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JANE BLAND
JUSTICE, FIRST COURT OF APPEALS
1307 SAN JACINTO, 10TH FLOOR
HOUSTON, TEXAS 77002

January 8, 2007

The Honorable Nathan Hecht
The Honorable Scott Brister
Mr. Jody Hughes, Rules Attorney
The Supreme Court of Texas
201 West 14th Street, Room 104
Austin, Texas 78701

Professor William V. Dorsaneo III
Southern Methodist University School of Law
3300 University Blvd.
Dallas, Texas 75205

Re: Proposed Amendment to Texas Rule of Appellate Procedure 39 to include a statement regarding oral argument.

Dear Colleagues:

I write to ask that you refer to the Texas Supreme Court Rules Advisory Committee the following proposed amendment to Texas Rule of Civil Procedure 39.1, as an addition to the current text of the rule (the addition appearing in bold):

39.1 Right to Oral Argument

Except as provided in 39.8, any party who has filed a brief and who has timely requested oral argument may argue the case to the court when the case is called for argument. **Any party may file a statement explaining why oral argument should, or need not, be permitted.**

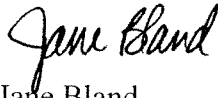
The suggested language is a derivation of Federal Rule of Appellate Procedure 34.1 ("Party's Statement"). The federal rule does not mandate the length of any statement, nor its proper placement in a brief. If the committee or the Court determines that precision would be better, then we could require that it come before the statement of the case and be limited in length. The lack of precision does not seem, however, to have created any trouble on the federal side, with most parties adding a paragraph about oral argument at the outset of their brief.

The purpose of the proposed amendment is to assist in the decision by counsel and by the intermediate courts of appeals to request, or to grant, respectively, oral argument. Rule 39.8 allows courts of appeals to advance a case without oral argument, and the trend in recent years is to grant far fewer of them. I attach a recent report provided by the Office of Court

Administration detailing the trend, compiled at the request of a member of the appellate bar in connection with a discussion at an annual conference last year. Although the actual numbers may be a little off due to timing and recording issues, the trend is steadily downward. When counsel could argue a case as of right, "Oral Argument Requested" or "Oral Argument Waived" on the cover of a brief was enough. As the attachment indicates, it is no longer. A statement about the benefit of argument in a particular case would assist a court of appeals in deciding about argument when the case is calendared and in fitting an appellate court's limited argument resources with those cases most in need of argument (perhaps stabilizing or reversing the current trend).

Thank you for your consideration of this matter. If I can be of further assistance, please do not hesitate to call me at (713) 655-2725.

Yours faithfully,

A handwritten signature in black ink that reads "Jane Bland". The signature is written in a cursive, flowing style.

Jane Bland

cc: Mr. Chip Babcock
Chair, Texas Supreme Court Rules Advisory Committee

The Honorable Sherry Radack
Chief Justice
First Court of Appeals

The Honorable Terry Jennings
Justice
First Court of Appeals

	2001				2002				2003				2004				2005			
	Total Cases Disposed	Oral Arguments	% Oral Arguments	Total Cases Disposed	Oral Arguments	% Oral Arguments	Total Cases Disposed	Oral Arguments	% Oral Arguments	Total Cases Disposed	Oral Arguments	% Oral Arguments	Total Cases Disposed	Oral Arguments	% Oral Arguments	Total Cases Disposed	Oral Arguments	% Oral Arguments	Total Cases Disposed	Oral Arguments
1st/Houston	1,568	135	8.6%	1,470	77	5.2%	1,349	63	4.7%	1,376	47	3.4%	1,315	52	4.0%	1,315	52	4.0%	1,315	52
2nd/Fort Worth	1,070	157	14.7%	1,030	122	11.8%	1,035	138	13.3%	1,022	112	11.0%	1,064	146	13.7%	1,064	146	13.7%	1,064	146
3rd/Austin	820	127	15.5%	817	108	13.2%	798	116	14.5%	714	130	18.2%	789	62	7.9%	789	62	7.9%	789	62
4th/San Antonio	1,059	123	11.6%	963	111	11.5%	979	88	9.0%	966	61	6.3%	1,050	61	5.8%	1,050	61	5.8%	1,050	61
5th/Dallas	2,614	61	2.3%	2,479	180	7.3%	2,679	152	5.7%	2,156	63	2.9%	2,196	277	12.6%	2,196	277	12.6%	2,196	277
6th/Texasarkana	455	107	23.5%	431	86	20.0%	448	85	19.0%	481	59	12.3%	372	42	11.3%	372	42	11.3%	372	42
7th/Amarillo	658	N/A	N/A	623	132	21.2%	570	102	17.9%	547	79	14.4%	608	67	11.0%	608	67	11.0%	608	67
8th/El Paso	559	180	32.2%	564	105	18.6%	531	80	15.1%	563	100	17.8%	525	85	16.2%	525	85	16.2%	525	85
9th/Beaumont	445	38	8.5%	383	25	6.5%	489	13	2.7%	422	29	6.9%	542	30	5.5%	542	30	5.5%	542	30
10th/Waco	477	80	16.8%	347	64	18.4%	384	24	6.3%	387	13	3.4%	602	54	9.0%	602	54	9.0%	602	54
11th/Eastland	479	86	18.0%	457	62	13.6%	420	56	13.3%	393	43	10.9%	407	68	16.7%	407	68	16.7%	407	68
12th/Tyler	374	34	9.1%	413	34	8.2%	415	18	4.3%	402	16	4.0%	396	20	5.1%	396	20	5.1%	396	20
13th/Corpus Christi	917	172	18.8%	882	160	18.1%	1,009	117	11.6%	1,062	76	7.2%	990	11	1.1%	990	11	1.1%	990	11
14th/Houston	1,637	429	26.2%	1,434	180	12.6%	1,323	144	10.9%	1,339	101	7.5%	1,202	94	7.8%	1,202	94	7.8%	1,202	94
Total	12,474	1,729	13.9%	12,293	1,446	11.8%	12,429	1,196	9.6%	11,830	929	7.9%	12,058	1,069	8.9%	12,058	1,069	8.9%	12,058	1,069

Does not
include
dispositions for
Amarillo