

TO: SCAC
FROM: Mike A. Hatchell – Chair of Rules of Judicial Admin. Subcommittee
DATE: August 23, 2007
RE: MDL Remand Rule 13.7

Dear SCAC Committee Members:

Previously, the chairman referred to the subcommittee on the Rules of Judicial Administration two items: (i) whether MDL judges should be given the power to appoint a master in chancery to assist the trial judges; and (ii) whether the MDL rules should be amended to provide specific guidelines regarding trial dates for cases remanded from the MDL judge to a conventional trial court. Below is the recommendation of the subcommittee with an attached draft rule.

RJA Rule 13.7 - Remand to Trial Court:

The rule is provided for discussion purposes in response to the letter from Justice Hecht and the referral to our subcommittee from our chairman.

Please note, however, that, after consideration of comments by Judge Christopher (an MDL judge) and Judge Dietz (who administers the Austin central docketing system) regarding the need for a detailed rule governing remand to a trial court from an MDL judge, the subcommittee has unanimously voted (with 5 members present) not to recommend adoption of this rule or any amendment of the present rule.

RJA Rules - Power to Appoint a Master in Chancery:

The subcommittee has also unanimously rejected (6 members voting) the suggestion that the RJA MDL rules be amended to provide that the MDL judge have the power to appoint a master in chancery.

The subcommittee followed the recommendations of Judges Christopher and Davidson that the ability to appoint additional judges filled any need that prompted this referral. The subcommittee adds its comment that it does not see any adverse effects from giving MDL judges the power to appoint a master, but it believes the MDL judges who administer the rules are the best arbiters of the need for changing the rules in matters like this.

Current Text:

Rule 13.7. Remand to 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.

Draft Text:

Rule 13.7. Remand to Trial Court

(b) Remand. The pretrial court may remand 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) Date for trial on remand. The pretrial court may determine the date by which the trial on remand must commence as necessary for the efficient operation of the MDL system.

(1) Remand in Counties **without** a central docket system. If the trial court determines that it is unable to commence the trial on remand by the date specified, the trial court must notify the presiding administrative judge for the judicial region. The presiding administrative judge for the judicial region must appoint a qualified judge to preside over the remanded proceeding.

(2) Remand in Counties **with** a central docket system.

a. The pretrial court may specify that the remanded proceeding will be assigned and decided in due order according to the local rules regarding a central docket system.

b. The pretrial court may specify that the remanded proceeding be assigned to a trial court to preside over the remanded proceeding. The assigned trial court will be determined as follows.

- i. If the central docketing system in use in the county to which the proceeding is remanded provides for the assignment of a specific trial court to preside over a case pending in that county, that procedure will be utilized to select the trial court to preside over the remanded proceeding.
- ii. If the central docketing system in use in the county to which the case is remanded does not provide for the assignment of a specific trial court to preside over a proceeding, the judge assigned oversight for the administration of the central docketing system must assign a trial court to preside over the remanded proceeding.
- iii. If a trial court is not assigned as required by either the operation of the central docketing system or the judge administering the central docketing system within 28 days after the order remanding the proceeding and ordering that the proceeding be assigned for an identified trial court to preside over the remanded proceeding, the pretrial court may assign the trial court that will preside over the remanded proceeding.