



The Supreme Court of Texas

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

Chambers of
Justice Nathan L. Hecht

March 8, 2007

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Rules Advisory Committee
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Referral of Proposed Changes to Rules of Civil Procedure and Judicial Administration

Via e-mail

Dear Chip:

The Court requests the Advisory Committee's recommendations on several changes to the Rules of Civil Procedure and the Rules of Judicial Administration proposed by members of the bar and others. These proposals are summarized in the attached appendices A and B respectively.

The Court greatly appreciates the Committee's thoughtful consideration of these issues, for its dedication to the rules process, and for your continued leadership on the Committee. I look forward to seeing you all on April 27th.

Sincerely,

Nathan L. Hecht
Justice

A handwritten signature in black ink, appearing to read "Nathan L. Hecht".

RULES OF CIVIL PROCEDURE

Rule: none

Current Text: none

Summary of Proposal:

Gene Storie proposes adding a rule for the automatic substitution of current state officers as successors in suits where the original state officer no longer holds office. He suggests modifying the text of TRAP 7.2, perhaps modeled on the federal rule of civil procedure providing for automatic substitution of public officers. *See* Fed. R. Civ. P. 25(d) (“When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer’s successor is automatically substituted as a party.”). The Court seeks the Committee’s recommendation on this proposal.

Rule 103. Who May Serve

Current Text:

Process – including citation and other notices, writs, orders, and other papers issued by the court – may be served anywhere by (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than eighteen years of age, or (3) any person certified under order of the Supreme Court. Service by registered or certified mail and citation by publication must, if requested, be made by the clerk of the court in which the case is pending. But no person who is a party to or interested in the outcome of a suit may serve any process in that suit, and, unless otherwise authorized by a written court order, only a sheriff or constable may serve a citation in an action of forcible entry and detainer, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced by the person delivering the process. The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.

Summary of Proposal:

Carl Weeks, Chair of the Process Server Review Board, cites confusion among process servers, attorneys, and judges over an apparent conflict between Rule 103 (and its similarly-worded counterpart applicable to justice courts, Rule 536(a)), and Rule 663, which governs execution and return of a writ of garnishment. Rules 103 and 536(a), as amended in 2005, allow private process servers generally to serve most types of process except certain types involving physical possession of property. Although writs of garnishment do not appear to be included among the categories of process from which private servers are generally excluded, Rule 663 contemplates execution of such a writ only by a sheriff or constable. *See* TRCP 663 (“The sheriff or constable receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof as of other citations.”); *see also Jamison v. Nat’l Loan Investors*,

L.P., 4 S.W.3d 465, 468 (Tex. App.—Houston [1st Dist.] 1999, pet. denied) (“The Rules of Civil Procedure provide that only a sheriff or constable may deliver the writ to the garnishee.”). Mr. Weeks states that lawyers, judges, and process servers have sought clarification as to whether private process servers may serve writs of garnishment, as there do not appear to be any post-2005 appellate decisions addressing this issue. The Committee is asked to consider whether and how the apparent conflict between the two rules (103/536 and 663) should be resolved.

RULES OF JUDICIAL ADMINISTRATION**Rule 13.6. Proceedings in Pretrial Court****Current text:**

(a) *Judges Who May Preside.* The MDL Panel may assign as judge of the pretrial court any active district judge, or any former or retired district or appellate judge who is approved by the Chief Justice of the Supreme Court of Texas. An assignment under this rule is not subject to objection under chapter 74 of the Government Code. The judge assigned as judge of the pretrial court has exclusive jurisdiction over each related case transferred pursuant to this rule unless a case is retransferred by the MDL Panel or is finally resolved or remanded to the trial court for trial.

(b) *Authority of Pretrial Court.* The pretrial court has the authority to decide, in place of the trial court, all pretrial matters in all related cases transferred to the court. Those matters include, for example, jurisdiction, joinder, venue, discovery, trial preparation (such as motions to strike expert witnesses, preadmission of exhibits, and motions in limine), mediation, and disposition by means other than conventional trial on the merits (such as default judgment, summary judgment, and settlement). The pretrial court may set aside or modify any pretrial ruling made by the trial court before transfer over which the trial court's plenary power would not have expired had the case not been transferred.

Summary of Proposal:

At an interim meeting of the House Civil Practices Committee last summer, a suggestion was made to amend Rule 13.6 to expressly permit a pretrial judge to use a special master, on the theory that special masters might be particularly helpful on smaller discovery and evidentiary rulings. The Court seeks the Committee's recommendation on this proposal.

Rule 13.7. Remand to Trial Court**Current text:**

(a) *No Remand if Final Disposition by Pretrial Court.* A case in which the pretrial court has rendered a final and appealable judgment will not be remanded to the trial court.

(b) *Remand.* The pretrial court may order remand of one or more cases, or separable triable portions of cases, when pretrial proceedings have been completed to such a degree that the purposes of the transfer have been fulfilled or no longer apply.

(c) *Transfer of Files.* When a case is remanded to the trial court, the clerk of the pretrial court will send the case file to the trial court without retaining a copy unless otherwise ordered. The parties may file in the remanded case copies of any pleadings or orders from the pretrial court's master file. The clerk of the trial court will reopen the trial court file under the cause number of the trial court, without a new filing fee.

Summary of Proposal:

Judge Mark Davidson, whom the MDL Panel assigned as pretrial judge in the asbestos MDL cases, has suggested that the Court consider amending this rule to allow a pretrial judge to remand a case to a particular court in those counties that use a central docket system to assign cases. Judge Davidson indicates that it could be difficult to set a trial date under Rule 13.6(d) that works for a particular trial judge if the pretrial judge doesn't know which trial judge will hear the case. The Court seeks the Committee's recommendation on this proposal.