

September 7, 2009

**Rule 16-165a Subcommittee  
Report on the  
Proposed Civil Case Cover Sheet**

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Supreme Court Advisory Committee

1. Background. In the fall of 2008, the Texas Judicial Council approved model cover sheets for civil and family law cases, which can be modified for local use. The proposed cover sheets would be filled out by the plaintiff's lawyer or pro se litigant whenever a civil case is filed in a Texas District Court or County-level Court. There is one form for filing in District Court and another for filing in County Court, and a third form for family law cases, which in some counties can be filed in either the District or County-level court. These forms were presented to the Supreme Court Advisory Committee at its November 21-22, 2008 meeting, but have been slightly revised since that time. A copy of the current version of each form is attached to this e-mail. At the meeting, the Advisory Committee suggested that the three cover sheets be consolidated into one single cover sheet. Pursuant to that suggestion, OCA developed the attached proposed consolidated cover sheet, which it presented to the Texas Judicial Council at its meeting on August 28, 2009. The contents are the same, except for two minor changes.

During its August meeting, the Judicial Council approved a motion to post the proposed consolidated cover sheet that covers both civil and family law cases filed in both District and County-level Courts as a model form, which can be modified for local use, on the Office of Court Administration website for comments. At its next meeting, the Judicial Council will consider whether to: 1) make appropriate changes to the proposed consolidated model cover sheet in accordance with comments received; and 2) give approval to the consolidated model cover sheet.

2. Subcommittee Recommendation. This Supreme Court Advisory Committee subcommittee has been requested to make a proposal only on adopting a Texas Rule of Civil Procedure to require the filing of these forms. The current model cover sheets, and the subsequently proposed consolidated model cover sheet, were developed by the Office of Court Administration based on the cover sheets currently or previously used by several Texas counties, with input from various civil and family judges, district and county clerks, the Supreme Court Advisory Committee and other interested parties. The Subcommittee accepts any model cover sheet approved by the Texas Judicial Council and proposes amending the Texas Rules of Civil Procedure to add a new Rule 78a.

3. When Cover Sheet is to be Filed. The forms themselves say that they should be filed "with the original petition" or, in family law case, when a motion for modification or enforcement of a final order is filed. The Subcommittee discussed with Mary Cowherd, Office of Court Administration Deputy Director and Director of Research and Court Services, whether we should try to capture information on all original claims for affirmative relief regardless of who

files them, including counter-claims filed by the defendant, cross-claims filed by a defendant against third parties, and third party cross-claims filed by the plaintiff in response to counterclaims asserted by the defendant. The requirement of a cover sheet could also apply not just to third-party practice (Rule 38), but also to interpleaders' petitions (Rule 43), intervenors' claims for relief (Rule 60), cross-claims (Rule 97(e)), petitions to take a pre-suit deposition (Rule 202), ancillary proceedings like garnishment, attachment, and sequestration (Rules 592-734), and to petitions relating to home equity loan foreclosures (Rule 735-736). Mary indicated that the Office of Court Administration does not want to try to capture information from any source other than the plaintiff's original petition, as the clerks currently report information only at the filing of the original petition (other than when a motion to modify or enforce is filed in a family law case).

4. Where to Put the Requirement to File a Cover Sheet. Under the Texas Rules of Civil Procedure, the pleadings rules are in Section 4, "Pleadings," which includes Rules 45 through 98. Subsection A is "General," Subsection B is "Pleadings of Plaintiff," and Subsection C is "Pleadings of Defendant." Intervenor are covered by Rules 60 and 61, under the "General" category. The relevant rules are appended to this memo. The Subcommittee suggests that the most logical place to insert the requirement for a civil case cover sheet directed solely to plaintiffs is between Rules 78 and 79.

5. Proposed New Rule. This Subcommittee Proposes the following new Rule 78a:

Rule 78a.

When a party files an original petition, that party must also file 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 of a cover sheet is for administrative purposes and does not affect or determine how the action is commenced in district or county court.

Part of this language is patterned after Rule 47, but transposed to a section dealing solely with the plaintiff's pleadings.

6. Relevant Existing Rules Set Out.

**Rule 45. Definition and System**

Pleadings in the district and county courts shall

(a) be by petition and answer;

(b) consist of a statement in plain and concise language of the plaintiff's cause of action or the defendant's grounds of defense. That an allegation be evidentiary or be of

legal conclusion shall not be grounds for objection when fair notice to the opponent is given by the allegations as a whole;

- (c) contain any other matter which may be required by any law or rule authorizing or regulating any particular action or defense;
- (d) be in writing, on paper measuring approximately 8 1/2 inches by 11 inches, and signed by the party or his attorney, and either the signed original together with any verification or a copy of said original and copy of any such verification shall be filed with the court. The use of recycled paper is strongly encouraged.

When a copy of the signed original is tendered for filing, the party or his attorney filing such copy is required to maintain the signed original for inspection by the court or any party incident to the suit, should a question be raised as to its authenticity.

All pleadings shall be construed so as to do substantial justice.

#### **Rule 46. Petition and Answer; Each One Instrument of Writing**

The original petition, first supplemental petition, second supplemental petition, and every other, shall each be contained in one instrument of writing, and so with the original answer and each of the supplemental answers.

#### **Rule 47. Claims for Relief**

An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain

- (a) a short statement of the cause of action sufficient to give fair notice of the claim involved,
- (b) in all claims for unliquidated damages only the statement that the damages sought are within the jurisdictional limits of the court, and
- (c) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed.

#### **Rule 48. Alternative Claims for Relief**

A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the

insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based upon legal or equitable grounds or both.

#### **Rule 49. Where Several Counts**

Where there are several counts in the petition, and entire damages are given, the verdict or judgment, as the case may be, shall be good, notwithstanding one or more of such counts may be defective.

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#### **Rule 60. Intervenor's Pleadings**

Any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.

#### **Rule 61. Trial: Intervenors: Rules Apply to All Parties**

These rules of pleading shall apply equally, so far as it may be practicable to intervenors and to parties, when more than one, who may plead separately.

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#### **Rule 74. Filing With the Court Defined**

The filing of pleadings, other papers and exhibits as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and time and forthwith transmit them to the office of the clerk.

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### **B. Pleadings of Plaintiff**

#### **Rule 78. Petition; Original and Supplemental; Indorsement**

The pleading of plaintiff shall consist of an original petition, and such supplemental petitions as may be necessary in the course of pleading by the parties to the suit. The original petition and the supplemental petitions shall be indorsed, so as to show their respective positions in the process of pleading, as "original petition," "plaintiff's first supplemental petition," "plaintiff's second supplemental petition," and so on, to be successively numbered, named, and indorsed.

#### **Rule 79. The Petition**

The petition shall state the names of the parties and their residences, if known, together with the contents prescribed in Rule 47 above.

**Rule 80. Plaintiff's Supplemental Petition**

The plaintiff's supplemental petitions may contain special exceptions, general denials, and the allegations of new matter not before alleged by him, in reply to those which have been alleged by the defendant.

**Rule 81. Defensive Matters**

When the defendant sets up a counter claim, the plaintiff may plead thereto under rules prescribed for pleadings of defensive matter by the defendant, so far as applicable. Whenever the defendant is required to plead any matter of defense under oath, the plaintiff shall be required to plead such matters under oath when relied on by him.

**Rule 82. Special Defenses**

The plaintiff need not deny any special matter of defense pleaded by the defendant, but the same shall be regarded as denied unless expressly admitted.