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March 27, 2003

Mr. Charles L. Babcock
 Chair, Supreme Court Advisory Committee
 901 Main St., Suite 6000
 Dallas, Texas 75202

Re: A Proposal to Control Costs of Litigation and to Prevent Wasting Court Time

Dear Mr. Babcock:

As Chair of the Supreme Court Advisory Committee, I would like to make a proposal to you and the Committee, to be considered for possible addition to the Texas Rules of Civil Procedure.

In my practice as a litigator, I have noticed that one of the greatest abuses of our judicial system is the propensity of some attorneys to file frivolous "motions for sanctions" against their opposing counsel and opposing parties. While the ability to file a Motion for Sanctions was initially intended to prevent abuses of the judicial system, they have become yet another way that unscrupulous litigators can manipulate and pervert that system. Frequently, the motions are meritless, and have as their motive *not* the punishment of true wrongdoing but *instead* seek only to compel opposing counsel to appear in court, and spend time -- and legal fees -- to defend these frivolous motions. The goal is to "wear down the opponent" by spending them out of the ability to litigate.

First of all, please know that I have not been the "victim" of any one of these motions. I have, however, had to respond to frivolous motions for sanctions filed by other attorneys, quite frequently, and can tell your firsthand that they are a tremendous source of frustration (at the very least), to those of us who consider ourselves to be honorable litigators.

In my career, I have had an opportunity to attend court in several jurisdictions, both domestic as well as foreign. The "sanctions" practice that I have seen in Nevada is something that I propose should be duplicated, here in Texas. It is as follows:

1. Sanctions, if awarded at all, should not be payable to the opposing party, or to the court. Instead, the Judge should designate a charitable entity to be the recipient of the sanctions. The effect of this practice being adopted in Texas would make the current "litigation lottery" practice of sanctions completely non-lucrative for the moving party. Accordingly, the impetus to file a "motion for sanctions" would be minimized, except in the most egregious (and, therefore logically most appropriate) circumstances. Since the party seeking to move the court for sanctions would not

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financially benefit as the result of the imposition of sanctions, far less court time (and attorney's fees) would be wasted in this area of practice (which I would add does absolutely nothing towards resolving the actual matters in controversy). This is based upon Nevada practice

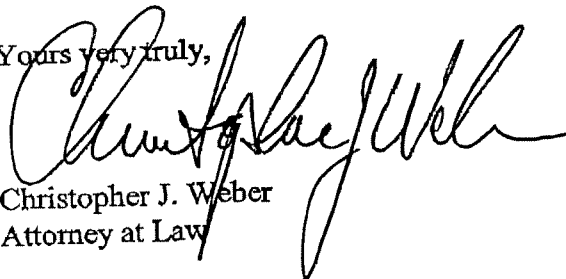
2. In the event a "motion for sanctions" is filed, the court should be required, by "mandatory" language (such as the word "shall") to impose the sanctions upon one party, or the other. If the court finds that the acts which are the subject of the motion are in fact sanctionable, then the court should award sanctions (in an amount no less than \$200.00), against the party who has "broken the rules". Again, those sanctions should be payable to a charitable entity. In the event, however, that the party who moved for the imposition of sanctions did so without just cause, then the sanctions (again in the minimum amount of \$200.00), must be awarded against the *moving* party for having brought a frivolous motion for sanctions. This suggestion is my own.

If the forgoing were to be adopted in Texas, again, sanctions would only be requested from the court in the most egregious and appropriate circumstances.

In my estimation, approximately one-fifth of pre-trial motion practice has something to do with one party requesting sanctions from the other. This does nothing to actually resolve the matter, and only wastes time and creates additional expense for the litigants. It also has the effect of prolonging the litigation. If the Legislature were to adopt either one or both of the mechanisms I've described above, I believe it would result in a tremendous savings to all persons who find themselves in the unfortunate circumstance of having to engage in litigation to obtain a resolution of their various disputes. Far less court time would be taken up, as well.

Should you wish to discuss these matters with me, please do not hesitate to contact me at the phone numbers or address shown above.

Yours very truly,



Christopher J. Weber
Attorney at Law

cjw/cmb