

E-MAILS RE: TRAP RULES

Chip:

Before the committee or the supreme court takes further action on the TRAP rules, I would like to see if we can make one additional change.

I think the TRAP rules should say that anyone who files an affidavit of indigence in the trial court must also serve a copy on the court reporter. Previous TRAP 40(a)(3)(B) required exactly that. Somehow this requirement was omitted when present TRAP 20(d)(1) was promulgated, and now the rule lets the movant just file the indigence affidavit puts the burden on the clerk to notify the court reporter. In a perfect world, clerks would always get it done. But in reality, especially in Bexar County, clerks drop the ball.

There is a part of me that says clerks should notice these affidavits when they are filed and should do their duty. But sometimes they just don't, and it seems unfair to court reporters. The salient fact for me is that the added burden to the indigent appellant is close to zero (make an extra copy and send it or take it to the reporter), while the reality in the courthouse is that clerks sometimes drop the ball.

Could we discuss this briefly at the meeting?

David Peeples

Chip and others, I will be in Fargo, North Dakota during the meeting and won't be able to get to Austin. The issue Judge Peeples happens more often than we think. It's become a matter of course now to file an indigency appeal in hopes that the court reporter won't find out about it until it's too late. They are usually the ones who contest them because it is money and time they actually donate to the cause out of their pocket. In true indigency cases we should be doing them; but we should have the ability to make them prove it's a true indigency case and not someone who just doesn't want to pay for an appeal, which is more often the case.

Have a great meeting, and thanks, Judge Peeples, for bringing this up.

David B. Jackson, CSR, RDR