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MEMORANDUM

To: Lisa Hobbs
cc: Justice Nathan Hecht and Appellate Rules Subcommittee Members
From: William V. Dorsaneo, III
Re: Transfer of Appellate Cases
Date: May 2, 2005

Here is a slightly revised draft of the proposed Administrative Rule for cases transferred from one court of appeals to another court of appeals. Because time is short, I have emailed it to all committee members.

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Rule 15. Transfer of Court of Appeal Cases

- 15.1 Authority to Transfer. The Supreme Court may order cases transferred from one court of appeals to another at any time that, in the opinion of the Supreme Court, there is good cause for the transfer.
- 15.2 Jurisdiction When Transferred. The court of appeals to which a case is transferred has jurisdiction of the case without regard to the district in which the case originally was tried and to which it is returnable on appeal.
- 15.3 Place of Decision. The court of appeals to which a case is transferred shall deliver, enter and render the opinions, orders and decisions in a transferred case at the place where the court to which the case is transferred regularly sits as provided by law.
- 15.4 Oral Argument.
 - (a) Except as provided by Subsections (b) and (e), the justices of the court of appeals to which a case is transferred shall hear oral argument, after due notice to the parties or their attorneys, at the place from which the case is originally transferred.
 - (b) If requested by all parties or their attorneys, the oral argument in a transferred case may be heard in the regular place of the court to which the case is transferred.
 - (c) If a case is transferred to a court that regularly sits not more than 35 miles from the place the court from which the case was transferred regularly sits, the court, at the discretion of its chief justice and after notice to the parties or their counsel, may hear oral arguments at the place it regularly sits. For purposes of this subsection, the place where a court of appeals regularly sits is that

specified in Subchapter C, Chapter 22, and the mileage between the places is that determined by the comptroller under Chapter 660.

- (d) The actual and necessary traveling and living expenses of the justices in hearing an oral argument at the place from which the case is transferred shall be paid by the state from funds appropriated for that purpose.
- (e) At the discretion of its chief justice, a court to which a case is transferred may hear oral argument through the use of teleconferencing technology as provided by Section 22.302. The court and the parties or their attorneys may participate in oral argument from any location through the use of teleconferencing technology. The actual and necessary expenses of the court in hearing an oral argument through the use of teleconferencing technology shall be paid by the state from funds appropriated for the transfer of case, as specified in Subsection (d).

15.5 Precedent in Transferred Cases

Alternative One

In cases transferred by the Supreme Court from one court of appeals to another court of appeals, the court of appeals may, when it issues its opinion, and must on motion for rehearing by a party, state whether the outcome would have been different had the court of appeals applied precedent of the court from which the case is transferred.

The Supreme Court may take the following action on a petition for review that alleges error because precedent of the transferor court was not applied to resolve the case:

- (a) grant the petition for review and decide the issues itself,
- (b) set aside the judgment of the court of appeals without reference to the merits and, in the interest of justice, transfer the case to the transferor court for decision on the merits, or
- (c) deny or refuse the petition.

Alternative Two

In cases transferred by the Supreme Court from one court of appeals to another, the court of appeals to which the case is transferred must [consider and give due regard to] [decide the case in accordance with] the view held by the transferor appellate court of Texas law as reflected in the decisions of the transferor court, and state whether the outcome would have been different had the transferee court applied its own or another court of appeals' precedent or view of Texas law.

The Supreme Court may take the following action on a petition for review that alleges error because precedent of the transferor court was applied to resolve the case:

- (a) grant the petition for review and decide the issues itself,
- (b) grant the petition for review, resolve the actual or apparent conflict of decisions and, if necessary, remand the case to the court of appeals for further action.
- (c) deny or refuse the petition.