	"N/A"
#50	"N/A"

Table 1

Mean Responses on comprehension questionnaires from group A and group B.

	Questionnaire Version							
	PJC 1.1		PJC 1.2		PJC1.3		Verdict Form	
Criteria	A	B	A	B	A	B	A	B
Understandable	5.40	5.86*	5.82	5.90	5.24	5.66*	5.38	5.44
Clear	5.36	5.86*	5.74	5.90	5.26	5.64*	5.22	5.34
Easy to follow	5.26	5.84*	5.80	5.84	5.16	5.48	5.26	5.22
Simple	5.30	5.66	5.64	5.82	4.94	5.20	5.02	5.06
Makes Sense	5.32	5.90*	5.70	5.90	5.20	5.54	5.26	5.24
Necessary	5.44	5.74	5.80	5.80	5.60	5.76	5.56	5.44
Informative	5.30	5.62	5.80	5.74	5.40	5.64	5.30	5.28
Direct	5.60	5.84	5.76	5.90	5.52	5.70	5.24	5.26

* Denotes statistically significantly different from Group A at $p<.05$.

Table 2
Percentage of correct responses to PJC 1.1 Questionnaire.

Question	A	B	Difference	Percent Change
The case presented before you is a civil action and not a criminal action.	84%	100%	16%*	19%
Twelve people will be chosen as jurors in this case.	34%	92%	58%*	171%
If a juror breaks the rules, the Judge may have to order a new trial.	86%	96%	10%	12%
As a juror, you are allowed to withhold information from attorneys during jury selection.	84%	84%	0%	0%
As a juror, you are not allowed to mingle with the lawyers, the witness, the parties, or anyone involved in the case.	94%	100%	6%	6%
As a juror, you may say "hello" to the lawyers, witnesses, parties, and others involved in the case.	78%	84%	6%	8%
You are allowed to discuss this case with your spouse.	100%	94%	-6%	-7%
To be impartial means to be open and honest.	24%	32%	8%	33%
To be "free from bias and prejudice" means you have not prejudged the case before hearing the evidence.	92%	98%	6%	7%

* Denotes statistically significant difference in accuracy between group A and B at $p<.05$.

Table 3
Percentage of correct responses to PJC 1.2 Questionnaire.

Question	A	B	Difference	Percent Change
As a juror, you are allowed to investigate the case on your own (i.e. internet searches).	100%	100%	0%	0%
As a juror, you can discuss the case with each other while on breaks.	100%	90%	-10%*	-11%
As a juror, you should consider attorney's fees when awarding damages.	90%	98%	8%	9%
As a juror, you should not consider insurance when awarding damages.	68%	76%	8%	12%
As a juror, you role is to decide which side should win.	58%	60%	2%	3%
As a juror, your conclusions on the case can only be based on what is presented during the trial.	96%	100%	4%	4%
Secret evidence is evidence found by private investigation by a juror.	60%	40%	-20%*	-33%

* Denotes statistically significant difference in accuracy between group A and B at $p<.05$.

Table 4
Percentage of correct responses to PJC 1.3 Questionnaire.

Question	A	B	Difference	Percent Change
As a juror, you can't let sympathy influence your verdict.	92%	98%	6%	7%
During your deliberations, you may take an average of damage amounts and use that as your answer.	78%	92%	14%	18%
As jurors, you must be unanimous in all of your answers.	40%	78%	38%*	95%
As jurors, you may trade answers and exchange votes.	94%	98%	4%	4%
The presiding juror has the final say in the verdict.	76%	58%	-18%	-31%
You cannot use circumstantial evidence in deciding your verdict.	54%	66%	12%	22%
Preponderance of the evidence means beyond a shadow of a doubt.	38%	54%	16%	42%
Circumstantial evidence is indirect proof.	86%	86%	0%	0%
Deliberations are the instructions the Judge reads to you as jurors.	74%	70%	-4%	-6%

* Denotes statistically significant difference in accuracy between group A and B at $p<.05$.

Table 5
Percentage of correct responses to Verdict Form Questionnaire.

Question	A	B	Difference	Percent Change
In a civil trial, the jury has to be convinced beyond a reasonable doubt that the Plaintiff's claims are correct.	30%	38%	8%	27%
In order to be a "proximate cause" for an event, the result does not necessarily have to be foreseeable.	24%	34%	10%	42%
One of the criteria of fraud is that a party (the Plaintiff) suffers by relying on a false statement of fact from another party (the Defendant).	86%	90%	4%	5%
"Proximate cause" means the Plaintiff was injured as a result of the Defendant's act or omission.	50%	58%	8%	16%
One of the criteria of fraud is that a party (the Defendant) makes a false statement with the intention that it should be acted on by another party (the Plaintiff).	74%	80%	6%	8%
You cannot have more than one proximate cause.	62%	62%	0%	0%
In order to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met.	20%	68%	48%*	240%

* Denotes statistically significant difference in accuracy between group A and B at $p<.05$.

Table 6
Responses to questions regarding Verdict Form.

	Response Option			
	Yes		No	
Question	A	B	A	B
Did your jury spend any time during its deliberations discussing any of the instructions that the judge gave you?	44%	68%	56%	32%
The judge's reading of the instructions was so clear that we didn't need to discuss them.	66%	42%	34%	58%
The instructions the Judge read were too long.	24%	32%	76%	68%
The instructions the Judge read were too difficult to understand.	4%	6%	96%	94%
We didn't know how to use the instructions to help to reach a verdict.	22%	16%	78%	84%
You didn't need instructions to decide a case like this.	34%	30%	66%	70%

Table 7
Percentage of responses to trailer question ("I chose that answer because") from PJC 1.1, 1.2, 1.3.

Question		Response Option: Group A 1	Group A 2	Group A 3	Group A 4	Group B 1	Group B 2	Group B 3	Group B 4
The case presented before you is a civil action and not a criminal action.	Correct	95%	5%	0%	0%	98%	0%	0%	2%
	Incorrect	13%	13%	13%	61%	0%	0%	0%	0%
Twelve people will be chosen as jurors in this case.	Correct	58%	24%	18%	0%	96%	2%	2%	0%
	Incorrect	27%	22%	6%	45%	50%	0%	50%	0%
If a juror breaks the rules, the Judge may have to order a new trial.	Correct	93%	5%	2%	0%	98%	2%	0%	0%
	Incorrect	43%	29%	14%	14%	50%	0%	0%	50%
As a juror, you are allowed to withhold information from attorneys during jury selection.	Correct	76%	17%	5%	2%	90%	7%	3%	0%
	Incorrect	50%	13%	13%	24%	38%	25%	25%	12%
As a juror, you are not allowed to mingle with the lawyers, the witness, the parties, or anyone involved in the case.	Correct	100%	0%	0%	0%	100%	0%	0%	0%
	Incorrect	100%	0%	0%	0%	0%	0%	0%	0%
As a juror, you may say "hello" to the lawyers, witnesses, parties, and others involved in the case.	Correct	100%	0%	0%	0%	100%	0%	0%	0%
	Incorrect	73%	18%	9%	0%	63%	25%	0%	12%

Response Options: (1) I heard the Judge read it. (2) I didn't hear the Judge read it, but it makes sense. (3) I'm guessing. (4) I don't know.

Question		Response Option							
		Group A				Group B			
		1	2	3	4	1	2	3	4
You are allowed to discuss this case with your spouse.	Correct	96%	2%	0%	2%	96%	0%	0%	2%
	Incorrect	0%	0%	0%	0%	67%	33%	0%	0%
To be impartial means to be open and honest.	Correct	17%	75%	8%	0%	31%	38%	25%	6%
	Incorrect	42%	47%	8%	3%	80%	8%	6%	6%
To be "free from bias and prejudice" means you have not prejudged the case before hearing the evidence.	Correct	37%	54%	7%	2%	94%	6%	0%	0%
	Incorrect	25%	0%	0%	75%	0%	0%	0%	100%
As a juror, you are allowed to investigate the case on your own (i.e. internet searches).	Correct	96%	4%	0%	0%	100%	0%	0%	0%
	Incorrect	0%	0%	0%	0%	0%	0%	0%	0%
As a juror, you can discuss the case with each other while on breaks.	Correct	98%	2%	0%	0%	93%	7%	0%	0%
	Incorrect	0%	0%	0%	0%	100%	0%	0%	0%
As a juror, you should consider attorney's fees when awarding damages.	Correct	93%	7%	0%	0%	100%	0%	0%	0%
	Incorrect	40%	0%	20%	40%	100%	0%	0%	0%
As a juror, you should not consider insurance when awarding damages.	Correct	82%	15%	3%	0%	100%	0%	0%	0%
	Incorrect	44%	6%	19%	31%	92%	0%	0%	8%

Response Options: (1) I heard the Judge read it. (2) I didn't hear the Judge read it, but it makes sense. (3) I'm guessing. (4) I don't know.

Question		Response Option							
		Group A				Group B			
		1	2	3	4	1	2	3	4
As a juror, your role is to decide which side should win.	Correct	90%	10%	0%	0%	90%	10%	0%	0%
	Incorrect	43%	43%	4%	10%	70%	25%	0%	5%
As a juror, your conclusions on the case can only be based on what is presented during the trial.	Correct	92%	8%	0%	0%	98%	2%	0%	0%
	Incorrect	100%	0%	0%	0%	0%	0%	0%	0%
Secret evidence is evidence found by private investigation by a juror.	Correct	87%	13%	0%	0%	70%	20%	10%	0%
	Incorrect	35%	35%	20%	10%	20%	23%	30%	27%
As a juror, you can't let sympathy influence your verdict.	Correct	80%	17%	3%	0%	86%	14%	0%	0%
	Incorrect	75%	0%	0%	25%	100%	0%	0%	0%
During your deliberations, you may take an average of damage amounts and use that as your answer.	Correct	90%	10%	0%	0%	94%	4%	0%	2%
	Incorrect	35%	10%	10%	45%	50%	50%	0%	0%
As jurors, you must be unanimous in all of your answers.	Correct	90%	5%	5%	0%	92%	5%	3%	0%
	Incorrect	84%	3%	10%	3%	64%	18%	18%	0%
As jurors, you may trade answers and exchange votes.	Correct	94%	4%	2%	0%	94%	4%	2%	0%
	Incorrect	100%	0%	0%	0%	100%	0%	0%	0%

Response Options: (1) I heard the Judge read it. (2) I didn't hear the Judge read it, but it makes sense. (3) I'm guessing. (4) I don't know.

Question		Response Option							
		Group A				Group B			
		1	2	3	4	1	2	3	4
The presiding juror has the final say in the verdict.	Correct	66%	32%	0%	2%	80%	17%	3%	0%
	Incorrect	66%	17%	0%	17%	75%	5%	10%	10%
You cannot use circumstantial evidence in deciding your verdict.	Correct	70%	23%	7%	0%	85%	12%	3%	0%
	Incorrect	74%	22%	4%	0%	70%	24%	6%	0%
Preponderance of the evidence means beyond a shadow of a doubt.	Correct	43%	47%	10%	0%	55%	30%	15%	0%
	Incorrect	61%	6%	13%	20%	74%	9%	4%	13%
Circumstantial evidence is indirect proof.	Correct	55%	33%	10%	2%	88%	8%	2%	2%
	Incorrect	0%	43%	0%	57%	72%	0%	14%	14%
Deliberations are the instructions the Judge reads to you as jurors.	Correct	43%	49%	5%	3%	63%	20%	11%	6%
	Incorrect	84%	8%	0%	8%	73%	13%	7%	7%

Response Options: (1) I heard the Judge read it. (2) I didn't hear the Judge read it, but it makes sense. (3) I'm guessing. (4) I don't know.

Table 8

Percentage of responses to trailer question ("I chose that answer because") from verdict form.

Question		Response Option									
		Group A					Group B				
		1	2	3	4	5	1	2	3	4	5
In a civil trial, the jury has to be convinced beyond a reasonable doubt that the Plaintiff's claims are correct.	Correct	40%	53%	0%	0%	7%	58%	26%	0%	11%	5%
	Incorrect	37%	34%	11%	11%	7%	45%	23%	16%	3%	13%
In order to be a "proximate cause" for an event, the result does not necessarily have to be foreseeable.	Correct	50%	25%	8%	0%	17%	47%	29%	12%	0%	12%
	Incorrect	32%	29%	13%	21%	5%	27%	21%	18%	0%	27%
One of the criteria of fraud is that a party (the Plaintiff) suffers by relying on a false statement of fact from another party (the Defendant).	Correct	65%	16%	0%	0%	19%	69%	18%	4%	2%	7%
	Incorrect	14%	14%	43%	0%	29%	50%	25%	8%	0%	17%
"Proximate cause" means the Plaintiff was injured as a result of the Defendant's act or omission.	Correct	56%	20%	0%	4%	20%	67%	21%	6%	0%	6%
	Incorrect	12%	20%	24%	36%	8%	9%	9%	29%	48%	5%
One of the criteria of fraud is that a party (the Defendant) makes a false statement with the intention that it should be acted on by another party (the Plaintiff).	Correct	65%	14%	2%	0%	19%	65%	10%	10%	0%	15%
	Incorrect	17%	22%	22%	17%	22%	20%	30%	20%	20%	10%

Response Options: (1) I heard the Judge read it. (2) I didn't hear the Judge read it, but it makes sense. (3) I'm guessing. (4) I don't know.
(5) I learned it during deliberations.

Question		Response Option: Group A 1	2	3	4	5	Group B 1	2	3	4	5
You cannot have more than one proximate cause.	Correct	55%	32%	10%	0%	3%	55%	13%	19%	0%	13%
	Incorrect	11%	0%	20%	58%	11%	0%	11%	21%	68%	0%
In order to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met.	Correct	70%	10%	0%	10%	10%	65%	9%	6%	0%	20%
	Incorrect	43%	17%	13%	10%	17%	31%	13%	13%	25%	18%

Response Options: (1) I heard the Judge read it. (2) I didn't hear the Judge read it, but it makes sense. (3) I'm guessing. (4) I don't know.
(5) I learned it during deliberations.

Table 9 Preponderance of the Evidence Survey.

The following written question was given to 75 research participants who were not part of this project, but hired to be mock jurors in other Texas Mock Trials conducted by Courtroom Sciences in March and April 2006. The percentage of responses were grouped and are listed below.

You may or may not be familiar with the term "preponderance of the evidence" with respect to lawsuits and jury trials. It is the standard of proof used in many types of civil cases.

Typically, the Plaintiff in a lawsuit has to prove its case by a preponderance of the evidence in order to succeed.

According to Texas law, the term "preponderance of the evidence" is defined as ***the greater weight and degree of credibility of the evidence*** *admitted in the case.*

In your opinion, what is the numerical value for "preponderance of the evidence"? (Please answer with a number between 0%-100%)

Numerical Value	Percentage of participants who assigned a value in this range
0% – 50%	9%
51% – 60%	9%
61% – 80%	33%
81% – 100%	49%

n = 75

Table 10
Number of participants confused by terms or phrases in the jury charge.

Term or phrase	Group A	Group B
Deliberations	1 (2%)	0
Bias	1 (2%)	0
"You must not decide who you think should win"	1 (2%)	0
Quotient	1 (2%)	0
"You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors."	2 (4%)	0
"Those jurors who agree to all findings shall each sign the verdict form."	2 (4%)	0
Preponderance	4 (8%)	7 (14%)
"The same 10 jurors must agree on all the answers and then to the entire verdict."	0	1 (2%)
"If all 12 jurors do not agree, the 10 or more jurors who agree each sign the verdict certificate."	0	2 (4%)
"The greater weight and degree of credible evidence presented in this case." I	0	5 (10%)
"A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved."	2 (4%)	0
Indirect evidence means the circumstances reasonably suggest the fact. Indirect evidence means that based on the evidence, you can conclude the fact is true. Indirect evidence is also called "circumstantial evidence."	0	1 (2%)
"A fact may be proved by direct evidence or by indirect evidence or by both."	0	1 (2%)
"The presiding juror has the duty to sign the verdict if all 12 jurors agree or to get the signatures of all those who agree if the verdict is not by all 12."	0	1 (2%)

Term or phrase	Group A	Group B
"You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room."	1 (2%)	0
"In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of the instructions in or your answers to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment."	2 (4%)	0
Joint venture	0	2 (4%)
"A joint venture must be based on an agreement, and the agreement must have all these elements."	0	3 (6%)
Under joint venture, "a community of interest in the venture."	1 (2%)	0%
Fiduciary	17 (34%)	9 (18%)
Under fiduciary duty, "The transaction was fair to the Plaintiff; and the Defendant made reasonable use of the confidence that the Plaintiff placed in it; and the Defendant acted in the utmost good faith."	0	1 (2%)
Proximate cause	2 (4%)	1 (2%)
Fraud	0	1 (2%)
Material misrepresentation	3 (6%)	1 (2%)
"Misrepresentation means a false statement of fact or a promise of future performance made with an intent, at the time the promise was made, not to perform as promised."	2 (4%)	1 (2%)
"The party makes the misrepresentation as a positive assertion knowing it is false or makes the representation recklessly without knowing if it is true or false."	0	1 (2%)
"The party makes the misrepresentation and intends that the other party should act on it."	0	1 (2%)

Term or phrase	Group A	Group B
"The other party relies on the misrepresentation and suffers injury from relying on it."	0	1 (2%)
Negligent misrepresentation	1 (2%)	0
Pecuniary	10 (20%)	0
"The party making the representation did not exercise reasonable care or competence in obtaining or communicating the information."	1 (2%)	0
Exemplary damages	2 (4%)	0
Punitive damages	0	1 (2%)
"What sum of money."	0	1 (2%)
"The character of the conduct involved."	1 (2%)	0
"Degree of culpability"	5 (10%)	0
"To be signed by those rendering the verdict if not by all 12."	0	1 (2%)

Part 4

ANALYSIS

Rating of Instructions from Judge

The data in Table 1 demonstrates the research participants' reactions to the delivery and content of the Admonitory Instructions. They were asked to rate the certain criteria pertaining to the PJCs using a 1-6 Likert scale with 1 being "Not at All" and 6 being "Very much." The mean responses as portrayed in Table 1 reflect that research participants in Project B rated the following criteria significantly higher than the research participants in Project A.

Understandable - PJC 1.1 and PJC 1.3;

Clear - PJC 1.3;

Easy to Follow - PJC 1.1;

Makes Sense – PJC 1.1.

A statistically significant difference was measured using $p < .05$.

Comprehension of Instructions from Judge

The data in Tables 2-6 indicate that the comprehension levels of Version A are low but sometimes do improve using Version B. A correct response rate is considered low when less than 80% of research participants answer the True/False/Don't Know statement correctly. A "Don't Know" answer is considered incorrect.

PJC 1.1 – Instructions before Jury Selection

The survey data indicates correct response rates below 80% for the following items in the existing PJCs (Version A). Correct response rates are indicated in parentheses:

> *Twelve people will be chosen as jurors in this case (34%);*
> [34% of the Project A research participants answered this True/False/Don't Know survey item correctly]
>
> *As a juror, you may say "hello" to the lawyers, witnesses, parties, and others involved in the case (78%);*
>
> *To be impartial means to be open and honest (24%).*

In Version B, survey data indicates correct response rates below 80% for the following items:

> *To be impartial means to be open and honest (32%).*

A statistically significant difference was found in the correct response rate levels between Version A and Version B of the following items:

The case presented before you is a civil action and not a criminal action;

Twelve people will be chosen as jurors in this case.

PJC 1.2 – Instructions after Jury is Selected

The survey data indicates correct response rates below 80% for the following items in existing PJCs (Version A). Correct response rates are indicated in parentheses:

As a juror, you should not consider insurance when awarding damages (68%);

As a juror, your role is to decide which side should win (58%);

Secret evidence is evidence found by private investigation by a juror (60%).

In Version B, survey data indicates correct response rates below 80% for the following items:

As a juror, you should not consider insurance when awarding damages (76%);

As a juror, your role is to decide which side should win (60%);

Secret evidence is evidence found by private investigation by a juror (40%).

A statistically significant difference was found in the correct response rate levels between Version A and Version B of the following items:

As a juror, you can discuss the case with each other while on breaks;

Secret evidence is evidence found by private investigation by a juror.

However, it should be noted that in PJC 1.2, the correct response rate to the above survey items was statistically better in Version A than Version B.

PJC 1.3/1.8 and Charge to the Court – Instructions before Jury Deliberations

The survey data indicates correct response rates below 80% for the following items in existing PJCs (Version A). Correct response rates are indicated in parentheses:

During your deliberations, you may take an average of damage amounts and use that as your answer (78%);

As jurors, you must be unanimous in all of your answers (40%);

The presiding jurors have the final say in the verdict (76%);

You cannot use circumstantial evidence in deciding your verdict (54%);

Preponderance of the evidence means beyond a shadow of a doubt (38%);

Deliberations are the instructions the Judge reads to you as jurors (74%).

In Version B, survey data indicates correct response rates below 80% for the following items:

As jurors, you must be unanimous in all of your answers (78%);

The presiding jurors have the final say in the verdict (58%);

You cannot use circumstantial evidence in deciding your verdict (66%);

Preponderance of the evidence means beyond a shadow of a doubt (54%);

Deliberations are the instructions the Judge reads to you as jurors (70%).

A statistically significant difference was found in the correct response rate levels between Version A and Version B of the following items:

As jurors, you must be unanimous in all of your answers.

Verdict Form

The survey data indicates correct response rates below 80% for the following items in existing PJCs (Version A). Correct response rates are indicated in parentheses:

In a civil trial, the jury has to be convinced beyond a reasonable doubt that the Plaintiff's claims are correct (30%);

In order to be a "proximate cause" for an event, the result does not necessarily have to be foreseeable (24%);

"Proximate cause" means the Plaintiff was injured as a result of the Defendant's act or omission (50%).

One of the criteria of fraud is that a party (the Defendant) makes a false statement with the intention that it should be acted on by another party (the Plaintiff) (74%);

You cannot have more than one proximate cause (62%);

In order to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met (20%).

In Version B, survey data indicates correct response rates below 80% for the following items:

In a civil trial, the jury has to be convinced beyond a reasonable doubt that the Plaintiff's claims are correct (38%);

In order to be a "proximate cause" for an event, the result does not necessarily have to be foreseeable (34%);

"Proximate cause" means the Plaintiff was injured as a result of the Defendant's act or omission (58%);

One of the criteria of fraud is that a party (the Defendant) makes a false statement with the intention that it should be acted on by another party (the Plaintiff) (80%);

You cannot have more than one proximate cause (62%);

In order to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met (68%).

A statistically significant difference was found in the correct response rate levels between Version A and Version B of the following items:

In order to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met.

Source of Information and Opinion

When examining the reasons for selection of their answer response to the True/False survey items, it is interesting to discover those research participants why they answered the True/False /Don't Know incorrectly. This data is presented in Table 7-8 of the Data Section of this report. It is important to pay attention to those research participants who state that they chose an incorrect answer because either the Judge read it (answer choice 1) or because the Judge didn't read it but it makes sense (answer choice 2).

Incorrect Answer, but "I Heard the Judge Read It":

In examining this data, it is apparent that these research participants did not hear the Judge correctly or simply misperceived what was read by the Judge. This is evident by the looking at the reasons cited for why research participants chose an incorrect answer. In many instances, they chose answer choice 1, "I heard the Judge read it." At least 50% of the research participants who answered the following True/False/Don't Know items incorrectly and attributed their answers to hearing it from the Judge (answer choice 1). The percentage is in parentheses after the survey item below and the version is indicated:

Twelve people will be chosen as jurors in this case (50% - B);
[During Project B, 50% of research participants who chose an incorrect answer to this True/False/Don't Know survey item claimed they heard this instruction from the Judge]

If a juror breaks the rules, the Judge may have to order a new trial (50% - B);

As a juror, you are allowed to withhold information from attorneys during jury selection (50% - A);

As a juror, you are not allowed to mingle with the lawyers, the witness, the parties, or anyone involved in the case (100%- A);

As a juror, you may say "hello" to the lawyers, witnesses, parties, and others involved in the case (73% - A, 63% -B);

You are allowed to discuss this case with your spouse (67% - B);

To be impartial means to be open and honest (80% - B);

As a juror, you can discuss the case with each other while on breaks (100% - B);

As a juror, you should consider attorney's fees when awarding damages (100% - B);

As a juror, you should not consider insurance when awarding damages (92% - B);

As a juror, your role is to decide which side should win (70% - B);

As a juror, your conclusions on the case can only be based on what is presented during the trial (100% - A);

As a juror, you can't let sympathy influence your verdict (75% - A, 100% - B);

During your deliberations, you may take an average of damage amounts and use that as your answer (50% - B);

As jurors, you must be unanimous in all of your answers (84% - A; 64% - B);

As jurors, you may trade answers and exchange votes (100% - A, 100% - B);

The presiding juror has the final say in the verdict (66% - A, 75% - B);

You cannot use circumstantial evidence in deciding your verdict (74% - A, 70% - B);

Preponderance of the evidence means beyond a shadow of a doubt (61% - A, 74% -B);

Circumstantial evidence is indirect proof (72% - B);

Deliberations are the instructions the Judge reads to you as jurors 84% -A, 73% - B);

One of the criteria of fraud is that a party (the Plaintiff) suffers by relying on a false statement of fact from another party (the Defendant) (50% - B);

Incorrect Answer, and "I Didn't Hear it from the Judge, but it Makes Sense":

When incorrect answers are chosen due to research participants not hearing it, but thinking it made sense is another area of concern (answer choice 2). At least 50% of the research participants cited that logic for an incorrect answer to the following items, and this demonstrates that jurors are substituting their own common sense for what the law prescribes.

During your deliberations, you may take an average of damage amounts and use that as your answer (50% - B);

Incorrect Answer, but "I was Guessing":

It is also interesting to note from Table 7-8 that some research participants answered incorrectly and stated they were guessing (answer choice 3). At least 50% of the research participants cited this reason for an incorrect answer to the following items:

Twelve people will be chosen as jurors in this case (50% - B);

Incorrect Answer, and "I Don't Know" Why I Chose It:

It is also interesting to note from Table 7-8 that some research participants answered incorrectly and stated they did not know why they chose that answer (answer choice 4). At least 50% of the research participates cited this reason for an incorrect answer to the following items:

The case presented before you is a civil action and not a criminal action (61% - A);

If a juror breaks the rules, the Judge may have to order a new trial (50% - B);

To be "free from bias and prejudice" means you have not prejudged the case before hearing the evidence (75% - A, 100% - B);

Circumstantial evidence is indirect proof (57% - A);

You cannot have more than one proximate cause (58% - A, 68% - B).

Incorrect Answer, but "I Learned it during Deliberations":

With regards to the Verdict Form Questionnaire, the trailer question included a fifth response option to indicate the basis of their answer to the preceding question. That additional response option was "I learned it during deliberations." As a side note that is of interest, for incorrect answers to the following items, at least 15% of the research participants cited that reason:

In order to be a "proximate cause" for an event, the result does not necessarily have to be foreseeable (27% - B);

One of the criteria of fraud is that a party (the Plaintiff) suffers by relying on a false statement of fact from another party (the Defendant) (29% - A; 17% - B);

One of the criteria of fraud is that a party (the Defendant) makes a false statement with the intention that it should be acted on by another party (the Plaintiff) (22% - A);

In order to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met (17% - A, 18% - B).

Preponderance of the Evidence

The data in Table 9 reveals a common sense numerical assignment to "preponderance of the evidence" as defined by the Judge in PJC 1.3. A survey was given to 75 research participants recruited for private Mock Trials in Texas venues between February and May 2006.

The data suggests that 49% of those surveyed assigned a numerical value between 81%-100% of the evidence while only 9% assigned a number between 51%-60% of the evidence.

Also, this question was asked as part of the PJC 1.3/1.8 survey. Only 38% of the research participants answered it correctly (51%-60% was considered correct) in Version A and 54% in Version B. Furthermore, 61% in Version A and 74% in Version B attributed the incorrect answer to hearing it from the Judge.

Lastly, data on the preponderance of the evidence is presented as One-Word Associations in the Data section to this report. The research participants were asked in the focus group session to give a definition as well as a numerical value. Those responses are illustrated in that section.

Jury Confusion Study

The data in Table 10 illustrates the results from the Jury Confusion Study, whereby the research participants were asked to review the Charge to the Court (which included PJC 1.3, 1.8 and the Verdict Form with Jury Instructions), and to highlight the language that was confusing. Both the frequency and percentage are reported.

Part 5

APPENDIX

- Appendix I – Project A PJC 1.1
- Appendix II – Project B PJC 1.1
- Appendix III – Project A PJC 1.2
- Appendix IV – Project B PJC 1.2
- Appendix V - Project A PJC 1.3/1.8 and Jury Charge
- Appendix VI - Project B PJC 1.3/1.8 Jury Charge
- Appendix VII – PJC 1.1 Questionnaire
- Appendix VIII - PJC 1.2 Questionnaire
- Appendix VIIII - PJC 1.3/1.8 Questionnaire
- Appendix X – Verdict Form Comprehension Questionnaire

Appendix I – Project A PJC 1.1

LADIES AND GENTLEMEN OF THE JURY PANEL:

The case that is now on trial is *Paul Payne* vs. *Don Davis*. This is a civil action which will be tried before a jury. Your duty as jurors will be to decide the disputed facts. It is the duty of the judge to see that the case is tried in accordance with the rules of law. In this case, as in all cases, the actions of the judge, parties, witnesses, attorneys and jurors must be according to law. The Texas law permits proof of any violation of the rules of proper jury conduct. By this I mean that jurors and others may be called upon to testify in open court about acts of jury misconduct. I instruct you, therefore, to follow carefully all instructions which I am now going to give you, as well as others which you will receive while this case is on trial. If you do not obey the instructions I am about to give you, it may become necessary for another jury to re-try this case with all of the attendant waste of your time here and the expense to the litigants and the taxpayers of this county for another trial. These instructions are as follows:

1. Do not mingle with nor talk to the lawyers, the witnesses, the parties, or any other person who might be connected with or interested in this case, except for casual greetings. They have to follow these same instructions and you will understand it when they do.

2. Do not accept from, nor give to, any of those persons any favors however slight, such as rides, food or refreshments.

3. Do not discuss anything about this case, or even mention it to anyone whomsoever, including your wife or husband, nor permit anyone to mention it in your hearing until you are discharged as jurors or excused from this case. If anyone attempts to discuss the case, report it to me at once.

4. The parties through their attorneys have the right to direct questions to each of you concerning your qualifications, background, experiences and attitudes. In questioning you, they are not meddling in your personal affairs, but are trying to select fair and impartial jurors who are free from any bias or prejudice in this particular case.

a. Do not conceal information or give answers which are not true. Listen to the questions and give full and complete answers.

b. If the attorneys ask some questions directed to you as a group which require an answer on your part individually, hold up your hand until you have answered the questions.

Do you understand these instructions? If not, please let me know now.

Whether you are selected as a juror for this case or not, you are performing a significant service which only free people can perform. We shall try the case as fast as possible consistent with justice, which requires a careful and correct trial. If selected on the jury, unless I instruct you differently, you will be permitted to separate at recesses and for meals, and at night.

The attorneys will now proceed with their examination.

Appendix II – Project B PJC 1.1

Ladies and Gentlemen: We are about to begin selecting a jury. Right now, you are members of what we call a panel. After the lawyers ask you some questions, 12 of you will be chosen for the jury. But before we start asking questions and choosing jurors, I will give you some information and then go over the instructions.

First of all, we thank you for being here. Even if you are not chosen for the jury, you are performing a valuable service that is your right and duty as a citizen of a free country.

Now I will give you some background about this case. This is a civil trial. A civil trial is a lawsuit that is not a criminal case. This means no one has been accused of a crime and no one will be going to jail.

The parties are as follows: The plaintiff is Petris, and the defendant is SPC.

The parties have the right to have their lawyers ask you questions about your background, experiences, and attitudes. They are not trying to meddle in your affairs. They are just being thorough and trying to choose fair jurors who do not have any bias or prejudice about this case.

Jurors sometimes ask what it means when I say we want jurors who do not have any bias or prejudice. The word "prejudice" means judging something before you have all the information. It also means making a decision that ignores facts presented in court and the law that I explain. But we want jurors who will not pre-judge the case and who will decide the case based only on the evidence presented in court and the law that I explain.

If you are chosen for the jury, you will listen to the evidence and decide the facts of the case. I, as the judge, will manage the process and make sure the law is applied correctly. I assure you we will handle this case as fast as we can, but we cannot rush things. We have to do it fairly and we have to follow the law.

Everyone must obey the instructions that I am about to give you: the lawyers, the witnesses, the jurors, and the parties.

If you do not follow these instructions, I may have to order a new trial and start this process over again. That would be a waste of time and money, so please listen carefully to these instructions.

These are the instructions:

1. Remember that you took an oath that you will tell the truth, so be honest when the lawyers ask you questions, and always give complete answers. Sometimes a lawyer will ask a question of the whole panel instead of just one person. If the question applies to you, raise your hand and keep it raised until you are called on.
2. Do not mingle or talk with the lawyers, the witnesses, the parties, or anyone involved in the case. You can exchange casual greetings like "hello" and "good morning." Other than that, do not talk with them at all. They have to follow these instructions too, so they will not be offended. Also, do not accept any favors from the lawyers, the witnesses, the parties, or anyone involved in the case, and do not do any favors for them. This includes favors such as giving rides and food. We ask you not to mingle or accept favors to avoid looking like you are friendly with one side of the case.

3. Do not discuss this case with anyone, even your spouse or friend. Do not allow anyone to discuss the case with you or in front of you. If anyone tries to discuss the case with you, tell me. We ask you not to discuss the case with others because we do not want you to be influenced by something other than the evidence presented in court.

Do you understand these instructions? If you do not, please tell me now.

The lawyers will now begin asking questions.

Appendix III – Project A PJC 1.2

LADIES AND GENTLEMEN:

By the oath which you take as jurors, you become officials of this court and active participants in the public administration of justice. I now give you further instructions which you must obey throughout this trial.

It is your duty to listen to and consider the evidence and to determine fact issues later submitted to you, but I, as judge, will decide matters of the law. You will now receive written instructions which you will observe during this trial, together with such other instructions as I may hereafter give, or as heretofore I have given to you.

[A copy of the written instructions set out below shall thereupon be handed to each juror.]

As you examine the instructions which have just been handed to you, we will go over them briefly together. The first three instructions have previously been stated, and you will continue to observe them throughout the trial. These and the other instructions just handed to you are as follows:

[The written instructions set out below shall thereupon be read by the court to the jury.]

Counsel, you may proceed.

[Written Instructions]

1. Do not mingle with nor talk to the lawyers, the witnesses, the parties, or any other person who might be connected with or interested in this case, except for casual greetings. They have to follow these same instructions and you will understand it when they do.

2. Do not accept from, nor give to, any of those persons any favors however slight, such as rides, food or refreshments.

3. Do not discuss anything about this case, or even mention it to anyone whomsoever, including your wife or husband nor permit anyone to mention it in your hearing until you are discharged as jurors or excused from this case. If anyone attempts to discuss the case, report it to me at once.

4. Do not even discuss this case among yourselves until after you have heard all of the evidence, the court's charge, the attorneys' arguments and until I have sent you to the jury room to consider your verdict.

5. Do not make any investigation about the facts of this case. Occasionally we have a juror who privately seeks out information about a case on trial. This is improper. All evidence must be presented in open court so that each side may question the witnesses and make proper objection. This avoids a trial based upon secret evidence. These rules apply to jurors the same as they apply to the parties and to me. If you know of, or learn anything about, this case except from the evidence admitted during the course of this trial, you should tell me about it at once. You have just taken an oath that you will render a verdict on the evidence submitted to you under my rulings.

6. Do not make personal inspections, observations, investigations, or experiments nor personally view premises, things or articles not produced in court. Do not let anyone else do any of these things for you.

7. Do not tell other jurors your own personal experiences nor those of other persons, nor relate any special information. A juror may have special knowledge of matters such as business, technical or professional matters or he may have expert knowledge or opinions, or he may know what happened in this or some other lawsuit. To tell the other jurors any of this information is a violation of these instructions.

8. Do not discuss or consider attorney's fees unless evidence about attorney's fees is admitted.

9. Do not consider, discuss, nor speculate whether or not any party is or is not protected in whole or in part by insurance of any kind.

10. Do not seek information contained in law books, dictionaries, public or private records or elsewhere, which is not admitted in evidence.

At the conclusion of all the evidence, I may submit to you a written charge asking you some specific questions. You will not be asked, and you should not consider, whether one party or the other should win. Since you will need to consider all of the evidence admitted by me, it is important that you pay close attention to the evidence as it is presented.

The Texas law permits proof of any violation of the rules of proper jury conduct. By this I mean that jurors and others may be called upon to testify in open court about acts of jury misconduct. I instruct you, therefore, to follow carefully all instructions which I have given you, as well as others which you later receive while this case is on trial.

You may keep these instructions and review them as the case proceeds. A violation of these instructions should be reported to me.

Appendix IV – Project B PJC 1.2

Ladies and Gentlemen: You have now been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

What you are receiving is a set of written instructions, and I am going to discuss them with you now. Some of them you have heard before, and some are new.

1. Please remember what I said about not mingling with those involved in this case, not accepting favors from those involved with this case, and not discussing the case with anyone.
2. Please discuss this case only with other jurors and only after I have given you the final instructions and sent you to the jury room to reach a verdict. This will be after you have heard all the evidence, all my instructions, and all the lawyers' arguments.
3. Do not investigate this case on your own. Do not view or inspect places or items from this case unless they are presented as evidence in court. Do not let anyone do those things for you. This rule is very important because we cannot have a trial based on evidence not presented in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom. All the evidence must be presented in open court so the parties and their lawyers can test it and object to it. For example:
    - Sometimes we have jurors who go on their own and try to get information about a case from outside this courtroom.
    - Sometimes we have jurors who go to places mentioned in the case to see the places for themselves.
    - And sometimes we have jurors who go look things up in law books, dictionaries, public records, or on the Internet.

    Please do not do any of these. Consider only the evidence presented in this courtroom.

4. Do not tell other jurors your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another case. But keep it to yourself. Telling other jurors about it is wrong because it means the jury will be considering things that were not presented in court.
5. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.
6. Do not consider insurance or who might be covered by insurance unless I tell you to. Do not guess about who might or might not be covered by insurance.

Do you understand these instructions? If you do not, please tell me now.

After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions will have questions for you to answer. You will not be asked which side should win, so do not answer that question. Instead, you will need to answer the specific questions I give you.
As I have said before, if you do not follow these instructions, I may have to order a new trial and start this process over again.

Appendix V – Project A PJC 1.3/1.8 Jury Charge

	§	IN THE DISTRICT COURT OF
Petris	§	
	§	
VS.	§	TEXAS
	§	
SPC	§	
	§	JUDICIAL DISTRICT

CHARGE OF THE COURT

Members of the Jury:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice, or sympathy play any part in your deliberations.

2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.

3. Since every answer that is required by this charge is important, no juror should state or consider that any required answer is not important.

4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire

jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

These instructions are given to you because your conduct is subject to review the same as that of the witnesses, parties, attorneys, and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case. Whenever a question requires other than a "Yes" or "No" answer, your answer must be based on a preponderance of the evidence.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to oversee the review of the Court's charge, and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror--

1. to preside during your deliberations;

2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge;

3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge;

4. to vote on the questions;

5. to write your answers to the questions in the spaces provided; and

6. to certify to your verdict in the space provided for the presiding juror's signature, or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform me of this fact.

When you have answered all the questions you are required to answer under the instructions of the Court, and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into the courtroom with your verdict.

_____

District Judge

QUESTION #1

Did SPC fail to comply with the agreement between Petris Technology, Inc. and SPC?

Answer: _____

If your answer to Question #1 is "Yes," then answer the following question. Otherwise, do not answer the following question.

QUESTION #2

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that resulted from such failure to comply?

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of the instructions in or your answers to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any, that—

were sustained in the past; Answer: _____

in reasonable probability will be sustained in the future. Answer: _____

QUESTION #3

Did a "joint venture" exist between SPC and Petris?

Answer: _____

Definitions/Instructions: A "joint venture" is an association of two or more persons to carry on a business for profit. A joint venture must be based on an agreement that has all the following elements:

1. a community of interest in the venture,
2. an agreement to share profits,
3. an express agreement to share losses, and
4. a mutual right of control or management of the venture.

If you answered "Yes" to Question #3, then answer Questions #4. If you answered "No" to Question #3 then skip to Question #6. .

QUESTION #4

Did SPC comply with its fiduciary duty to Petris Technology, Inc.?

Because they were joint venturers, SPC owed Petris Technology, Inc. a fiduciary duty. To prove SPC complied with its duty, SPC must show:

a. The transaction in question was fair and equitable to Petris;

b. SPC made reasonable use of the confidence that Petris placed in it;

c. SPC acted in the utmost good faith and exercised the most scrupulous honesty toward Petris;

d. SPC placed the interests of Petris before its own, did not use the advantage of its position to gain any benefit for itself at the expense of Petris, and did not place itself in any position where its self-interest might conflict with its obligations as a fiduciary; and

e. SPC fully and fairly disclosed all important information to Petris concerning the transaction.

Answer: _____

If your answer to Question #4 is "No," then answer the following question. Otherwise, do not answer the following question.

QUESTION #5

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that were proximately caused by such conduct?

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Do not add any amount for interest on damages, if any.

Answer: $_____

QUESTION #6

Did SPC commit fraud against Petris Technology, Inc.?

Fraud occurs when—

a. a party makes a material misrepresentation,

b. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion,

c. the misrepresentation is made with the intention that it should be acted on by the other party, and

d. the other party relies on the misrepresentation and thereby suffers injury.

"Misrepresentation" means a false statement of fact or a promise of future performance made with an intent, at the time the promise was made, not to perform as promised.

Answer: _____

If your answer to Question #6 is "Yes," then answer the following question. Otherwise, do not answer the following question.

QUESTION #7

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that resulted from such fraud?

Answer: $_____

QUESTION #8

Did SPC make a negligent misrepresentation on which Petris Technology, Inc. justifiably relied?

Negligent misrepresentation occurs when—

a. a party makes a representation in the course of his business or in a transaction in which he has a pecuniary interest,

b. the representation supplies false information for the guidance of others in their business, and

c. the party making the representation did not exercise reasonable care or competence in obtaining or communicating the information

Answer: _____

If your answer to Question #8 is "Yes," then answer the following question. Otherwise, do not answer the following question.

QUESTION #9

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that were proximately caused by such negligent misrepresentation?

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Answer: $_____

Do not add any amount for interest on past damages, if any.

Certificate as to Questions 1-9

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror if unanimous.)

_____
Juror Presiding

(To be signed by those rendering the verdict if not unanimous.)

	SIGNATURE	NAME PRINTED
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

If you answered Question 6 "YES" and were unanimous in that answer, then answer Question 10. Otherwise, do not answer Question 10.

QUESTION #10

What sum of money, if any, if paid now in cash, should be assessed against SPC and awarded to Petris Technology, Inc. as exemplary damages if any.

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

a. The nature of the wrong.

b. The character of the conduct involved.

c. The degree of culpability of SPC.

d. The situation and sensibilities of the parties concerned.

e. The extent to which such conduct offends a public sense of justice and propriety.

f. The net worth of SPC.

Answer in dollars and cents, if any.

Answer: _____

Certificate as to Questions 6 and 10

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

I certify that this jury was unanimous in answering Question 6 and 10

_____

Juror Presiding

(

Appendix VI – Project B PJC 1.3/1.8 Jury Charge

	§	IN THE DISTRICT COURT OF
Petris	§	
	§	
VS.	§	TEXAS
	§	
SPC	§	
	§	JUDICIAL DISTRICT

CHARGE OF THE COURT

Ladies and Gentlemen: You are about to go to the jury room to reach a verdict. This means you will apply the law and answer the questions I will give you.

Remember: You are to make up your own minds about the facts. You are the only judges of the credibility of the witnesses and the weight to give their testimony. But on matters of the law, you must follow the instructions I have given you before and those I will give you now. Please remember what I said about not discussing the case until you are in the jury room.

In just a moment I will be giving you a set of questions. Here are the instructions for answering the questions:

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on what was presented in court and on the law I explain to you. Please remember what I have said about not sharing your own special knowledge or experiences. This case must be decided only on the facts presented in court and on the law I give you.
3. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
4. All the questions and answers are important. No one should say that any question or answer is not important.
5. Answer yes or no to every question unless you are told otherwise.
6. A yes answer must be based on a preponderance of the evidence unless you are told otherwise.

- The term "preponderance of the evidence" is a legal phrase that means the greater weight and degree of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a yes answer, then answer no.

- Whenever a question requires an answer other than yes or no, your answer must be based on a preponderance of the evidence unless you are told otherwise.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win.
8. Do not answer questions by drawing straws or by any method of chance.
9. Some questions might ask you for a dollar amount. Do not decide on a dollar amount by adding up each juror's amount and then figuring the average.
10. Do not trade your answers. For example, do not say "I will answer this question your way if you answer another question my way."
11. The answers to the questions must be based on the decision of at least 10 of the 12 jurors unless otherwise instructed. The same 10 jurors must agree on all the answers and then to the entire verdict. Specifically—
    - Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.
    - If all 12 jurors agree, the presiding juror, or the elected foreperson, signs the verdict certificate for the entire jury.
    - If all 12 jurors do not agree, the 10 or more jurors who agree each sign the verdict certificate.

During this trial, you may have heard two kinds of evidence. They are direct evidence and indirect evidence.

Direct evidence means a fact was proved by a document, by an item, or by testimony from a witness who heard or saw the fact directly.

Indirect evidence means the circumstances reasonably suggest the fact. Indirect evidence means that based on the evidence, you can conclude the fact is true. Indirect evidence is also called "circumstantial evidence."

For example, suppose a witness was outside and saw that it was raining. The witness could testify that it was raining, and this would be direct evidence. Now suppose the witness was inside a building, but the witness saw people walking into the building with wet umbrellas. The witness could testify that it was raining outside, and this would be indirect evidence.

A fact may be proved by direct evidence or by indirect evidence or by both.

Do you understand these instructions? If you do not, please tell me now.

When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror, to act as the foreperson of the jury.

The presiding juror has these duties:

- To preside over your deliberations. This means the presiding juror will take the lead in discussions, write down the answers that 10 or more of you agree on, and see that you follow the instructions.
- To give written questions or comments to the judge. The presiding juror should give them to the bailiff, who will give them to me.
- To vote on the answers to questions, just as all jurors do.
- To sign the verdict if all 12 jurors agree or to get the signatures of all those who agree if the verdict is not by all 12.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Once you have reached a verdict, the presiding juror should notify the bailiff. Do not notify the bailiff that you have reached a verdict until—

1. you have answered all the questions,
2. the presiding juror has written down the answers, and
3. the presiding juror has signed the verdict certificate if all 12 jurors agree, or had all those who agree sign the verdict certificate if it is not by all 12.

QUESTION #1

Did SPC fail to comply with the agreement between Petris Technology, Inc. and SPC?

Answer: _____

If your answer to Question #1 is "Yes," then answer the following question. Otherwise, do not answer the following question.

QUESTION #2

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that resulted from the failure to comply?

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of the instructions in or your answers to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any, that—

were sustained in the past; Answer: _____

in reasonable probability will be sustained in the future. Answer: _____

QUESTION #3

Did a "joint venture" exist between SPC and Petris?

Answer: _____

Definitions/Instructions: A "joint venture" is an association of two or more people or businesses to carry on a business for profit. A joint venture must be based on an agreement, and the agreement must have all these elements:

1. a common interest in the venture, and
2. an agreement to share profits, and
3. an express agreement to share losses, and
4. a mutual right of control or management of the venture.

If you answered "Yes" to Question #3, then answer Questions #4. If you answered "No" to Question #3 then skip to Question #6.

QUESTION #4

Did SPC comply with its fiduciary duty to Petris Technology, Inc.?

Because they were joint venturers, SPC owed Petris a fiduciary duty. To prove SPC complied with its duty, SPC must prove all of these elements:

a. The transaction was fair to Petris; and

b. SPC made reasonable use of the confidence that Petris placed in it; and

c. SPC acted in the utmost good faith and exercised the most scrupulous honesty toward Petris; and

d. SPC placed the interests of Petris before its own interests, did not use the advantage of its position to gain any benefit for itself at the expense of Petris, and did not place itself in any position where its self-interest might conflict with its obligations to Petris; and

e. SPC fully and fairly disclosed all important information to Petris concerning the transaction.

Answer: _____

If your answer to Question #4 is "No," then answer the following question. Otherwise, do not answer the following question.

QUESTION #5

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that were proximately caused by the conduct?

"Proximate cause" means an act or an omission (a failure to act) that, in a natural and continuous sequence, produces a result. Without that cause, the result would not have occurred. To be a proximate cause, the act or omission must be something that a person using the required degree of care would have reasonably foreseen could cause the result or something similar. There may be more than one proximate cause for a result.

Do not add any amount for interest on damages, if any.

Answer: _____

QUESTION #6

Did SPC commit fraud against Petris Technology, Inc.?

Fraud occurs when all of these elements are present—

a. a party makes a material misrepresentation ("Misrepresentation" means a false statement of fact or a promise of future performance made with an intent, at the time the promise was made, not to perform as promised), and

b. the party makes the misrepresentation as a positive assertion knowing it is false or makes the representation recklessly without knowing if it is true or false, and

c. the party makes the misrepresentation and intends that the other party should act on it, and

d. the other party relies on the misrepresentation and suffers injury from relying on it.

Answer: _____

If your answer to Question #6 is "Yes," then answer the following question. Otherwise, do not answer the following question.

QUESTION #7

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that resulted from the fraud?

Answer: _____

QUESTION #8

Did SPC make a negligent misrepresentation on which Petris Technology, Inc. justifiably relied?

Negligent misrepresentation occurs when all of these elements are present:

a. a party makes a representation in the course of its business or in a transaction in which it has a monetary interest, and

b. the party makes a representation that uses false information for guiding others in their businesses, and

c. the party making the representation did not exercise reasonable care or competence in obtaining or communicating the information.

Answer: _____

If your answer to Question #8 is "Yes," then answer the following question. Otherwise, do not answer the following question.

QUESTION #9

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Petris Technology, Inc. for its damages, if any, that were proximately caused by the negligent misrepresentation?

"Proximate cause" means an act or an omission (a failure to act) that, in a natural and continuous sequence, produces a result. Without that cause, the result would not have occurred. To be a proximate cause, the act or omission must be something that a person using the required degree of care would have reasonably foreseen could cause the result or something similar. There may be more than one proximate cause for a result.

Answer: _____

Do not add any amount for interest on past damages, if any.

Certificate as to Questions 1-9

We, the jury, have answered these questions as indicated, and now return them into court as our verdict.

(To be signed by the presiding juror if agreed by all 12 jurors)

_____

Juror Presiding

(To be signed by those rendering the verdict if not by all 12)

	SIGNATURE	NAME PRINTED
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

If all 12 jurors answered Question 6 "Yes", then answer Question 10. Otherwise do not answer Question 10.

QUESTION #10

What sum of money, if any, if paid now in cash, should be assessed against SPC and awarded to Petris Technology, Inc. as punitive damages, if any, for the conduct found in response to Question #6?

"Punitive damages" are money you may, in your discretion, give as a penalty or punishment.

In deciding whether you will award punitive damages, think about any or all of these things:

a. The nature of the wrong.

b. The character of the conduct involved.

c. The degree of blame of SPC.

d. The situation and sensibilities of the parties concerned.

e. The extent to which the conduct offends a sense of justice and propriety.

f. The net worth of SPC.

Answer in dollars and cents, if any.

Answer: _____

Certificate as to Questions 6 and 10

We, the jury, have answered these questions as indicated, and now return them into court as our verdict.

I certify that all 12 jurors answered Question 6 and 10 "Yes."

_____

Juror Presiding

Appendix VII – PJC 1.1 Questionnaire

PJC 1.1 Questionnaire

Instructions

Please complete this questionnaire on the green and white scantron sheet provided. Use a #2 pencil and mark as darkly and as legibly as you can. Select one response for each question.

Please rate the following criteria using the "1" to "6" scale provided with "1" being the lowest rating and "6" being the highest rating.

	Not at all					Very much
1. Understandable	1	2	3	4	5	6
2. Clear	1	2	3	4	5	6
3. Easy to follow	1	2	3	4	5	6
4. Simple	1	2	3	4	5	6
5. Makes Sense	1	2	3	4	5	6
6. Necessary	1	2	3	4	5	6
7. Informative	1	2	3	4	5	6
8. Direct	1	2	3	4	5	6

9. The case presented before you is a civil action and not a criminal action.

(1)True (2)False (3)Don't Know

10. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

11. Twelve people will be chosen as jurors in this case.

(1)True (2)False (3)Don't Know

12. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

13. If a juror breaks the rules, the Judge may have to order a new trial.

(1)True (2)False (3)Don't Know

14. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

15. As a juror, you are allowed to withhold information from the attorneys during jury selection.

(1)True (2)False (3)Don't Know

16. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

17. As a juror, you are not allowed to mingle with the lawyers, the witness, the parties, or anyone involved in the case.

(1)True (2)False (3)Don't Know

18. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

19. As a juror, you may say "hello" to the lawyers, witnesses, parties and others involved in the case.

(1)True (2)False (3)Don't Know

20. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

21. You are allowed to discuss this case with your spouse.

(1)True (2)False (3)Don't Know

22. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

23. To be impartial means to be open and honest.

(1)True (2)False (3)Don't Know

24. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

25. To be "free from bias and prejudice" means you have not prejudged the case before hearing the evidence.

(1)True (2)False (3)Don't Know

26. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

Appendix VIII – PJC 1.2 Questionnaire

PJC 1.2 Questionnaire

Instructions

Please complete this questionnaire on the green and white scantron sheet provided. Use a #2 pencil and mark as darkly and as legibly as you can. Select one response for each question.

Please rate the following criteria using the "1" to "6" scale provided with "1" being the lowest rating and "6" being the highest rating.

	Not at all					Very much
1. Understandable	1	2	3	4	5	6
2. Clear	1	2	3	4	5	6
3. Easy to follow	1	2	3	4	5	6
4. Simple	1	2	3	4	5	6
5. Makes Sense	1	2	3	4	5	6
6. Necessary	1	2	3	4	5	6
7. Informative	1	2	3	4	5	6
8. Direct	1	2	3	4	5	6

9. As a juror, you are allowed to investigate the case on your own (i.e. internet searches).

(1)True (2)False (3)Don't Know

10. I chose that answer because:

(5) I heard the Judge read it
(6) I didn't hear the Judge read it, but it makes sense
(7) I'm guessing
(8) I don't know

11. As a juror, you can discuss the case with each other while on breaks.

(1)True (2)False (3)Don't Know

12. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

13. As a juror, you should consider attorney's fees when awarding damages.

(1)True (2)False (3)Don't Know

14. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

15. As a juror, you should not consider insurance when awarding damages.

(1)True (2)False (3)Don't Know

16. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

17. As a juror, your role is to decide which side should win.

(1)True (2)False (3)Don't Know

18. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

19. As a juror, your conclusions on the case can only be based on what is presented during the trial.

(1)True (2)False (3)Don't Know

20. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

21. Secret evidence is evidence found by private investigation by a juror.

(1)True (2)False (3)Don't Know

22. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

Appendix VIIII – PJC 1.3/1.8 Questionnaire

PJC 1.3/1.8 Questionnaire
Instructions

Please complete this questionnaire on the green and white scantron sheet provided. Use a #2 pencil and mark as darkly and as legibly as you can. Select one response for each question.

Please rate the following criteria using the "1" to "6" scale provided with "1" being the lowest rating and "6" being the highest rating.

	Not at all					Very much
1. Understandable	1	2	3	4	5	6
2. Clear	1	2	3	4	5	6
3. Easy to follow	1	2	3	4	5	6
4. Simple	1	2	3	4	5	6
5. Makes Sense	1	2	3	4	5	6
6. Necessary	1	2	3	4	5	6
7. Informative	1	2	3	4	5	6
8. Direct	1	2	3	4	5	6

9. As a juror, you can't let sympathy influence you verdict.

(1)True (2)False (3)Don't Know

10. I chose that answer because:

(9) I heard the Judge read it
(10) I didn't hear the Judge read it, but it makes sense
(11) I'm guessing
(12) I don't know

11. During your deliberations, you may take an average of damage amounts and use that as your answers.

(1)True (2)False (3)Don't Know

12. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

13. As jurors, you must be unanimous in all your answers.

(1)True (2)False (3)Don't Know

14. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

15. As jurors, you may trade answers and exchange votes.

(1)True (2)False (3)Don't Know

16. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

17. The presiding juror has the final say in the verdict.

(1)True (2)False (3)Don't Know

18. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

19. You cannot use circumstantial evidence in deciding you verdict.

(1)True (2)False (3)Don't Know

20. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

21. Preponderance of the evidence means beyond a shadow of a doubt.

(1)True (2)False (3)Don't Know

22. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

23. Circumstantial evidence is indirect proof.

(1)True (2)False (3)Don't Know

24. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

25. Deliberations are the instructions the Judge reads to you as jurors.

(1)True (2)False (3)Don't Know

26. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

27. "Preponderance of the evidence" is equal to _____ % of the evidence.

(1) 50-60% (2) 61-82% (3) 81-100%

28. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

Appendix X – Verdict Form Comprehension Questionnaire

Verdict Form Comprehension Questionnaire Instructions

Please complete this questionnaire on the green and white scantron sheet provided. Use a #2 pencil and mark as darkly and as legibly as you can. Select one response for each question.

Please rate the following criteria using the "1" to "6" scale provided with "1" being the lowest rating and "6" being the highest rating.

	Not at all					Very much
1. Understandable	1	2	3	4	5	6
2. Clear	1	2	3	4	5	6
3. Easy to follow	1	2	3	4	5	6
4. Simple	1	2	3	4	5	6
5. Makes Sense	1	2	3	4	5	6
6. Necessary	1	2	3	4	5	6
7. Informative	1	2	3	4	5	6
8. Direct	1	2	3	4	5	6

9. How well do you feel you understood the jury instructions that the judge gave you?

(1) Not at all.
(2) Not very well.
(3) Pretty well.
(4) Completely.

10. During your deliberations, how helpful were the jury instructions the judge gave you?

(1) Not at all helpful.
(2) A little helpful.
(3) Fairly helpful.
(4) Very helpful.

11. Did your jury spend any time during its deliberations discussing any of the instructions that the judge gave you?

(1) Yes (2) No

If your jury didn't spend much time discussing the instructions, was this because:

12. The judge's reading of the instructions was so clear that we didn't need to discuss them.

(1) Yes (2) No

13. The instructions were too long.

(1) Yes (2) No

14. The instructions were too difficult to understand.

(1) Yes (2) No

15. We didn't know how to use the instructions to help to reach a verdict.

(1) Yes (2) No

16. You didn't need instructions to decide a case like this.

(1) Yes (2) No

17. In a civil trial, the jury has to be convinced beyond a reasonable doubt that the plaintiff's claims are correct -- if the jury does not think that the plaintiff has proved every element of his or her case beyond a reasonable doubt, the jury should find for the defendant.

(1)True (2)False (3)Don't Know

18. I chose that answer because:

(5) I heard the Judge read it
(6) I didn't hear the Judge read it, but it makes sense
(7) I'm guessing
(8) I don't know

19. In order to be a proximate cause for an event, the result does not necessarily have to be foreseeable.

(1)True (2)False (3)Don't Know

20. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

21. Fraud can occur when a party (the Plaintiff) suffers by relying on a false statement of fact from another party (the Defendant).

(1)True (2)False (3)Don't Know

22. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

23. Proximate cause means the Plaintiff was injured as a result of the Defendant's act or omission.

(1)True (2)False (3)Don't Know

24. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

25. Fraud can occur when a party (the Defendant) makes a false statement with the intention that it should be acted on by another party (the Plaintiff).

(1)True (2)False (3)Don't Know

26. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

27. You cannot have more than one proximate cause.

(1)True (2)False (3)Don't Know

28. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

29. In order for the jury to find that the Defendant committed fraud, the Plaintiff only has to prove that one of the four criteria of fraud has been met.

(1)True (2)False (3)Don't Know

30. I chose that answer because:

(1) I heard the Judge read it
(2) I didn't hear the Judge read it, but it makes sense
(3) I'm guessing
(4) I don't know

Tab K

The Supreme Court of Texas

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

March 29, 2021

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

Re: Referral of Rules Issues

Dear Chip:

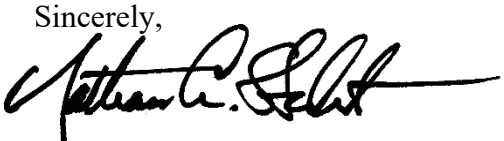
The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters.

Ethical Guidelines for Mediators. In the attached letter, the State Bar of Texas's Alternative Dispute Resolution Section asks the Court to add a comment to Guideline 14 of the Court's Ethical Guidelines for Mediators. The Committee should review and make recommendations.

Jury Rules. The rules in Part II, Section 10 of the Texas Rules of Civil Procedure are outdated and do not reflect current practice. The Court asks the Committee to draft amendments for the Court's consideration. The Committee should consult with the Remote Proceedings Task Force on removing any barriers to remote jury proceedings.

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

Sincerely,



Nathan L. Hecht
Chief Justice

Attachments

October 22, 2020

Via email: jaclyn.daumerie@txcourts.gov
Hon. Nathan L. Hecht
Hon. Eva Guzman
Hon. Debra Lehrmann
Hon. Jeffrey S. Boyd
Hon. John Phillip Devine
Hon. Jimmy Blacklock
Hon. Brett Busby
Hon. Jane Bland
Hon. Rebeca Huddle

Re: Request for Approval of Amendment to the Ethical Guidelines for Mediators by the Alternative Dispute Resolution Section of the State Bar of Texas

To the Honorable Justices of the Supreme Court of Texas:

I am writing to you in my capacity as Chair of the Alternative Dispute Resolution Section of the State Bar of Texas (the Section). The purpose of this letter is to ask the Supreme Court of Texas (the Court) to approve an amendment to Guideline 14 of the Ethical Guidelines for Mediators (the Guidelines). Guideline 14 provides as follows:

> **14. Agreements in Writing.** A mediator should encourage the parties to reduce all settlement agreements to writing.

The following comment is the amendment to Guideline 14:

> **Comment**. A mediator may prepare a written settlement agreement that memorializes the terms agreed to by the parties, and may suggest additional terms in a draft that are consistent with terms agreed to by the parties.

The basis of this Comment is Ethics Opinion 675 of the Professional Ethics Committee of the State Bar of Texas (the PEC), issued in August 2018. Ethics Opinion 675 answered some issues that have concerned Texas mediators for years. The Comment incorporates the key language from the PEC's opinion. This letter contains contextual information and the Section's reasons for proposing the Comment.

The Confusion Created by PEC Ethics Opinion 583 in 2008

In September 2008, the PEC issued Ethics Opinion 583 in answer to the following question it received from a Texas attorney: "May a lawyer enter into an arrangement to mediate a divorce settlement between parties who are not represented by legal counsel and prepare the divorce decree and other necessary documents to effectuate an agreed divorce if the mediation results in

an agreement?" For the reasons stated in its opinion, the PEC concluded, "[A] lawyer may not agree to serve both as a mediator between parties in a divorce and as a lawyer to prepare the divorce decree and other necessary documents to effectuate an agreement resulting from the mediation. Because a divorce is a litigation proceeding, a lawyer is not permitted to represent both parties in preparing documents to effectuate the terms of an agreed divorce."

Some attorneys acting as mediators interpreted the language of Ethics Opinion 583 expansively. They interpreted the opinion's conclusion, which prohibited not only the mediator's preparation of a divorce decree but also the "other necessary documents to effectuate an agreement resulting from the mediation" as a declaration that mediators should not draft a Mediated Settlement Agreement (MSA) at the conclusion of any mediation in which the parties reach an agreement.

Other attorneys acting as mediators interpreted Ethics Opinion 583 less expansively. They observed that MSAs were not within the scope of the question Ethics Opinion 583 answered. They also reasoned that assisting parties in drafting an MSA is a logical—and often expected or necessary—component of the service mediators provide to parties. They believed an expansive interpretation of Ethics Opinion 583 would impede mediators from providing a service many parties consider imperative.

In March 2016, after almost eight years of uncertainty regarding the interpretation of Ethics Opinion 583, an attorney and mediator asked the PEC to clarify the meaning of the contested language. In response, the PEC issued Ethics Opinion 675 in August 2018.

PEC Ethics Opinion 675 Addressed the Controversy in 2018

Ethics Opinion 675 considered the following questions: "May a Texas lawyer, acting as a mediator, prepare and provide to the parties in the mediation a proposed written agreement that memorializes the terms of the parties' agreement reached during the mediation? If so, may the lawyer-mediator propose terms for inclusion in the written agreement in addition to the specific terms agreed to by the parties in the mediation?"

For the reasons stated in its opinion, the PEC concluded: "A Texas lawyer, acting as a mediator, does not violate the Texas Disciplinary Rules of Professional Conduct by preparing and providing to the parties a draft of a written agreement that memorializes the terms of the parties' settlement reached during the course of the mediation, or by suggesting additional terms for inclusion in the draft agreement."

Reasons for Seeking Supreme Court of Texas Approval of this Comment

The Court first approved the Guidelines in 2005. In 2011, the Section submitted amendments to the Guidelines for the Court's approval, and the Court approved the amendments. Because the issue regarding mediators' authority to draft MSAs has concerned Texas mediators for over a

decade, the Section wishes to clarify the issue by including the relevant language of Ethics Opinion 675 in the Guidelines. Accordingly, the Section respectfully requests the Court's approval of the Comment to Guideline 14.

The Council of the Alternative Dispute Resolution Section of the State Bar of Texas, as authorized representatives of the Alternative Dispute Resolution Section, voted unanimously in favor of this Comment. The Comment has been endorsed by every statewide organization representing mediators in Texas. Those organizations are the Texas Mediator Credentialing Association, the Texas Association of Mediators, the Dispute Resolution Centers Directors' Council, the Texas Chapter of the Association of Attorney-Mediators, the Texas Mediation Trainers Roundtable, and the Center for Public Policy Dispute Resolution.

Please feel free to contact me if you have any questions regarding this request.

Respectfully submitted,

Gene Roberts, Jr., Chair
Alternative Dispute Resolution Section
State Bar of Texas
State Bar No. 50511618
Office: 936.294.1717
Mobile: 214.457.8229
Email: generob04@gmail.com

Tab L

MEMO

To: Supreme Court Advisory Committee

From: Rule 216 – 299a Subcommittee

Date: August 24, 2021

Re: Updating Jury Rules

By letter of March 29, 2021, Chief Justice Hecht requested the Supreme Court Advisory Committee to review Part II, Section 10 of the Texas Rules of Civil Procedure (Rules 216 – 236) because they are outdated and do not reflect common practice. Chief Justice Hecht also requested the Committee to draft amendments for the Court's consideration and requested consultation with the Remote Proceedings Task Force on removing any barriers to remote jury proceedings.

Our subcommittee believes that only Rule 226a would be impacted by remote jury proceedings. The current rule contemplates a jury being physically present and would need to be substantially rewritten for remote proceedings.

In a separate referral, Chief Justice Hecht also requested consideration of adding an implicit bias instruction to Rule 226a as recommended by the State Bar of Texas Rules Committee. That referral is addressed in a separate memo.

We also call to the Committee's attention that many of the rules on juries are clearly outdated. The Committee should note that the statutes on juries, Texas Government Code §§ 62.001 and 62.021, are also outdated in many respects. For example, some of the rules as well as

some of the statutes refer to the use of a "jury wheel" with a physical draw of names for jury lists. In the experience of the members of the subcommittees, all counties are now using a computerized system, even counties with populations of less than 1,000 people.

The changes recommended by our subcommittee are reflected in a red-line version of the rules which is attached. While our subcommittee has endeavored to revise some of the archaic language used in the rules, we recommend the Court consider a re-write of the jury rules in "plain English."

Many of the proposed changes are self-explanatory. We eliminated rules we believe are unnecessary and combined rules where considered appropriate. We submit the following comments on some of the proposed changes:

Rule 223. We have combined Rules 223 and 224. Previously, those rules dealt separately with interchangeable and non-interchangeable juries. The "jury shuffle" was contained only in Rule 223 although the rule has generally been thought applicable to counties not using interchangeable jury panels. We add a comment referencing the statutes on the use of interchangeable jury panels.

Rule 226a. We tried to use updated language regarding internet research by jurors. While the implicit bias instruction is addressed in a separate memo, we believe a proposed instruction could be easily added to this rule with our proposed changes.

Rule 227. We have combined Rules 227, 228, and 229 so that the rules on challenge for cause are included in a single rule. Former Rule 230, regarding certain questions not to be asked of a juror, has been modified and moved to Rule 227. We thought it better for that rule to precede the challenge for cause rules.

Rule 233. We have combined Rules 232 and 233 on peremptory challenges. We added a comment about the statute which addresses additional peremptory challenges if the trial court decides to seat alternate jurors.

TCR/rd
Attachment

Tab M

Section 10.- The Jury in Court

RULE 216. REQUEST AND FEE FOR JURY TRIAL

a. Request. No jury trial shall be had in any civil suit, unless a written request for a jury trial is filed with the clerk of the court a reasonable time before the date set for trial of the cause on the non-jury docket, but not less than thirty days in advance.

b. Jury Fee. Unless otherwise provided by law, a fee of ten dollars if in the district court and five dollars if in the county court must be deposited with the clerk of the court within the time for making a written request for a jury trial. The clerk shall promptly enter a notation of the payment of such fee upon the court's docket sheet.

Notes and Comments

Comment to 1990 change: Additional fees for jury trials may be required by other law, e.g., Texas Government Code § 51.604.

RULE 217. OATH OF INABILITY

The deposit for a jury fee shall not be required when the party shall within the time for making such deposit, file with the clerk his affidavit to the effect that he is unable to make such deposit, and that he cannot, by the pledge of property or otherwise, obtain the money necessary for that purpose; and the court shall then order the clerk to enter the suit on the jury docket.

RULE 218. JURY DOCKET

The clerks of the district and county courts shall each keep a docket, styled "The Jury Docket," in which shall be entered in their order the cases in which jury fees have been paid or affidavit in lieu thereof has been filed as provided in the two preceding rules.

RULE 219. JURY TRIAL DAY

The court shall designate the days for taking up the jury docket and the trial of jury cases. Such order may be revoked or changed in the court's discretion.

RULE 220. WITHDRAWING CAUSE FROM JURY DOCKET

When any party has paid the fee for a jury trial, he shall not be permitted to withdraw the cause from the jury docket over the objection of the parties adversely interested. If so permitted, the court in its discretion may by an order permit him to withdraw also his jury fee deposit. Failure of a party to appear for trial shall be deemed a waiver by him of the right to trial by jury

RULE 221. CHALLENGE TO THE ARRAY

a. ~~When the jurors summoned have not been selected by jury commissioners or by drawing the names from a jury wheel,~~ Any party to a suit which is to be tried by a jury may, before the jury is drawn, challenge the array upon the ground that the officer summoning the jury has not followed the legal or statutory requirements, ~~acted corruptly,~~ or has willfully summoned jurors known to be prejudiced against the party challenging or biased in favor of the adverse party. All such challenges must be in writing setting forth distinctly the grounds of such challenge and supported by the affidavit of the party or some other credible person. When such challenge is made, the court shall hear evidence and decide without delay whether or not the challenge shall be sustained.

~~RULE 222. WHEN CHALLENGE IS SUSTAINED~~

b. If the challenge be sustained, the array of jurors summoned shall be discharged, and the court shall order other jurors summoned in their stead, and shall direct that the officer who summoned the persons so discharged, and on account of whose misconduct the challenge has been sustained, shall not summon any other jurors in the case.

RULE 223. PREPARING JURY LIST

a. In counties using interchangeable juries, the names of the jurors shall be placed upon the general panel in the order in which they are randomly selected, and jurors shall be assigned for service from the top thereof, in the order in which they shall be needed, and jurors returned to the general panel after service in any of such courts shall be enrolled at the bottom of the list in the order of their respective return.

b. In counties not using interchangeable juries, for trial the court's designee shall randomly select from the names on the jury list a sufficient number of qualified jurors to serve on the jury panel.

c. After assignment to a particular court, the trial judge of such court, upon the demand prior to voir dire examination by any party or attorney in the case reached for trial in such court, shall cause the names of all members of the assigned jury panel in the

case to be placed in random order on a list from which the jury is to be selected to try the case. There shall be only one shuffle and drawing by the trial judge in each case.

COMMENT

See Tex. Gov't Code Ann. §§ 62.016-017 on the case of interchangeable jury panels.

RULE 225. SUMMONING TALESMAN

~~When there are not as many as twenty-four names drawn from the box, if in the district court, or as many as twelve, if in the county court, the court shall direct the sheriff to summon such number of qualified persons as the court deems necessary to complete the panel. The names of those thus summoned shall be placed in the box and drawn and entered upon the slips as provided in the preceding rules.~~

RULE 226. OATH TO JURY PANEL

Before the parties or their attorneys begin the examination of the jurors whose names have thus been listed, the jurors shall be sworn by the court or under its direction, as follows: "You, and each of you, do solemnly swear or affirm that you will true answers give to all questions propounded to you concerning your qualifications as a juror, so help you God."

RULE 226a. INSTRUCTIONS TO JURY PANEL AND JURY

The court must give instructions to the jury panel and the jury as prescribed by order of the Supreme Court under this rule.

I.

That the following oral instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the members of the jury panel after they have been sworn in as provided in Rule 226 and before the voir dire examination:

Members of the Jury Panel [or Ladies and Gentlemen of the Jury Panel]:

Thank you for being here. We are here to select a jury. Twelve [six] of you will be chosen for the jury. Even if you are not chosen for the jury, you are performing a valuable service that is your right and duty as a citizen of a free country.

Before we begin: Please turn off all phones and other electronic devices. While you are in the courtroom, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or other social media platforms.] [I will give you a number where others may contact you in case of an emergency.] Do not record or photograph any part of these court proceedings, because it is prohibited by law.

If you are chosen for the jury, your role as jurors will be to decide the disputed facts in this case. My role will be to ensure that this case is tried in accordance with the rules of law.

Here is some background about this case. This is a civil case. It is a lawsuit that is not a criminal case. The parties are as follows: The plaintiff is _____, and the defendant is _____. Representing the plaintiff is _____, and representing the defendant is _____. They will ask you some questions during jury selection. But before their questions begin, I must give you some instructions for jury selection.

Every juror must obey these instructions. You may be called into court to testify about any violations of these instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money and would require the taxpayers of this county to pay for another trial.

These are the instructions.

1. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like “hello" and “good morning." Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.

2. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.

3. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or other social media platforms]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.

4. The parties, through their attorneys, have the right to ask you questions about your background, experiences, and attitudes. They are not trying to meddle in your affairs. They are just being thorough and trying to choose fair jurors who do not have any bias or prejudice in this particular case.

5. Remember that you took an oath that you will tell the truth, so be truthful when the lawyers ask you questions, and always give complete answers. If you do not answer a question that applies to you, that violates your oath. Sometimes a lawyer will ask a question

of the whole panel instead of just one person. If the question applies to you, raise your hand and keep it raised until you are called on.

6. Do not investigate this case on your own. For example, do not:

    a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;
    b. look anything up online, the Internet or any search engines such as Google, Safari, or Bing or any electronic device to learn more about any issue or person related to the case;
    c. go to places mentioned in the case to inspect the places;
    d. inspect items mentioned in this case unless they are presented as evidence in court;
    e. look anything up in a law book, dictionary, or public record to try to learn more about the case; or
    f. let anyone else do any of these things for you.

This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial. If you observe any juror violating this rule, please report it to the bailiff or to me immediately.

Every juror must obey my instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I may have to order a new trial and start this process over again. This would waste your time and the parties' money and would require the taxpayers of this county to pay for another trial. I may also hold any juror who violates these instructions in contempt of court.

Do you understand these instructions? If you do not, please tell me now. The lawyers will now begin to ask their questions.

II.

That the following oral and written instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the jury immediately after the jurors are selected for the case:

Members of the Jury [or Ladies and Gentlemen]:

You have been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

[Hand out the written instructions.]

You have each received a set of written instructions. I am going to read them with you now. Some of them you have heard before and some are new.

1. Turn off all phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or other social media platforms.] [I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on the Internet before these court proceedings end and you are released from jury duty. Do not record or photograph any part of these court proceedings, because it is prohibited by law.

2. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like "hello" and "good morning." Other than that, do not talk with them at all.

They have to follow these instructions too, so you should not be offended when they follow the instructions.

3. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.

4. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or other social media platforms]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.

5. Do not discuss this case with anyone during the trial, not even with the other jurors, until the end of the trial. You should not discuss the case with your fellow jurors until the end of the trial so that you do not form opinions about the case before you have heard everything.

After you have heard all the evidence, received all of my instructions, and heard all of the lawyers' arguments, you will then go to the jury room to discuss the case with the other jurors and reach a verdict.

6. Do not investigate this case on your own. For example, do not:

   a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;
   b. look anything up online, on the Internet or any search engines such as Google, Safari, or Bing or on any electronic device to learn more about any issue or person related to the case;
   c. go to places mentioned in the case to inspect the places;
   d. inspect items mentioned in this case unless they are presented as evidence in court;
   e. look anything up in a law book, dictionary, or public record to try to learn more about the case; or
   f. let anyone else do any of these things for you.

This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial. If you observe any juror violating this rule, please report it to the bailiff or me immediately.

7. Do not tell other jurors about your own experiences or other people's experiences. For example, you may have special knowledge of something in the case such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another similar case. Do not tell the other jurors about it. Telling other jurors about it is wrong because it means the jury will be considering things that were not admitted in court.

8. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.

9. Do not consider or guess whether any party is covered by insurance unless I tell you to.

10. During the trial, if taking notes will help focus your attention on the evidence, you may take notes using the materials the court has provided. Do not use any

personal electronic devices to take notes. If taking notes will distract your attention from the evidence, you should not take notes. Your notes are for your own personal use. They are not evidence. Do not show or read your notes to anyone, including other jurors.

You must leave your notes in the jury room or with the bailiff. The bailiff is instructed not to read your notes and to give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone.

[You may take your notes back into the jury room and consult them during deliberations. But keep in mind that your notes are not evidence. When you deliberate, each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. After you complete your deliberations, the bailiff will collect your notes.]

When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

11. I will decide matters of law in this case. It is your duty to listen to and consider the evidence and to determine fact issues that I may submit to you at the end of the trial. After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked, and you should not consider, which side will win. Instead, you will need to answer the specific questions I give you.

Every juror must obey my instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I may have to order a new trial and start this process over again. This would waste your time and the parties' money and would require the taxpayers of this county to pay for another trial. I may also hold any juror who violates these instructions in contempt of court.

Do you understand these instructions? If you do not, please tell me now.

Please keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.

III.

Court's Charge

Before closing arguments begin, the court must give to each member of the jury a copy of the charge, which must include the following written instructions, with such modifications as the circumstances of the particular case may require:

Members of the Jury [or Ladies & Gentlemen of the Jury):

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do an independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. [I will give you a number where others may contact you in case of an emergency.]

[Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.]

[You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.]

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence [unless you are told otherwise]. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence [unless you are told otherwise].

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. [Unless otherwise instructed] The answers to the questions must be based on the decision of at least 10 of the 12 [5 of the 6] jurors. The same 10 [5] jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 [5] jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

[Definitions, questions, and special instructions given to the jury will be transcribed here. If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury

need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D I and D2, instructions in substantially the following form must immediately precede such questions:

Preceding question (ii):

Answer Question (ii) for D1 only if you unanimously answered "Yes" to Question[s] (i) regarding Dl. Otherwise, do not answer Question (ii) for Dl. [Repeat for D2.]

You are instructed that in order to answer "Yes" to [any part of Question (ii), your answer must be unanimous. You may answer "No" to [any part of Question (ii) only upon a vote of 10 (5] or more jurors. Otherwise, you must not answer [that part of Question (ii).

Preceding question (iii):

Answer Question (iii) for DI only if you answered "Yes" to Question (ii) for DI. Otherwise, do not answer Question (iii) for Dl. [Repeat for D2.]

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

[These examples are given by way of illustration.]

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

   a. have the complete charge read aloud if it will be helpful to your deliberations;
   b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
   c. give written questions or comments to the bailiff who will give them to the judge;
   d. write down the answers you agree on;
   e. get the signatures for the verdict certificate; and
   f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. [Unless otherwise instructed] You may answer the questions on a vote of 10 [5] jurors. The same 10 [5] jurors must agree on every answer in the charge. This means you may not have one group of 10 [5] jurors agree on one answer and a different group of 10 [5] jurors agree on another answer.

2. If 10 [5] jurors agree on every answer, those 10 [5] jurors sign the verdict.

If 11 jurors agree on every answer, those 11 jurors sign the verdict.

If all 12 [6] of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 [6] of you agreeing on some answers, while only 10 [5] or 11 of you agree on other answers. But when you sign the verdict, only those 10 [5] who agree on every answer will sign the verdict.

4. [Added if the charge requires some unanimity] There are some special instructions before Questions _____ explaining how to answer those questions. Please follow the instructions. If all 12 [6] of you answer these questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

_____
Judge Presiding

Verdict Certificate

Check one:

Our verdict is unanimous. All 12 [6] of us have agreed to each and every answer. The presiding juror has signed the certificate for all12 [6] of us.

_____ _____
Signature of Presiding Juror Printed Name of Presiding Juror

Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

Our verdict is not unanimous. Ten [Five] of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE NAME PRINTED

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

If you have answered Question No._____[the exemplary damages amount], Then you must sign this certificate also.

Additional Certificate
[Used when some questions require unanimous answers]

I certify that the jury was unanimous in answering the following questions. All 12 [6] of us agreed to each of the answers. The presiding juror has signed the certificate for all 12 [6] of us.

[Judge to list questions that require a unanimous answer, including the predicate liability question.]

_____ _____
Signature of Presiding Juror Printed Name of Presiding Juror

IV.

That the following oral instructions shall be given by the court to the jury after the verdict has been accepted by the court and before the jurors are released from jury duty:

Thank you for your verdict.

I have told you that the only time you may discuss the case is with the other jurors in the jury room. I now release you from jury duty. Now you may discuss the case with anyone. But you may also choose not to discuss the case; that is your right.

After you are released from jury duty, the lawyers and others may ask you questions to see if the jury followed the instructions, and they may ask you to give a sworn statement. You are free to discuss the case with them and to give a sworn statement. But you may choose not to discuss the case and not to give a sworn statement; that is your right.

NOTE: This rule would have to be substantially re-written for use in remote proceedings. We do not submit a proposed draft because of the uncertainty about the nature of remote jury proceedings at this time.

RULE 227. CERTAIN QUESTIONS NOT TO BE ASKED

A potential juror shall not be asked a question in the presence of other jurors about disqualifying convictions or pending felony or theft charges.

RULE 228. CHALLENGE TO JUROR

A challenge to a particular juror is either a challenge for cause or a peremptory challenge. The court shall decide without delay any such challenge, and if sustained, the juror shall be discharged from the particular case. Either such challenge may be made orally on the formation of a jury to try the case.

RULE 229. CHALLENGE FOR CAUSE

a. A challenge for cause is an objection made to a juror, alleging some fact which by law disqualifies him to serve as a juror in the case or in any case, or which in the opinion of the court, renders him an unfit person to sit on the jury. Upon such challenge the

examination is not confined to the answers of the juror, but other evidence may be heard for or against the challenge.

b. If any party challenges any juror for cause, and the challenge is sustained, the name of the juror shall be stricken from the list delivered to the parties.

~~RULE 231. NUMBER REDUCED BY CHALLENGES~~

~~If the challenges reduce the number of jurors to less than twenty-four, if in the district court, or to less than twelve, if in the county court, the court shall order other jurors to be drawn from the wheel or from the central jury panel or summoned, as the practice may be in the particular county, and their names written upon the list instead of those set aside for cause. Such jurors so summoned may likewise be challenged for cause.~~

RULE 232. MAKING PEREMPTORY CHALLENGES

If twenty-four names remain on the list after the combination of challenges for cause, or twelve names in a case with a six person jury, the parties shall proceed to make their peremptory challenges. A peremptory challenge is made to a juror without assigning any reason therefore except as provided below, each side to a civil action with a twelve-person jury is entitled to six peremptory challenges in a case tried in the district court, and to three peremptory challenges in cases with a six-person jury.

Alignment of the Parties. In multiple party cases, it shall be the duty of the trial judge to decide whether any of the litigants aligned on the same side of the docket are antagonistic with respect to any issue to be submitted to the jury, before the exercise of peremptory challenges.

Definition of Side. The term "side" as used in this rule is not synonymous with "party," "litigant," or "person." Rather, "side" means one or more litigants who have common interests on the matters with which the jury is concerned.

Motion to Equalize. In multiple party cases, upon motion of any litigant made prior to the exercise of peremptory challenges, it shall be the duty of the trial judge to equalize the number of peremptory challenges so that no litigant or side is given unfair advantage as a result of the alignment of the litigants and the award of peremptory challenges to each litigant or side. In determining how the challenges should be allocated the court shall consider any matter brought to the attention of

the trial judge concerning the ends of justice and the elimination of an unfair advantage.

COMMENT

See Tex. Gov't Code Ann. § 62.020 regarding additional peremptory challenges if the court decides to seat alternate jurors.

RULE 234. LISTS RETURNED TO THE COURT'S DESIGNEE

When the parties have made or declined to make their peremptory challenges, they shall deliver their lists to the court's designee. The court's designee shall, if the case requires a twelve-person jury, call off the first twelve names on the lists that have not been stricken; and if the case requires a six-person jury, the court's designee shall call off the first six names on the lists that have not been erased; those whose names are called shall be the jury.

RULE 235. IF JURY IS INCOMPLETE

When by peremptory challenges the jury is left incomplete, the court shall direct other jurors to be drawn or summoned to complete the jury; and such other jurors shall be impaneled as in the first instance.

RULE 236. OATH TO JURY

The jury shall be sworn by the court or under its direction, in substance as follows: "You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God.

Tab N

Zamen, Shiva

From: Tom Riney <triney@rineymayfield.com>
Sent: Thursday, August 12, 2021 10:47 AM
To: Babcock, Chip
Cc: Elaine Carlson
Subject: SCAC assignment on jury rules
Attachments: Jury Rules Referral Letter March 2021 SCAC.pdf

Chip, I attach the original referral letter to our subcommittee on updating jury rules. I am vice-chair of the subcommittee but Elaine asked me to take the lead because of my experience with jury trials. We have conducted several subcommittee meetings by Zoom with numerous drafts of proposed changes. While I think we have a draft that substantially improves the rules, it is not quite final. In our meeting yesterday afternoon, the subcommittee recommended we ask the Court to "translate" the rules to "plain English." The subcommittee seems willing to try to undertake that task but Elaine and I discussed that the Court may not want to use plain English for just one section of the rules. Thus, we ask for your guidance.

We think our efforts to date substantially improve the language of the jury rules. The existing rules use clumsy and confusing language and we have tried to improve on that. We have also endeavored to eliminate language on procedures that are no longer used.

We look forward to your advice.

Thomas C. Riney
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Download vCard

Zamen, Shiva

From: Richard Orsinger <richard@ondafamilylaw.com>
Sent: Thursday, August 19, 2021 9:17 PM
To: Levy, Robert L; jperduejr (jperduejr@perdueandkidd.com); Elaine Carlson (elainecarlson@comcast.net); pschenkkan (pschenkkan@gdhm.com); evansdavidl (evansdavidl@msn.com)
Cc: Babcock, Chip
Subject: RE: 2021-08-17 Letter to Legislative Subcommittee re June 2, 2021 Assignment [IMAN-JWDOCS.FID961666]--Proposed change to jury instructions

7. Do not let bias, prejudice, or sympathy play any part in your evaluation of the evidence admitted or testimony heard in this case. [As we discussed in jury selection,] [E]veryone, including me, has feelings, assumptions, perceptions, fears, and stereotypes that we may not be aware of but that can affect what we see and hear, how we remember what we see and hear, and how we make decisions. Because you are making important decisions as the jurors in this case, you must evaluate the evidence carefully, and you must not jump to conclusions based on personal likes or dislikes, generalizations, prejudices, sympathies, stereotypes, or biases. Our system of justice is counting on you to render a just verdict based on the evidence, not on biases.

Dear Subcommittee member: as long as we are talking about the reasoning process for jurors, the biggest problem in a trial is omitted from the suggested language, and that is making up your mind before you have heard both sides.

Possible instruction: “You should not decide a question without seeing and considering evidence from both sides of the case.”

Or

“You should not make up your mind until you have heard all the evidence and have deliberated with your other Jurors.”

Wikipedia definition of bias: “Bias is a disproportionate weight in favor of or against an idea or thing, usually in a way that is closed-minded, prejudicial, or unfair. Biases can be innate or learned. People may develop biases for or against an individual, a group, or a belief.” https://en.wikipedia.org/wiki/Bias

Wikipedia definition of prejudice, https://en.wikipedia.org/wiki/Prejudice

> “Prejudice[1][need quotation to verify] can be an affective feeling towards a person based on their perceived group membership.[citation needed] The word is often used to refer to a preconceived (usually unfavourable) evaluation or classification of another person based on that person's perceived political affiliation, sex, gender, beliefs, values, social class, age, disability, religion, sexuality, race, ethnicity, language, nationality, complexion, beauty, height, occupation, wealth, education, criminality, sport-team affiliation, music tastes or other personal characteristics.[2][need quotation to verify]
>
> The word "prejudice" can also refer to unfounded or pigeonholed beliefs[3][4] and it may apply to "any unreasonable attitude that is unusually resistant to rational influence".[5] Gordon Allport defined prejudice as a "feeling, favorable or unfavorable, toward a person or thing, prior to, or not based on, actual experience".[6] Auestad (2015) defines prejudice as characterized by "symbolic transfer", transfer of a value-laden meaning content onto a socially-formed category and then on to individuals who are taken to belong to that category, resistance to change, and overgeneralization.[7]”

Wikipedia definition of sympathy: “Sympathy is the perception, understanding, and reaction to the distress or need of another life form.[1] According to David Hume, this sympathetic concern is driven by a switch in viewpoint from a personal perspective to the perspective of another group or individual who is in need. Hume explained that this is the case because "the minds of all men are similar in their feelings and operations" and that "the motion of one communicates itself to the rest" so that as affectations readily pass from one to another, they beget corresponding movements.”
https://en.wikipedia.org/wiki/Sympathy

As long as we are talking about errors in judgment formation, here is a list of cognitive biases.
https://en.wikipedia.org/wiki/List_of_cognitive_biases. This is the scientifically-based analysis of problems with the way that humans form judgments. There is a large body of psychological research and publications on cognitive biases.

We can’t address all cognitive biases in jury instructions, but we can address some. The biggest cognitive bias I have encountered inf 45 years of practicing law and trying many jury trials is confirmation bias. Here is what Wikipedia says about confirmation bias, https://en.wikipedia.org/wiki/Confirmation_bias:

> “Confirmation bias is the tendency to search for, interpret, favor, and recall information in a way that confirms or supports one's prior beliefs or values.[1] People display this bias when they select information that supports their views, ignoring contrary information, or when they interpret ambiguous evidence as supporting their existing attitudes. The effect is strongest for desired outcomes, for emotionally charged issues, and for deeply entrenched beliefs. Confirmation bias cannot be eliminated entirely, but it can be managed, for example, by education and training in critical thinking skills.

Confirmation bias is a broad construct covering a number of explanations. Biased search for information, biased interpretation of this information, and biased memory recall, have been invoked to explain four specific effects: 1) attitude polarization (when a disagreement becomes more extreme even though the different parties are exposed to the same evidence); 2) belief perseverance (when beliefs persist after the evidence for them is shown to be false); 3) the irrational primacy effect (a greater reliance on information encountered early in a series); and 4) illusory correlation (when people falsely perceive an association between two events or situations).

A series of psychological experiments in the 1960s suggested that people are biased toward confirming their existing beliefs. Later work re-interpreted these results as a tendency to test ideas in a one-sided way, focusing on one possibility and ignoring alternatives (myside bias, an alternative name for confirmation bias). In general, current explanations for the observed biases reveal the limited human capacity to process the complete set of information available, leading to a failure to investigate in a neutral, scientific way."

Flawed decisions due to confirmation bias have been found in political, organizational, financial and scientific contexts. These biases contribute to overconfidence in personal beliefs and can maintain or strengthen beliefs in the face of contrary evidence. For example, confirmation bias produces systematic errors in scientific research based on inductive reasoning (the gradual accumulation of supportive evidence). Similarly, a police detective may identify a suspect early in an investigation, but then may only seek confirming rather than disconfirming evidence. A medical practitioner may prematurely focus on a particular disorder early in a diagnostic session, and then seek only confirming evidence. In

social media, confirmation bias is amplified by the use of filter bubbles, or "algorithmic editing", which display to individuals only information they are likely to agree with, while excluding opposing views."

Another problem that arises in making judgments is called heuristics. Here is the Wikipedia definition of heuristics, https://en.wikipedia.org/wiki/Heuristic

> "A heuristic or heuristic technique (/hjʊəˈrɪstɪk/; Ancient Greek: εὑρίσκω, heurískō, 'I find, discover'), is any approach to problem solving or self-discovery that employs a practical method that is not guaranteed to be optimal, perfect, or rational, but is nevertheless sufficient for reaching an immediate, short-term goal or approximation. Where finding an optimal solution is impossible or impractical, heuristic methods can be used to speed up the process of finding a satisfactory solution. Heuristics can be mental shortcuts that ease the cognitive load of making a decision.[1][2]"
>
> Examples that employ heuristics include using trial and error, a rule of thumb or an educated guess."

Merely saying not to let "bias, prejudice, or sympathy" play a part in your verdict is pretty worthless as an instruction. I think that it is a great idea to go down this path of making the jury instructions more meaningful and more beneficial to the litigants, but I suggest that we give some thought to what the biggest problems are with juries and addressing them in the instructions. There is a lot of research about judgment formation generally and jury decision-making in particular.

Richard

Tab O

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

May 31, 2019

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

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters. Some require immediate attention, while others are longer-range initiatives. I have provided a complete list for the Committee's information.

Several matters arise from legislation passed by the 86th Legislature, which, if signed by the Governor, takes effect immediately or on September 1, 2019. The Committee should conclude its work on them by its June 21, 2019 meeting. Many of the changes may be simple and straightforward. They are:

Joint Judicial Campaign Activity. The State Commission on Judicial Conduct has disciplined judges for joint campaign activities based on Canons 2B and 5(2) of the Code of Judicial Conduct. Canon 2B states in part: "A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge." Canon 5(2) states in part: "A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party." HB 3233, passed by the 86th Legislature, adds Election Code § 253.1612, which states that the "Code of Judicial Conduct may not prohibit, and a judicial candidate may not be penalized for, a joint campaign activity conducted by two or more judicial candidates." The Committee should consider whether the text of the rules should be changed or a comment added to reference or restate the statute.

MDL Applicability. Government Code §§ 74.161-.201 create the Judicial Panel on Multidistrict Litigation, and Rule of Judicial Administration 13 governs its operation. SB 827, § 2 adds § 74.1625 to prohibit the MDL panel from transferring two types of actions: (1) DTPA actions (unless specifically allowed under the DTPA) and (2) Texas Medicaid Fraud Prevention Act actions. The amendment does not direct that Rule 13 be changed, but the Committee should consider whether the text of Rule 13.1 should be changed and a comment added to reference or restate the statute.

Expedited Actions. Rule of Civil Procedure 169 implements Government Code § 22.004(h). SB 2342 adds § 22.004(h-1), which calls for rules, "[i]n addition to the rules adopted under [s]ubsection (h), . . . to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed $250,000 . . . balanc[ing] the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions." Rules necessary to implement this change must be adopted by January 1, 2021. But the statute makes various other changes that take effect September 1, 2019. The Committee should consider whether other rules should be changed, such as Rules of Civil Procedure 47, 224, and 500.3, or comments added to reference or restate the statute by that date.

Dismissal. Rule of Civil Procedure 91a provides for the dismissal of baseless causes of action, implementing Government Code § 22.004(g). Civil Practice and Remedies Code § 30.021 mandates an award of costs and attorney fees to the prevailing party. HB 3300 amends § 30.021 to make an award discretionary and applies to cases commenced on or after September 1, 2019. The Committee should consider whether other rules should be changed or comments added to reference or restate the statute by that date.

Notice of Appeal. SB 891, § 7.02, adds Civil Practice and Remedies Code § 51.017 to require service of notice of appeal on court reporters. The Committee has already considered this change. The statute is effective September 1, 2019.

One other matter arising from legislation passed by the 86th Legislature requires rule-making by January 1, 2020:

Public Guardians. Section 24 of SB 667, passed by the 86th Legislature, adds Subchapter G-1 to Chapter 1104 of the Estates Code, which governs public guardians and directs the Court "in consultation with the Office of Court Administration . . . and the presiding judge of the statutory probate courts . . . [to] adopt rules necessary to implement this subchapter." Section 67 of the bill provides that the Court "shall adopt rules necessary to implement Subchapter G-1, . . . including rules governing the transfer of the guardianship of the person or of the estate of a ward, or both, if appropriate, to an office of public guardian established under that subchapter or a public guardian contracted under that subchapter." OCA and Judge Guy Herman will draft these rules, and the Committee should review them.

Other matters arising from legislation passed this Session set extended deadlines for rule-making:

Citation. SB 891, passed by the 86th Legislature, amends several state statutes to address citation. The bill adds Government Code § 72.034 directing the Court "by rule [to] establish procedures for the submission of public information to the public information Internet website by a person who is required to publish the information" by June 1, 2020. The bill also adds Civil Practice and Remedies Code § 17.033 requiring the Court to "adopt rules to provide for the substituted service of citation by an electronic communication sent to a defendant through a social media presence" by December 31, 2020. The Committee should make recommendations.

Protective Order Registry Forms. SB 325 requires the Office of Court Administration to create an online registry for family violence protective orders and applications and to permit public access to certain information about the protective orders by June 1, 2020. The bill also adds Government Code § 72.158 directing the Court to "prescribe a form for use by a person requesting a grant or removal of public access" to the information and permits the Court to prescribe related procedures. The bill does not specify a deadline for the forms. The Committee should recommend appropriate forms.

Criminal Forms. HB 51 adds Government Code § 72.0245 requiring the Office of Court Administration to create a number of forms for use in criminal actions, such as forms to waive a jury trial and enter a plea of guilty or nolo contendere, and forms for a trial court to admonish a defendant before accepting a guilty or nolo contendere plea. It also requires the Supreme Court to "by rule . . . set the date by which all courts with jurisdiction over criminal actions must adopt and use the forms created . . . ." OCA will work with Holly Taylor, the Court of Criminal Appeals' Rules Attorney, to formulate a plan to develop the forms. The Committee should review the forms when drafted. The statutory deadline is September 1, 2020.

Procedures Related to Mental Health. SB 362 directs the Supreme Court to "adopt rules to streamline and promote the efficiency of court processes under Chapter 573, Health and Safety Code" and "adopt rules or implement other measures to create consistency and increase access to the judicial branch for mental health issues." The Judicial Commission on Mental Health will draft these rules, and the Committee should review them.

CPS and Juvenile Cases. HB 2737 requires the Court and its Children's Commission to "annually . . . provide guidance to judges who preside over child protective services cases or juvenile cases," and requires the Court to "adopt the rules necessary to accomplish the purpose of this section." The statute sets no deadline. The Children's Commission is developing an implementation plan. The Committee should review any rules proposed by the Commission.

Transfer on Death Deed Forms. SB 874 requires the Court to promulgate "a form for use to create a transfer on death deed and a form for use to create an instrument for revocation of a transfer on death deed." The statute sets no deadline. The Probate Forms Task Force will develop these and other forms for the Committee's review.

Finally, there are several matters unrelated to recent legislation on which the Court requests the Committee's recommendations.

Suits Affecting the Parent-Child Relationship. In response to HB 7, passed by the 85th Legislature, the Court appointed the HB 7 Task Force to draft the rules required by the statute and to make any other recommendations for expediting and improving the trial and appeal of cases governed by Family Code Chapter 264. On November 27, 2017, the HB 7 Task Force submitted a report and recommendations to the Court ("Phase I Report"). The Committee studied the Phase I Report and made recommendations to the Court. Subsequently, on December 31, 2018, the Task Force submitted a second report and recommendations to the Court ("Phase II Report"). The Phase II Report is attached to this letter. The Committee should review the Phase II Report and make recommendations.

Out-of-Time Appeals in Parental Rights Termination Cases. A parent whose appeal from a judgment terminating his rights in a child is untimely may contend that the delay is not his fault and may blame ineffective assistance of counsel. This can complicate and extend the appellate process. The Committee should consider rules to address this situation, including:

- a narrow late-appeal procedure;
- an abate-and-remand procedure like the one proposed in the Phase II Report;
- a habeas- or bill-of-review-style procedure; and
- prophylactic procedures not considered in the Phase I or Phase II Reports, such as a requirement that trial counsel stay on until the notice of appeal has been filed.

Registration of In-House Counsel. A majority of states require that an attorney employed as in-house counsel and residing in one state but licensed in another either register, obtain a limited license, or be fully licensed to practice in the state of residence. The Board of Law Examiners has approved new Rule 23 of the Rules Governing Admission to the Bar, requiring only registration of in-house counsel. The proposed rule is attached. The Committee should review the rule and make recommendations.

Civil Rules in Municipal Courts. Municipal Court Judge Ryan Henry has proposed that procedural rules be adopted for civil cases in municipal courts. The Committee should set up a process for considering Judge Henry's proposals and making recommendations.

Motions for Rehearing in the Courts of Appeals. Justice Christopher and the State Bar Court Rules Committee have each proposed amendments to Rule of Appellate Procedure 49.3, which are attached. The Committee should consider both and make recommendations.

Parental Leave Continuance Rule. In the attached memorandum, the State Bar Court Rules Committee proposes a parental leave continuance rule. The State of Florida has studied such a procedure in depth. The Committee should consider that work and the proposal and make recommendations.

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

Sincerely,

Nathan L. Hecht
Chief Justice

Attachments

Tab P

MEMORANDUM

TO: **Supreme Court Advisory Committee**

FROM: **Appellate Rules Subcommittee**

RE: **Appeals in Parental Termination Cases**

DATE: **September 1, 2021**

I. Matter Referred to Subcommittee

The Court's May 31, 2019 letter and Chairman Babcock's June 3, 2019 letter refer the following matter to the Appellate Rules Subcommittee:

> **Out-of-Time Appeals in Parental Rights Termination Cases.** A parent whose appeal from a judgment terminating his rights in a child is untimely may contend that the delay is not his fault and may blame ineffective assistance of counsel. This can complicate and extend the appellate process. The Committee should consider rules to address this situation, including:
>
> - a narrow late-appeal procedure;
> - an abate-and-remand procedure like the one proposed in the Phase II Report;
> - a habeas- or bill-of-review-style procedure; and
> - prophylactic procedures not considered in the Phase I or Phase II Reports, such as a requirement that trial counsel stay on until the notice of appeal has been filed.
>
> **Suits Affecting the Parent-Child Relationship.** In response to HB 7, passed by the 85th Legislature, the Court appointed the HB 7 Task Force to draft the rules required by the statute and to make any other recommendations for expediting and improving the trial and appeal of cases governed by Family Code Chapter 264. On November 27, 2017, the HB 7 Task Force submitted a report and recommendations to the Court ("Phase I Report"). The Committee studied the Phase I Report and made recommendations to the Court. Subsequently, on December 31, 2018, the Task Force submitted a second report and recommendations to the Court ("Phase II Report"). The Phase II Report is attached to this letter. The Committee should review the Phase II Report and make recommendations.

The HB 7 Phase II Report recommends four changes that affect the appellate rules and also have some bearing on the out-of-time appeal assignment: (1) right to counsel, showing authority to appeal, and frivolous appeals; (2) a procedure in the court of appeals to consider ineffective-

assistance-of-counsel claims discovered by appellate counsel; (3) a rule standardizing the currently unwritten understanding on *Anders* briefs; and (4) opinion templates for use in parental termination cases.

II. Background

The subcommittee and SCAC previously have discussed and approved TRAP amendments relating to out-of-time petitions for review. The subcommittee has not considered or discussed a similar procedure in the courts of appeals, nor has the subcommittee addressed a procedure for bringing late claims of ineffective assistance of counsel, *Anders* briefs, or frivolous appeals.

The Texas Supreme Court has indicated that it will consider the July 2017 proposals regarding late-filed petitions for review in conjunction with any additional recommendations on parental-termination topics identified in the May 31, 2019 referral letter.

III. Issues for Discussion

The subcommittee has broken down the referral topics into two stages to be addressed in the following order.

1. Stage One: Out-of-time appeals and related issues
    a. HB7 Phase II recommendations: indigent parent's right to counsel on appeal; notice of right to appeal; showing authority to appeal
    b. Assessing proposals for addressing untimely appeals and ineffective claims
        i. HB7 Phase II recommendation: abate and remand for evidentiary hearing in support of IAC claim
        ii. "narrow late-appeal procedure"
        iii. "habeas- or bill-of-review-style procedure" for a collateral attack
        iv. other possible procedures such as a requirement that counsel continue the representation until a notice of appeal has been filed.
2. Stage Two: Briefing and Opinions
    a. Frivolous appeals; *Anders* procedures in the courts of appeals as discussed by the HB7 task force; "Parental Termination Brief Checklist"
    b. Opinion templates as created by the HB7 task force

The full committee already has voted on recommendations regarding form of citation to provide notice of the right to appeal, and showing authority to appeal.

This memo moves on to Stage One, topic 1(b) with respect to proposals for addressing untimely appeals and ineffective assistance claims. The subcommittee will address Stage Two in later meetings.

IV. Discussion

A. Notice of Right to Appeal and Right to Representation by Counsel

In a suit filed by a governmental entity in which termination of the parent-child relationship or appointment of a conservator for the child is requested, an indigent parent is entitled by statute to representation by counsel until the case is dismissed; all appeals relating to any final order terminating parental rights are exhausted or waived; or the attorney is relieved or replaced. *See* Tex. Fam. Code §§ 107.013(a), 107.016(3). In termination cases, this right extends to the filing of a petition for review in the Texas Supreme Court. *In the Interest of P.M.*, 520 S.W.3d 24, 27 (Tex. 2016) (per curiam).[1]

The full committee has voted in favor of the following citation language to provide notice of the right to appeal and the right to representation by counsel.

> "You have the right to be represented by an attorney. If you are indigent and unable to afford an attorney, you have the right to request the appointment of an attorney by contacting the court at [address], [telephone number]. If you appear in opposition to the suit, claim indigence and request the appointment of an attorney, the court will require you to sign an affidavit of indigence and the court may hear evidence to determine if you are indigent. If the court determines you are indigent and eligible for appointment of an attorney, the court will appoint an attorney to represent you at no cost to you."
>
> "You are further notified that if a judgment is rendered against you, you have a right to appeal the judgment to the court of appeals and to the Supreme Court of Texas, and if you are indigent an attorney will be appointed to conduct the appeal at no cost to you."

B. Showing Authority to Appeal

To clarify (1) whether there is a desire on the terminated parent's part to appeal, and (2) who is responsible for prosecuting the appeal, the full committee voted in favor of a recommendation to amend TRCP 306 to read as follows.

<u>[Current] Rule 306 Recitation of Judgment</u>

> The entry of the judgment shall contain the full names of the parties, as stated in the pleadings, for and against whom the judgment is

[1] The Supreme Court has not addressed whether there is a constitutional or statutory right to appointed counsel in private parental termination suits, or whether such a right extends to a non-indigent parent. The Court also has not addressed whether appointed counsel must be provided for an indigent parent at the petition for review stage in cases in which a governmental entity seeks the appointment of a conservator for a child.

rendered. 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, the judgment must state the specific grounds for termination or for appointment of the managing conservator.

[Proposed] Rule 306 Judgment in Suit Affecting the Parent-Child Relationship

1. 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, the judgment must state the specific grounds for termination or for appointment of the managing conservator. **[Same as the current rule.]**

2. The following provisions apply in a suit filed by a governmental entity that seeks the termination of the parent-child relationship or appointment of the entity as a child's conservator. The attorney ad litem will continue the representation for appellate proceedings unless the judgment contains one of the following express statements:

a. The attorney ad litem is replaced by another attorney who will continue the representation for appellate proceedings; or

b. The attorney ad litem is discharged without continuing the representation for appellate proceedings based upon a finding of good cause. For purposes of this subpart, "good cause" means the following:

i. The parent or alleged father failed to appear after service under Texas Rule of Civil Procedure 106(a); or

ii. The attorney ad litem appointed for the parent or alleged father was unable despite diligent efforts to locate the parent or alleged father; or

iii. After being located by the attorney ad litem, the parent or alleged father failed to appear at the trial on the merits; or

iv. After being located by the attorney ad litem, the parent or alleged father never expressed to the attorney ad litem a desire to exercise the right to appeal the judgment to the court of appeals or to the Supreme Court of Texas.

Explanation of changes:

1. The first sentence of TRCP 306 is moved to TRCP 301.

2. Under Family Code §107.013 the court must appoint an attorney ad litem for:

    i. An indigent parent who responds to oppose the termination or appointment;
    ii. A parent served by publication;
    iii. An alleged father who failed to register his parenthood under Chap. 160 and whose location is unknown; and,
    iv. A registered alleged father who cannot be located for service.

    The attorney ad litem must investigate what the petitioner has done to locate an alleged father and do an independent investigation to find him. Tex. Fam. Code §107.0132(a). If the attorney locates him, he must report the address and locating information to the court and each party. Tex. Fam. Code §107.0132(b). If the attorney ad litem cannot locate him, he shall report his efforts to the court; on receipt of the report, the court must discharge the attorney. Tex. Fam. Code §107.0132(d). If the alleged father is adjudicated the parent and is determined to be indigent, the court may continue the appointment on the same basis as an indigent parent. Tex. Fam. Code §107.0132(c). This suggests that after the alleged father appears, he is entitled to continued representation only upon proof of indigency.

3. The attorney ad litem serves until the earliest of:

    i. The date the suit is dismissed;
    ii. The date appeals of a final order are exhausted or waived; or
    iii. The date the attorney is relieved of duties or replaced by another attorney after a finding of good caused rendered on the record.

    Tex. Fam. Code §107.016(3). The Supreme Court has held that once appointed, counsel may withdraw only for good cause, which did not include client disagreement or belief the appeal is meritless. *In the Interest of P.M.*, 520 S.W.3d at 27. Courts have a duty to see that withdrawal not result in foreseeable prejudice to the client; if the court permits withdrawal, it must provide for new counsel. *Id*. However, this was a case where the parent had appeared and actively pursued an appeal. This leaves unresolved whether the court may relieve the attorney ad litem if the parent/alleged father never appeared after personal service or service by publication.

Section 107.0132(d) mandates discharging counsel if the alleged father cannot be located. Section 107.0132(c) suggests the alleged father who is served is entitled to continued representation on the same basis as a parent who appears. Arguably the *P.M.* decision would permit discharging the attorney ad litem if:

i. The alleged father cannot be located;
ii. The alleged father is served, responds, but fails to prove he is indigent;
iii. The parent is served, responds, but fails to prove indigency.

4. This rule text avoids the difficulty of trying to determine whether a party who has never appeared (or has disappeared) wishes to waive the appeal. It focused on determining what is good cause under Texas Family Code section 107.016(3) to relieve the appointed attorney ad litem when the final judgment is signed. It does not address discharging or relieving an appointment prior to a final judgment.

5. The text in paragraph 2 makes clear what the default outcome is and seeks to avoid difficulty in determining finality or other consequences if the judgment does not contain one of the express statements.

Additional areas for consideration include (1) is Rule 306 the best place to put such a rule; (2) are there other rules that could be more readily adapted for this purpose, such as Rule 308a; (3) should all rules of civil procedure governing the parent-child relationship be assembled in one place as part of "Rules Relating to Special Proceedings" in Part VII of the Texas Rules of Civil Procedure.

C. Motions for Extension of Time and Conformity With Revisions to TRAP 4.7

At this juncture, the subcommittee recommends that any standards or procedures adopted for earlier appellate proceedings be compatible with those ultimately adopted with respect to petitions for review in the Texas Supreme Court. As noted earlier, the subcommittee and SCAC previously have discussed and approved TRAP amendments relating to out-of-time petitions for review.

D. Ineffective Assistance of Counsel

"[T]he statutory right to counsel in parental-rights termination cases embodies the right to effective counsel." *In re M.S.*, 115 S.W.3d 534, 544 (Tex. 2003). The standard for determining whether counsel is effective in this context is the same as the standard applied in the criminal context pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984). *See In re M.S.*, 115 S.W.3d at 545.

Under *Strickland*, a defendant seeking to establish ineffective assistance must establish both prongs of a two-prong inquiry by showing that (1) "counsel's performance was deficient" by showing "errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment; and (2) "the deficient performance prejudiced the defense" by showing that "counsel's errors were so serious as to deprive the defendant of a fair trial whose result is reliable." *Strickland*, 466 U.S at 687; *see also In re M.S.*, 115 S.W.3d at 545.

"With respect to whether counsel's performance in a particular case is deficient, we must take into account all of the circumstances surrounding the case, and must primarily focus on whether counsel performed in a 'reasonably effective' manner." *In re M.S.*, 115 S.W.3d at 545 (quoting *Strickland*, 466 U.S. at 687). "In this process, we must give great deference to counsel's performance, indulging 'a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance,' including the possibility that counsel's actions are strategic." *Id.* (quoting *Strickland*, 466 U.S. at 689). Ineffective assistance claims generally must be supported by evidence beyond the bare record of the underlying proceeding.

The HB7 Task Force noted an important distinction between the operation of ineffective assistance claims in the criminal context versus the parental termination context. In the criminal context, it is difficult for a defendant to effectively assert an ineffective assistance claim on direct appeal; the preferred avenue for raising this claim is a post-conviction habeas corpus proceeding. *See, e.g., Mata v State*, 226 S.W.3d 425, 430 n.1 (Tex. Crim. App. 2007). The HB7 Task Force observed: "By contrast, the exhaustion of a direct appeal in a parental-termination case is essentially the end of the procedural road, at least to the extent a parent has no other procedural opportunity to collaterally attack a final order of termination."

The HB7 Task Force recommended a proposed rule to provide an opportunity for the limited abatement of an appeal to hold an evidentiary hearing in support of an ineffective assistance claim. The proposed rule would be part of Texas Rule of Appellate Procedure 28.4 and provide as follows:

> (d) *Remand for Evidentiary Hearing*. For good cause shown by written motion filed no later than 20 days after the later of the date the clerk's record was filed or the date the reporter's record was filed, the appellate court may order a remand for the limited purpose of holding an evidentiary hearing concerning an allegation of ineffective assistance of counsel. The appellate court must rule on the motion for remand within three days; otherwise, it will be denied by operation of law. The trial court shall begin the evidentiary hearing no later than the seventh day after the abatement order. The hearing shall be recorded by a court reporter and the trial court shall make findings of fact as to whether appellant was prejudiced as a result. No later than 20 days from the date of the abatement order the court reporter shall file a supplemental court reporter's record of the hearing and the district clerk shall file a supplemental clerk's record, including the trial court's findings of fact, and the appeal shall be reinstated. The deadline in Rule 6.2(a) of the Rules of Judicial Administration shall be tolled for no more than 20 days pending an abatement ordered under this rule.

The subcommittee is in general agreement with the Task Force's proposed approach via rule to address ineffective assistance claims in the parental termination context. The subcommittee raises the following points for consideration in connection with the operation of such a rule in practical terms.

- The subcommittee discussed whether any further effort to define the parameters of "good cause" is warranted, and concluded that the better course is to leave the phrase undefined given the difficulty of formulating a fair and reasonable written standard that will capture the many possible scenarios that could lead to invocation of this rule.

- The proposed rule contemplates that, if a remand is ordered, the appeal will be abated while trial proceedings are undertaken to address the ineffective assistance claim. Consideration should be given to requiring the party seeking remand/abatement to establish a prima facie case of ineffective assistance before a remand and abatement is authorized. This requirement would act as a brake on this mechanism so that the interests of the affected children in obtaining a prompt resolution of the issues are not unduly compromised.

- The proposed rule contemplates that a direct appeal will be the vehicle for asserting an ineffective assistance of counsel claim in the parental termination context. This is a feasible approach when new appellate counsel enters the case. However, if trial counsel remains on the case through the appeal, then this approach potentially puts trial counsel in the untenable position of asserting counsel's own ineffectiveness at the same time the direct appeal is underway on the merits. For this reason, consideration should be given to recognizing a vehicle with a short time limit for collaterally attacking a termination determination, through an equitable bill of review procedure or similar means, in circumstances in which the same attorney represents the terminated parent in the trial court and on appeal. A vehicle allowing collateral attack also would address situations involving allegations of ineffective assistance on appeal by newly appointed appellate counsel.

Tab Q

MEMORANDUM

TO: **Supreme Court Advisory Committee**

FROM: **Appellate Rules Subcommittee**

RE: **Appeals in Parental Termination Cases**

DATE: **April 12, 2021**

I. Matter Referred to Subcommittee

The Court's May 31, 2019 letter and Chairman Babcock's June 3 letter refer the following matter to the Appellate Rules Subcommittee:

> **Out-of-Time Appeals in Parental Rights Termination Cases.** A parent whose appeal from a judgment terminating his rights in a child is untimely may contend that the delay is not his fault and may blame ineffective assistance of counsel. This can complicate and extend the appellate process. The Committee should consider rules to address this situation, including:
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> - a narrow late-appeal procedure;
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> - prophylactic procedures not considered in the Phase I or Phase II Reports, such as a requirement that trial counsel stay on until the notice of appeal has been filed.
>
> **Suits Affecting the Parent-Child Relationship.** In response to HB 7, passed by the 85th Legislature, the Court appointed the HB 7 Task Force to draft the rules required by the statute and to make any other recommendations for expediting and improving the trial and appeal of cases governed by Family Code Chapter 264. On November 27, 2017, the HB 7 Task Force submitted a report and recommendations to the Court ("Phase I Report"). The Committee studied the Phase I Report and made recommendations to the Court. Subsequently, on December 31, 2018, the Task Force submitted a second report and recommendations to the Court ("Phase II Report"). The Phase II Report is attached to this letter. The Committee should review the Phase II Report and make recommendations.

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assistance-of-counsel claims discovered by appellate counsel; (3) a rule standardizing the currently unwritten understanding on *Anders* briefs; and (4) opinion templates for use in parental termination cases.

II. Background

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III. Issues for Discussion

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        i. HB7 Phase II recommendation: abate and remand for evidentiary hearing in support of IAC claim
        ii. "narrow late-appeal procedure"
        iii. "habeas- or bill-of-review-style procedure" for a collateral attack
        iv. other possible procedures such as a requirement that counsel continue the representation until a notice of appeal has been filed.
2. Stage Two: Briefing and Opinions
    a. Frivolous appeals; *Anders* procedures in the courts of appeals as discussed by the HB7 task force; "Parental Termination Brief Checklist"
    b. Opinion templates as created by the HB7 task force

This memo focuses on Stage One, topic 1(a) with respect to the right to counsel on appeal, notice of right to appeal, and showing authority to appeal. The subcommittee will address Stage One, topic 1(b) and Stage Two in later meetings.

IV. Discussion

A. Notice of Right to Appeal and Right to Representation by Counsel

In a suit filed by a governmental entity in which termination of the parent-child relationship or appointment of a conservator for the child is requested, an indigent parent is entitled by statute to representation by counsel until the case is dismissed; all appeals relating to any final order terminating parental rights are exhausted or waived; or the attorney is relieved or replaced. *See* Tex. Fam. Code §§ 107.013(a), 107.016(3). In termination cases, this right extends to the filing of a petition for review in the Texas Supreme Court. *In the interest of P.M.*, 520 S.W.3d 24 (Tex. 2016) (per curiam).[1]

The HB7 Task Force made the following recommendations regarding an indigent parent's notice of the right to appeal and the right to counsel on appeal.

> The HB7 Task Force proposes that a defendant in a parental-termination suit be notified in the citation about the right to counsel, including the right to counsel on appeal. This will provide an additional measure of notice in the event appointed counsel later declines to pursue an appeal due to abandonment of the case by the parent. The admonition could be added to the required notice and take the following form:
>
> > "You have the right to be represented by an attorney. If you are indigent and unable to afford an attorney, you have the right to request the appointment of an attorney by contacting the court at [address], [telephone number]. If you appear in opposition to the suit, claim indigence and request the appointment of an attorney, the court will require you to sign an affidavit of indigence and the court may hear evidence to determine if you are indigent. If the court determines you are indigent and eligible for appointment of an attorney, the court will appoint an attorney to represent you."
> >
> > "You are further notified that if a judgment is rendered against you, you have a right to appeal the judgment to the court of appeals and to the Supreme Court of Texas, and if you are indigent an attorney will be appointed to conduct the appeal at no cost to you."
>
> To the extent the Supreme Court is currently considering a revision of Rule 99 to include standard form citations, the Task Force proposes the creation of a customized form citation, in English and Spanish (and with an internet citation to translations in other languages), to be used in parental termination cases. Such a

[1] The Supreme Court has not addressed whether there is a constitutional or statutory right to appointed counsel in private parental termination suits, or whether such a right extends to a non-indigent parent. The Court also has not addressed whether appointed counsel must be provided for an indigent parent at the petition for review stage in cases in which a governmental entity seeks the appointment of a conservator for a child.

> citation could have language customized to address the availability of default judgments in parental-termination cases.

The subcommittee reviewed and discussed these HB7 Task Force recommendations.

The subcommittee recommends the following revision to the HB7 Task Force's proposed citation language.

> "You have the right to be represented by an attorney. If you are indigent and unable to afford an attorney, you have the right to request the appointment of an attorney by contacting the court at [address], [telephone number]. If you appear in opposition to the suit, claim indigence and request the appointment of an attorney, the court will require you to sign an affidavit of indigence and the court may hear evidence to determine if you are indigent. If the court determines you are indigent and eligible for appointment of an attorney, the court will appoint an attorney to represent you at no cost to you."
>
> "You are further notified that if a judgment is rendered against you, you have a right to appeal the judgment to the court of appeals and to the Supreme Court of Texas, and if you are indigent an attorney will be appointed to conduct the appeal at no cost to you."

The proposed revision clarifies the practical consequence of being "eligible for appointment of an attorney" and conforms the first paragraph to the second paragraph so they both provide the same information in parallel fashion.

The HB7 Task Force proposal comports with an October 2017 report by the Rules 15-165a Subcommittee entitled, "Modernizing TRCP 99, Issuance and Form of Citation." The full advisory committee discussed this report at its October 2017 meeting, and the proposed revisions to TRCP 99 are pending before the Texas Supreme Court. Among other things, the October 2017 report recommends eliminating from TRCP 99 the description of a citation's mandatory contents and instead promulgating a form citation in plain language that clerks must follow. The Appellate Rules Subcommittee endorses the application of this approach to parental termination cases. The Appellate Rules Subcommittee solicits input from the full advisory committee about whether additional language addressing default judgments or other topics specific to parental termination cases should be considered for inclusion in a form citation for parental termination cases.

B. Showing Authority to Appeal

The HB7 Task Force made the following recommendations (footnotes omitted) with respect to requiring an attorney to show authority to pursue an appeal from a termination order.

> The filing of a notice of appeal starts the process of immediately preparing a record for which a court reporter might not be compensated. To avoid initiating the preparation of an appellate record in circumstances when a terminated parent may not actually be seeking to challenge a final order, the HB7 Task Force recommends an amendment to Rule 28.4(c) to require that a notice of appeal include an attorney certification that "the attorney consulted with the appellant and the appellant has directed the attorney to pursue to the appeal." *See Appendix C, Rule 28.4(c)*. The Task Force further proposes a similar certification in a petition for review filed in the Supreme Court. *See Appendix D, Rule 53.2(l)*. As an enforcement mechanism, the Task Force proposes borrowing from the procedure in Texas Rule of Civil Procedure 12 to challenge an attorney's authority but eliminating the requirement of a sworn motion.

The HB7 Task Force's proposed rule revisions read in part as follows.

> HB7 Task Force Proposed Texas Rule of Appellate Procedure 28.4(c):
>
> (c) *Certification by Appointed Counsel and Motion to Show Authority*. A notice of appeal filed by appointed counsel must state that the attorney consulted with the appellant and the appellant has directed the attorney to pursue the appeal. A party, the district clerk, or a court reporter may, by written motion stating a belief that the appeal is being prosecuted without authority, cause the attorney to be cited to appear before the court and show his authority to act. The notice of the motion shall be served upon the challenged attorney at least three days before the hearing on the motion. At the hearing on the motion, the burden of proof shall be upon the challenged attorney to show sufficient authority to file the notice of appeal. Upon failure to show such authority, the court shall strike the notice of appeal. The motion shall be heard and determined within ten days of service of the motion, and all appellate deadlines shall be suspended pending the court's ruling. The court must rule on the motion to show authority not later than the third day following the date of the hearing on the motion, and if the court does not timely rule, the motion is considered to have been denied by operation of law.
>
> HB7 Task Force Proposed Texas Rule of Appellate Procedure 53.2(l):
>
> (l) *Certification by Appointed Counsel*. In a case in which the petitioner has a statutory right to counsel for purposes of seeking review by the Supreme Court, a petition filed by appointed counsel must state that the attorney consulted with the petitioner and the petitioner has directed the attorney to file a petition for review.

The subcommittee reviewed and discussed these HB7 Task Force proposals.

The subcommittee recommends a different approach regarding an enforcement mechanism in proposed TRAP 28.4(c).

Questions arose among the subcommittee members regarding the necessity of creating a motion-to-show-authority procedure. If the full advisory committee concludes such a procedure is necessary, then the subcommittee recommends creating a simpler procedure. Grafting the procedure from TRCP 12 onto TRAP 28.4(c) makes for a lengthy and potentially cumbersome or redundant appellate rule. Instead of adding language to proposed TRAP 28.4(c) delineating the procedure for challenging authority to appeal, the subcommittee recommends (1) adding a second sentence to proposed TRAP 28.4(c) stating that a motion challenging an attorney's authority to pursue a parental-termination appeal will be handled in the trial court under TRCP 12, and (2) supplementing TRCP 12 as necessary to accommodate the accelerated timeframes applicable to parental-termination appeals.

The full committee discussed the questions of authority and intent to appeal at length during the November 1, 2019 meeting. Substantial consideration was given to the issue of "phantom" appeals pursued on behalf of absent parents whose intent to pursue an appeal from a termination order may be difficult for trial counsel or the trial court to confirm because they cannot be located. The full committee votes indicated a preference for a rule-based procedure under which the trial court would (1) conduct a hearing at the conclusion of trial, and then (2) sign an order based on the results of that hearing.

The subcommittee considered this procedure based on the vote and recommends a narrow rule to implement it as discussed further below. One possible location for such a rule is as part of current Texas Rule of Civil Procedure 306, which already contains a specific provision addressing the contents of a judgment 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.

The subcommittee discussed using Rule 306 as the vehicle for any procedure that may be implemented, and moving the first sentence of Rule 306 to Rule 301.

To obtain practical insights on how such a procedure might work and to identify potential pitfalls, the subcommittee reached out to those who have experience handling these cases. Two key pitfalls were identified.

- It is problematic to infer an intent to relinquish parental rights, or to relinquish the right to appeal from a termination order, solely from a terminated parent's absence at trial or periodic absences as a case progresses. Parents subject to termination may "disappear" from a case for periods of time and become unreachable by counsel because they are homeless, or incarcerated, or experiencing domestic violence, or experiencing untreated mental illness, or experiencing the effects of substance abuse. It is not uncommon for parents in these circumstances to re-establish contact with counsel after trial when their circumstances have stabilized and express a desire to challenge a termination order on appeal. For this reason, a rule permitting the trial court to determine an intent not to appeal based solely on the parent's absence from trial, or trial counsel's inability to communicate with a

parent who previously has been participating in the case but has become unreachable, potentially could operate to foreclose the appellate rights of parents who later will express a desire to appeal.

- Parents who are present for trial may be difficult to reach after trial, which counsels in favor of having any hearing and determination with respect to an intent to appeal occur at the close of trial instead of when the judgment is signed.

Based on this input, the subcommittee has reviewed a proposed revision to Rule 306.

Under this proposal, non-appearance at trial would give rise to a permissible inference that the terminated parent does not wish to appeal when a parent (1) is identified as an "alleged" or "presumed" parent; (2) has never been located or involved in the case; and (3) is represented at trial only because the trial court has appointed an attorney ad litem to represent the "alleged" or "presumed" parent at trial.

Discussion of revisions to Rule 306 during the June 19, 2020 full committee meeting generated multiple comments and suggestions aimed at making the revised rule more streamlined and easier to implement at the trial court level.

Additional discussion occurred during the November 6, 2020 full committee meeting. The November 2020 discussion included input from the Supreme Court of Texas Permanent Judicial Commission for Children, Youth, and Families; on behalf of the Commission, Judge Dean Rucker and Judge Rob Hofmann offered a further proposed revision of the draft Rule 306 that was circulated and discussed by the full committee.

The subcommittee met in April 2021 to review the comments to the revised draft of Rule 306. A new draft of revised Rule 306 is presented for consideration based on the comments at prior meetings and the language proposed by the Commission. The redline changes below show the differences between (1) the Commission-sponsored draft of Rule 306 discussed during the November meeting; and (2) the revised draft now presented after further consideration within the subcommittee.

[Current] Rule 306 Recitation of Judgment

> The entry of the judgment shall contain the full names of the parties, as stated in the pleadings, for and against whom the judgment is rendered. 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, the judgment must state the specific grounds for termination or for appointment of the managing conservator.

[Draft] Rule 306 Judgment in Suit Affecting the Parent-Child Relationship

> 1. 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, the judgment must state the specific grounds for termination or for appointment of the managing conservator. **[Same as the current rule.]**

~~1.~~ 2. The following provisions apply in a suit filed by a governmental entity that seeks the termination of the parent-child relationship or appointment of the entity as a child's conservator. The attorney ad litem will continue the representation for appellate proceedings unless the judgment contains one of the following express statements:~~The judgment must contain one of the following express statements regarding appointment of an attorney ad litem to pursue a parent's or alleged father's appeal.~~

~~a. The attorney ad litem will continue the representation for appellate proceedings; or~~

a~~b~~. The attorney ad litem is replaced by another attorney who will continue the representation for appellate proceedings; or

b~~c~~. The attorney ad litem is discharged without continuing the representation for appellate proceedings based upon a finding of good cause. For purposes of this subpart, "good cause" means the following:

i. The parent or alleged father failed to appear after service under Texas Rule of Civil Procedure 106(a)~~proper personal citation~~; or

ii. The attorney ad litem appointed for the parent or alleged father was unable despite diligent efforts to ~~identify or~~ locate the parent or alleged father; or

iii. After being located by the attorney ad litem, the parent or alleged father failed to appear at the trial on the merits; or

iv. After being located by the attorney ad litem, the parent or alleged father never expressed to the attorney ad litem a desire to exercise the right to appeal the judgment to the court of appeals or to the Supreme Court of Texas.

Explanation of changes:

1. The first sentence of TRCP 306 is moved to TRCP 301.

2. It is assumed that the proposed changes to citation are approved.

3. Under Family Code §107.013 the court must appoint an attorney ad litem for:

    i. An indigent parent who responds to oppose the termination or appointment;
    ii. A parent served by publication;
    iii. An alleged father who failed to register his parenthood under Chap. 160 and whose location is unknown; and,
    iv. A registered alleged father who cannot be located for service.

    The attorney ad litem must investigate what the petitioner has done to locate an alleged father and do an independent investigation to find him. Tex. Fam. Code §107.0132(a). If the attorney locates him, he must report the address and locating information to the court and each party. Tex. Fam. Code §107.0132(b). If the attorney ad litem cannot locate him, he shall report his efforts to the court; on receipt of the report, the court must discharge the attorney. Tex. Fam. Code §107.0132(d). If the alleged father is adjudicated the parent and is determined to be indigent, the court may continue the appointment on the same basis as an indigent parent. Tex. Fam. Code §107.0132(c). This suggests that after the alleged father appears, he is entitled to continued representation only upon proof of indigency.

4. The attorney ad litem serves until the earliest of:

    i. The date the suit is dismissed;
    ii. The date appeals of a final order are exhausted or waived; or
    iii. The date the attorney is relieved of duties or replaced by another attorney after a finding of good caused rendered on the record.

    Tex. Fam. Code §107.016(3). The Supreme Court has held that once appointed, counsel may withdraw only for good cause, which did not include client disagreement or belief the appeal was meritless. *In the Interest of P.M.*, 520 S.W.3d at 27. Courts have a duty to see that withdrawal not result in foreseeable prejudice to the client; it the court permits withdrawal, it must provide for new counsel. *Id*. However, this was a case where the parent had appeared and actively pursued an appeal. This leaves unresolved whether the court may relieve the attorney ad litem if the parent/putative father never appeared after personal service or service by publication.

    Section 107.0132(d) mandates discharging counsel if the alleged father cannot be located. Section 107.0132(c) suggests the alleged

father who is served is entitled to continued representation on the same basis as a parent who appears. Arguably the *P.M.* decision would permit discharging the attorney ad litem if:

i. The alleged father cannot be located;
ii. The alleged father is served, responds, but fails to prove he is indigent;
iii. The parent is served, responds, but fails to prove indigency.

5. This draft avoids the difficulty of trying to determine whether a party who has never appeared (or has disappeared) wishes to waive the appeal. It focused on determining what is good cause under Texas Family Code section 107.016(3) to relieve the appointed attorney ad litem when the final judgment is signed. It does not address discharging or relieving appointment prior to a final judgment.

6. The revised text in paragraph 2 makes clear what the default outcome is and seeks to avoid difficulty in determining finality or other consequences if the judgment does not contain one of the express statements.

7. Replacing "personal citation" in paragraph 2(b)(i) with an express reference to service under TRCP 106(a) is intended to align this rule with Rule 106(a) to avoid potential confusion.

8. The deletion of "identify or" in paragraph 2(b)(ii) is intended to align the rule with the statutory standard and avoid potential confusion about any differences between identifying vs. locating.

Additional areas for consideration include (1) is Rule 306 the best place to put such a rule; (2) are there other rules that could be more readily adapted for this purpose, such as Rule 308a; (3) should all rules of civil procedure governing the parent-child relationship be assembled in one place as part of "Rules Relating to Special Proceedings" in Part VII of the Texas Rules of Civil Procedure.

C. Motions for Extension of Time and Conformity With Revisions to TRAP 4.7

Later subcommittee reports will address issues concerning extensions of time by an indigent parent with a statutory right to appointed counsel if the indigent parent's appointed counsel fails to timely pursue an appeal. At this juncture, the subcommittee recommends that any standards or procedures adopted for earlier appellate proceedings be compatible with those ultimately adopted with respect to petitions for review in the Texas Supreme Court. As noted earlier, the subcommittee and SCAC previously have discussed and approved TRAP amendments relating to out-of-time petitions for review.