

Date: 11/18/09

From: Richard R. Orsinger, Subcommittee on Rule 16-165a

To: Supreme Court Advisory Committee

Re: Possible language to include in "Comment" to proposed new rule of procedure regarding civil case cover sheet

At the SCAC meeting on September 25, 2009, the Committee discussed and took several votes on a proposed civil case cover sheet. The Committee was further tasked to discuss possible language to put into a comment to the proposed rule. This Memo sets out alternative proposals about what might be included in a comment. This issue will be discussed at the SCAC hearing on 11/20-21/2009.

Although the Committee was divided at its September 25, 2009 meeting about how the proposed new rule should be phrased, and where it should be located, here is the proposed new rule that was debated by the Committee on that day, with the sole difference being a proposal to use the word "submit" instead of "file":

Rule 78a.

When a party files an original petition, that party must also file [or "submit"] a civil case cover sheet that includes the style of the case, name and contact information of the attorney in charge or party filing the suit, state bar number of the attorney in charge (if applicable), names of the parties, the case type, and any other information required under local rules or in the form provided by the clerk of the court in which the pleading is filed. The filing [or "submission"] of a cover sheet is for administrative purposes and does not affect or determine how the action is commenced in district or county court.

Use one or more of the following for inclusion in the "Comment" to the new rule:

1. [The last sentence can be removed from the Rule and included in a comment to the rule, or the last sentence can be deleted and other language can be included in the comment.]
2. This Rule requires the party initiating a civil case to submit to the court clerk, at the time the original petition is filed, a civil case cover sheet containing information that the clerk needs to make a monthly case activity report to the Office of Court Administration.
2. Local judges may require that additional information be submitted in a civil case cover sheet that is to be used in docket administration.

3. The civil case cover sheet neither replaces nor supplements the filings and service of pleadings or other papers as required by the law. [Patterned after Federal form JS-44, only it omits “except as provided by local rules of court”].
4. The information in the civil case cover sheet does not constitute a discovery request, response, or supplementation, and is not admissible in evidence. [Patterned after Harris County civil case information sheet, except “not admissible in evidence” is substituted for the form’s “not admissible at trial”].
5. The civil case cover sheet does not constitute a pleading or discovery, is not admissible in evidence, and does not affect the substantive rights of any party. [Based on SCAC discussions]
6. The filing [or “presentation” or “submission”] of a cover sheet is for administrative purposes only. [Based on SCAC discussions]
7. The filing [or “presentation” or “submission”] of a cover sheet is for administrative purposes and does not affect the substantive or procedural rights of the parties to the litigation. [Based on SCAC discussions]
8. The civil cover sheet is for statistical purposes only and does not affect substantive rights. [Based on SCAC discussions]
9. The civil cover sheet is for record-keeping purposes only. [Based on SCAC discussions]
10. The civil cover sheet is for administrative purposes only and cannot be used for any other purpose in the litigation. [Based on SCAC discussions]
11. The purpose of this Rule is to gather information, and it does not prejudice the rights of parties. [Based on SCAC discussions]
12. The civil case cover sheet need not be [shall not be] served on other parties in the case.