

Appendix to Report from Subcommittee on TRCPs 1-14c
Disposing of Exhibits and Depositions after Notice by Publication
December 21, 2004

- Appendix A Letter from Hon. Charles Bacarisse to Chief Justice Thomas R. Phillips
 (January 22, 2003)
- Appendix B 55 Tex. B. J. 111, 500
 (reprinting orders in Misc. Docket Nos. 92-0024, 92-0060)

Appendix A



CHARLES BACARISSE
HARRIS COUNTY DISTRICT CLERK

January 22, 2003

The Honorable Thomas R. Phillips
Chief Justice
Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711

Dear Justice Phillips:

The intent of this letter is to seek temporary relief from the restrictions of Rules 14b and 209, Texas Rules of Civil Procedure. The rules state the District Clerk cannot dispose of exhibits and depositions in a civil case unless the attorneys in the case receive individual notice of the intent to destroy these documents from the District Clerk. This process is extraordinarily cumbersome, expensive and ineffective, especially in a county the size of Harris County.

The District Clerk of Harris County maintains the case records for 15 County Criminal Courts at Law, 59 District Courts and 3 Region IV-D Courts. We receive approximately 150,000 new case filings annually. We have an estimated 3.5 million case files, 106,500 civil exhibits and 19,100 civil depositions currently in inventory. The exhibits range from enlarged charts, texts and photographs to 55-gallon drums, automobile parts, torn clothing, etc. Within one year of case disposition, these records become obsolete - not accessed by the public.

In 1991, due to dwindling records storage space, the Harris County District Clerk requested and received signed orders from the Supreme Court of Texas allowing for the destruction of certain exhibits and depositions by posting a notice in the Texas Bar Journal. The records pertaining to those orders were destroyed. In 1997, this office contacted the Supreme Court of Texas regarding a possible rule change to allow for the systematic destruction of these records. We were told a Supreme Court Advisory Committee was formed to address the issue of the retention of court records - including case files, depositions and exhibits. Our expectation at that time was a rule change was to take place rather quickly as this appeared to be a common problem among all the larger Texas counties. Some 5 years later, we still do not have resolution to the on-going problem of storage of depositions and exhibits.

We are struggling with the lack of storage space. Maintaining obsolete records due to cumbersome destruction rules is neither economical nor operationally feasible. We have formulated a plan for consideration by the Supreme Court of Texas regarding the destruction of exhibits and depositions. We believe this plan meets the spirit of 14b and 209 while eliminating the cumbersome, expensive process of notification. If approved this process would remain in effect until official rule changes could be implemented.

The Honorable Thomas R. Phillips
January 9, 2003
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The Harris County District Clerk is requesting the Supreme Court of Texas consider the attached orders to the letter – Relating to the Retention and Disposition of Exhibits By the District Clerk of Harris County (Rule 14b) and Relating to the Retention and Disposition of Depositions By the District Clerk of Harris County. These orders give the Harris County District Clerk permission to dispose of all exhibits and depositions submitted in any case:

- one year after judgment in the case has been rendered, and in which no motion for new trial was filed within two years after judgment was signed or
- in which judgment was signed, and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by final judgment as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court.

Notification to the attorneys of the intent to destroy the records (exhibits and depositions) would be made through publication in the Texas Bar Journal. The District Clerk of Harris County would dispose of all exhibits and depositions beginning in the third month after the month in which notice of the Clerk's intention to do so is published in the Texas Bar Journal. Attorneys desiring to withdraw exhibits must do so by a published date.

Your timely consideration of this matter would be greatly appreciated.

Sincerely,



CHARLES BACARISSE
District Clerk

CEB/dkr
Enclosures

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. _____

RELATING TO THE RETENTION AND DISPOSITION OF EXHIBITS BY THE DISTRICT CLERK OF HARRIS COUNTY

ORDERED:

Pursuant to Rule 14b, Texas Rules of Civil Procedure, exhibits shall be retained by the District Clerk of Harris County as required by law, unless disposed of as allowed by this Order or this Court's general Order effective January 1, 1988, a copy of which is attached.

In any case—

- (1) in which one year has passed since judgment in the case was rendered and no motion for new trial was filed within two years after the judgment was signed, or
- (2) in which a judgment was signed, and no appeal was perfected or a perfected appeal was dismissed, or an appellate court has issued a final judgment as to all parties and the case is no longer pending on appeal or in the trial court.

the District Clerk of Harris County may dispose of all exhibits beginning in the third month after the month in which notice of the Clerk's intention to do so is published conspicuously in the *Texas Bar Journal*, except those materials which, prior to disposition, are withdrawn.

SIGNED AND ENTERED this _____ day of _____, 2003.

Thomas R. Phillips, Chief Justice

Nathan L. Hecht, Justice

Craig T. Enoch, Justice

Priscilla R. Owen, Justice

Harriet O'Neill, Justice

Wallace Jefferson, Justice

Michael Schneider, Justice

Steven W. Smith, Justice

Dale Wainwright, Justice

Appendix B

In the Supreme Court of Texas

Miscellaneous Docket No. 0024

Relating to the Retention and Disposition of Depositions By the District Clerk of Harris County

ORDERED:

Pursuant to Rule 209, Texas Rules of Civil Procedure, deposition transcripts and depositions upon written questions shall be retained by the District Clerk of Harris County as required by law unless disposed of as allowed by this Order or this Court's general order effective Jan. 1, 1988,

In any case —

1. in which judgment was rendered upon service of process by publication and signed prior to Jan. 1, 1987, and in which no motion for new trial was filed within two years after judgment was signed, or
2. in which judgment was signed prior to Jan. 1, 1985, and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by final judgment as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court—

the district clerk of Harris County may dispose of all deposition transcripts and depositions upon written questions beginning in the third month after the month in which notice of the clerk's intention to do so is published conspicuously in the *Texas Bar Journal*, except material which, prior to disposition, the clerk has received a written notice to withdraw, identify the case number, the style of case, and the materials to be withdrawn.

SIGNED AND ENTERED the 13th day of December 1991.

ABA Gambrell Professionalism Award

Nominations are open for the second annual awards competition recognizing bar association and law school projects to enhance professionalism among lawyers.

Entries will be accepted until May 1, and awards will be presented at the ABA Annual Meeting in August in San Francisco. The ABA Special Coordinating Committee on Professionalism and Center for Professional Responsibility will confer up to three awards of \$3,750 each for programs on-going after June 1, 1991. Projects previously recognized are ineligible.

The ABA Standing Committee will judge entries based on overall program quality and success, suitability of the program for replication elsewhere, likelihood the program will continue, innovative nature of the program, substantive strength of the program in professionalism, and scope of the program.

For additional information on eligibility or nominating procedures, contact Arthur Garwin, ABA assistant professionalism counsel, 541 N. Fairbanks Ct., 14th Floor, Chicago, IL 60611-3314; 312/988-5294

Law Firms Experience Economic Downturn

Law firms are dismissing an unprecedented number of associates and, for the first time, are requiring significant numbers of partners to withdraw. Although it has been well-chronicled in the press, this trend has not been tracked and quantified, leading firms to question their termination policies and procedures. A recent survey by Hildebrandt, Inc. has revealed how widespread dismissals are. It also indicates that the terminations are far from over.

The Somerville, NJ-based legal management consulting company, surveyed the nation's largest law firms. Of the 105 firms responding, more than half expect to ask partners to leave in the next 18 months, and nearly nine out of 10 anticipate terminating associates in the same period.

The survey showed that 60 percent of responding firms asked partners to withdraw during the past 18 months. Approximately one-third of the firms surveyed had no involuntary withdrawals in that time period. Half of these expect them in the next 18 months and nearly two-thirds of the firms that terminated partners anticipate they will ask more to leave in the next 18 months.

Although a growing number of firms are asking partners and associates to leave, few have established policies on severance.

"We were astonished to discover the number of firms that do not compel withdrawing partners to sign settlement agreements," said Edwin Mruk, senior consultant with Hildebrandt Career Counseling for Professionals. "In fact, firms that have terminated partners in the past actually are less likely to have separation policies than those that have not. This is a clear case of lawyers not following the advice that they give to their clients."

"However," says Mruk, "lawyers are not being dumped on the sidewalk. In many cases, they are being given severance pay, secretarial services and use of office space, as well as the services of professional outplacement consultants."

Hildebrandt is a management consulting company that specializes in helping law practices cut costs, increase efficiency, and maximize profits.

For more information about the survey call Mruk at 212/983-8045 or Ann Levine or Carol Buckner at 908/725-1600.

Toll-Free Numbers Available

A new toll-free phone number is available to persons seeking information about filing a complaint against a Texas attorney. The toll-free number is part of an overhaul of the State Bar's grievance system which goes into effect in May. Those who call 1/800/932-1900 will receive information about the system and be guided through the initial steps of filing a complaint.

Another toll-free number, 1/800/932-1990, is available to any member of the public or profession seeking information about the State Bar of Texas or the legal profession in Texas.

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 92-0060

Relating to the Retention and Disposition Of Exhibits by the District Clerk of Harris County

ORDERED:

Pursuant to Rule 14b, Texas Rules of Civil Procedure, exhibits shall be retained by the District Clerk of Harris County as required by law unless disposed of as allowed by this order or this court's general order effective Jan. 1, 1988.

In any case —

- (1) in which judgment was rendered upon service of process by publication and signed prior to Jan. 1, 1987, and in which no motion for new trial was filed within two years after judgment was signed, or
- (2) in which judgment was signed prior to Jan. 1, 1985, and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by final judgment as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court —

the District Clerk of Harris County may dispose of all exhibits beginning in the third month after the month in which notice of the clerk's intention to do so is published conspicuously in the *Texas Bar Journal*, except materials which, prior to disposition, the clerk has received a written notice to withdraw, identifying the case number, the style of the case, and the materials to be withdrawn.

Signed and entered the 25th day of February 1992.

How the New Grievance System Works

A CLE Video from the State Bar of Texas

In 1990, the State Bar membership voted to adopt a new system for handling lawyer discipline and disability.

That system took effect May 1.

In an effort to help Texas lawyers understand the new system, the State Bar Professional Development program has produced a videotape highlighting the changes in how grievances are handled in Texas. The videotape also demonstrates important new rules affecting the investigatory and evidentiary hearings which are part of the system.

The new system affects all lawyers. To ensure that all Texas lawyers are educated about the new system, the State Bar of Texas will present this videotape free of charge throughout the state during June. No registration fee will be charged and attorneys can earn a half hour of MCLE credit.

The videotape includes discussion

and demonstrations by James McCormack, general counsel of the State Bar of Texas; Steve W. Young, first assistant general counsel; Sam Bargainer, office manager of the Dallas regional office of the general counsel; and Eddie Vassallo, grievance committee chair, Dallas. Research and scripting of the videotape was done by Marilee Neff, director of the Dallas regional office of the general counsel.

This program was made possible by a grant from the Texas Bar Foundation.

In addition, the general counsel's office has developed model language to help attorneys meet the requirement that they notify clients of the existence of the grievance process.

A brochure announcing the dates for presentation of the videotape should arrive in attorneys' offices in late May. Seating at the video program will be on a first come, first served basis.

Full-Text Opinions — Ready When You Are

In an effort to better serve Texas lawyers, the State Bar of Texas has implemented a new process whereby subscribers to the *Texas Lawyers' Civil* or *Criminal Digests* have access to the fastest full-text opinion service in the state. The service is available to subscribers 24 hours a day, 365 days a year.

To order an opinion from the FASTBACK OPINION Service, subscribers can use their touch-tone phones, dial toll-free, 1/800/925-5567 and receive the full-text of any Texas appellate opinion reported in the digests. Within one minute of an order, the service will begin faxing the opinion. Subscribers will be billed for the service.

The charge is four dollars per call and 75 cents per page for as many opinions as ordered per call. The number of pages and the identification number of the opinions are shown in the digests. If an attorney would rather receive the text through the mail there is no additional charge. For a \$20 fee, the opinion can be sent overnight by express delivery.

Non-subscribers to the digests can use the FASTBACK service for a \$10 per call surcharge. A year's subscription to either the civil or criminal digest is \$35 plus tax and may begin at anytime.

If you need more information or would like to subscribe to one or both of the digests, write Digest Subscription (specify criminal or civil), State Bar of Texas, P.O. Box 12487, Austin 78711, or call 512/463-1403. Mastercard and Visa are accepted.

Toll-Free Numbers Available

A toll-free phone number, part of the overhaul of the State Bar of Texas grievance procedure, is available to persons seeking information about the grievance process. Those who call 1/800/932-1900 will be guided through the initial steps of filing a complaint.

Another toll-free number, 1/800/932-1990 is available to those seeking information about the State Bar.