

**Texas Supreme Court Advisory Committee
Legislative Mandates Subcommittee
August 1, 2007**

Assignment: Develop proposed rule for dealing with “complex cases”

Based on discussions with Justice Hecht, Chip Babcock, as Chair of the Supreme Court Advisory Committee, has asked our Subcommittee to develop a proposed rule for dealing with “complex cases.” As you may be aware, the Texas Legislature considered such a proposal as part of Senate Bill 1204 during the recent 80th Legislative Session, but that bill did not pass. The Court would now like to consider alternatives for enacting such a proposal as a Court rule, in the absence of a legislative mandate.

Chip has suggested that the rule should provide that the presiding judge of each administrative region will appoint one judge who sits within that region to serve as the region’s Complex Case Judge. This judge would be assigned to preside over all Complex Cases in that region, and would sit in the court in which the case was filed (i.e., the judge would go to the case, not the case to the judge).

The rule would have to define a “Complex Case” (or at least provide factors for identifying a Complex Case) in detail, and would have to provide detailed procedures for the assignment of such a case to the Complex Case Judge and that Judge’s handling of the case. It could include procedures to require or allow for a more expedited resolution of the case (i.e., rocket-docket or fast-track resolutions).

This rule could be similar to the proposals in SB 1204, and draw conceptually from the old MDL Rule 11 (which applies only to cases filed prior to 2003). In fact, the Court could adopt it as a replacement to that rule.

For background information, see the following attached documents:

1. SB 1204, Article 8 (dealing with complex cases);
2. Govt Code Chap 74 (selected provisions dealing with administrative regions);
3. Tex. R. Judic. Admin Rule 11.

Article 8 of SB 1204, 80th Legislature, Introduced Version (did not pass)

COMPLEX CASES

SECTION 8.01. Subchapter H, Chapter 74, Government Code, is amended by adding Section 74.165 to read as follows:

Sec. 74.165. LIMITATION. If a civil case is being or has been considered for transfer under this subchapter by the judicial panel on multidistrict litigation, the case may not be referred to the judicial panel on complex cases under Subchapter I for a determination of whether the case is complex, regardless of whether the judicial panel on multidistrict litigation transfers the case.

SECTION 8.02. Chapter 74, Government Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. JUDICIAL PANEL ON COMPLEX CASES

Sec. 74.181. DEFINITION. In this subchapter, "panel" means the judicial panel on complex cases established under Section 74.182.

Sec. 74.182. JUDICIAL PANEL ON COMPLEX CASES. The judicial panel on complex cases consists of five members designated by the chief justice of the supreme court. The members of the panel must be active court of appeals justices or regional presiding judges.

Sec. 74.183. OPERATION AND RULES IN GENERAL. (a) The panel must operate according to rules of practice and procedure adopted by the supreme court under Section 74.024.

(b) The panel may prescribe additional rules for the conduct of its business not inconsistent with the law or rules adopted by the supreme court, including rules adopted

under Section 74.184.

Sec. 74.184. RULES TO GUIDE DETERMINATION OF WHETHER CASE IS COMPLEX. (a) The supreme court shall adopt rules regarding the types of civil cases that constitute complex cases.

(b) In developing the rules, the supreme court shall consider the following factors with respect to a type of civil case:

(1) whether there are likely to be a large number of separately represented parties;

(2) whether coordination may be necessary with related actions pending in one or more courts in other counties, states, or countries, or in a United States federal court;

(3) whether it would be beneficial for the case to be heard by a judge who is knowledgeable in the specific area of the law involved;

(4) whether it is likely that there will be numerous pretrial motions, or that pretrial motions will present difficult or novel legal issues that will be time-consuming to resolve;

(5) whether it is likely that there will be a large number of witnesses or a substantial amount of documentary evidence;

(6) whether it is likely that substantial post-judgment supervision will be required;

(7) whether it is likely that the amount in controversy will exceed an amount specified by the supreme court; and

(8) whether there is likely to be scientific, technical, medical, or other

evidence that requires specialized knowledge.

Sec. 74.185. DETERMINATION BY PANEL. (a) On the motion of a party to a civil case, the judge of the court in which the case is pending shall refer the case to the panel for a determination of whether the case constitutes a complex case.

(b) Using the rules adopted by the supreme court under Section 74.184, the panel shall determine whether the case is a complex case. The concurrence of three panel members is necessary to make the determination that the case is complex.

Sec. 74.186. ASSIGNMENT OF JUDGE. (a) On determining that a case is a complex case, the panel shall assign a judge to hear the case. The panel may assign:

(1) an active judge from the administrative region in which the court from which the case was referred is located; or

(2) a retired or former judge from any administrative region, provided that the retired or former judge agrees to travel to the administrative region described by Subdivision (1) to preside over the case.

(b) A retired or former judge assigned to preside over a complex case is not subject to an objection under Section 74.053, other than an objection made as authorized by Section 74.053(d).

Sec. 74.187. LIMITATION. If a civil case is or has been referred to the panel for a determination of whether the case is complex, the case may not be transferred by the judicial panel on multidistrict litigation as provided by Subchapter H, regardless of the determination made by the panel under this subchapter.

Sec. 74.188. MANDAMUS. On the determination by the panel that a case is not complex, a party to the case may apply to the supreme court for a writ of mandamus to

the panel for a determination to the contrary. The supreme court shall review the application under an abuse of discretion standard.

SECTION 8.03. Subchapter B, Chapter 51, Civil Practice and Remedies Code, is amended by adding Section 51.016 to read as follows:

Sec. 51.016. PERMISSIVE APPEALS IN MULTIDISTRICT LITIGATION AND COMPLEX CASES. The judge of a district court to which multidistrict litigation has been transferred under Section 74.162, Government Code, or the judge of a district court assigned to hear a complex case under Section 74.186, Government Code, may by written order permit an appeal from an interlocutory order made in the case if:

- (1) the interlocutory order is not otherwise appealable;
- (2) the interlocutory order involves a controlling question of law with respect to which there is a substantial ground for differences of opinion; and
- (3) an immediate appeal from the interlocutory order may materially advance the ultimate termination of the litigation.

SECTION 8.04. Not later than January 1, 2008, the Texas Supreme Court shall adopt rules regarding complex cases and designate the initial members of the judicial panel on complex cases required by Subchapter I, Chapter 74, Government Code, as added by this Act.

SECTION 8.05. The changes in law made by this article apply to cases pending on or after January 1, 2008.