MEMORANDUM

TO: Supreme Court Advisory Committee

FROM: Judge David Peeples

RE: Letter rulings by judges—first draft

DATE: May 12, 2011

At our March meeting we discussed the problem of letter rulings. I think there was consensus on three points: (1) Litigants need to know whether a letter ruling *starts* the appellate and plenary-power timetables or *stops* them. (2) The stakes are higher when a letter starts the timetables (expiration of appeal rights and plenary power) than when it stops them (which keeps the case in the trial court). (3) Clarity is important so litigants (and lawyers and judges) can know whether timetables have been affected or not. (On the issue of clarity, I repeat my view that we need bright-line rules, not a fact-specific, language-parsing search for the judge's actual intent, which would be the polar opposite of clarity.) The draft below seeks to implement these goals. For your convenience I have attached my March memo on this matter and also the subcommittee draft of a final judgment rule.

Three other points: I was not able to spend as much time on this as I wanted to; this is a draft for discussion, not a proposal for approval. After our discussion, we might want to discuss again whether the problem of letter rulings is better addressed by case law than by rule. I decided to keep everything in one rule for purposes of discussion; we can decide later whether and how to break this into different parts and put them in different rules.

FORMALITY OF JUDGMENTS AND ORDERS.

(1) Issuance of ruling. Rulings may be announced from the bench, or by formal written order, letter or memorandum, electronic mail, or other reasonable means.

(2) Formal order required. Rulings that start timetables, including final judgments and orders overruling motions for new trial, must be contained in a signed formal written order.

(3) Formal order not required. Rulings that do not start timetables, including orders concerning discovery and scheduling, those granting a new trial or setting aside an earlier order, and other interlocutory rulings, may be contained in a letter or memorandum signed by the judge without a more formal writing.

(4) Enforceability and preservation of error. Whether an order is enforceable and whether it preserves error is governed by other law and does not depend on its formality.

MEMORANDUM

TO: Supreme Court Advisory Committee

FROM: Judge David Peeples

RE: The legal effect of letter rulings by judges

DATE: March 23, 2011

In response to questions raised by Chief Justice Tom Gray, Justice Hecht has asked the committee to study the legal effect of letter rulings by judges. The question is: To what extent should letter rulings from judges have the legal effect of formal orders? (The issue seems not to have arisen with e-mail rulings, which have no ink signature.)

Letter rulings are used primarily in two situations. First, after an oral hearing judges occasionally take matters under advisement and later announce their rulings by letter. Second, when a matter is decided by submission without an oral hearing, judges will often notify litigants of the ruling by letter. These letter rulings can raise several questions:

1. **Finality and appealability.** Is the letter ruling itself a final and appealable order (assuming it disposes of all parties and issues or is a subject for interlocutory appeal)? That is, does the letter *start* the timetables?

2. **Effectiveness.** Is it effective to grant a new trial or to set aside an earlier final order on which the timetables have begun to run? That is, does the letter *stop* the timetables that would otherwise keep running?

3. **Enforceability.** Is the letter ruling enforceable as an order of the court (e.g., orders compelling discovery for purposes of Rule 215, temporary orders in a family law case)? Letter rulings would seem to be at least as enforceable as oral rulings from the bench.

4. **Preservation of error.** Is it a sufficient ruling of the court to preserve error?

In our discussion of this matter, I suggest that we keep several thoughts in mind.

1. **Ain't broke, don't fix?** Are there enough recurring problems with letter rulings to justify a rule?

2. **Draft for the most common situation.** If we draft a rule, we should draft for the most common and usual situations. I submit that in most instances judges do not

intend that letter rulings will *be* the final and appealable order. Even when judges intend to grant complete/final relief in a letter, they almost always envision that there will eventually be a formal, signed judgment or order.

3. **Interlocutory letter rulings are common.** Many letter rulings are interlocutory anyway, and issues of finality and appealability will not arise. And frequently there is no intent to write up a formal order ever; all the parties need is the judge's decision, and there will never be a formal typewritten order in the form of a pleading. Discovery is probably the most common example of this.

4. **Clarity and ease of application.** Every rule of procedure should aim for clarity and ease of application. This means we should avoid inquiries into the judge's subjective intent. The appellate cases usually focus on such language as, *I will grant the motion, I am denying the motion, The motion for new trial is granted, I ask Attorney Jones to prepare and circulate an order,* etc.

5. **Easy to create finality.** Remember that when judges really intend finality, they can simply put clear finality language in their letters. The *Lehmann* language comes to mind.

6. **E-mail.** As time goes by will letter rulings gradually vanish, as e-mail displaces all these hard-copy letters? Does e-mail's superiority to hard copy (quicker and easier) explain the dwindling number of these cases?

Several cases on this subject are collected in *Perdue v. Patten Corp.,* 142 S.W.3d 596, 600-603 (Tex. App.—Austin 2004, no pet.). Excerpts from *Perdue* are attached.

PROPOSED REVISED RULE 300
January 14, 2010

Rule 300. Finality of Judgment or Order.

(a) Applicability. This rule governs finality for purposes of appeal and plenary power.

(b) Final judgment. At the conclusion of the litigation, the court shall render a final judgment or order by disposing of all claims between all parties.

(c) Disposition of all claims and parties. A judgment or order is final if it:

(1) specifically disposes of all claims between all parties, by itself or in combination with earlier judgments and orders, or

(2) states with unmistakable clarity, in language placed immediately above or adjacent to the judge's signature, that it finally disposes of all parties and all claims and is appealable.

(d) Presumption after conventional trial. A judgment rendered after a conventional trial on the merits that does not comply with section (c) is nevertheless presumed to dispose of all claims between all parties and is presumed to be final and appealable.

COMMENT

Rule 300 codifies the holdings stated in *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191 (Tex. 2001). It is not intended to apply to when there are special rules of finality, such as probate and receivership. *See, e.g.* De Ayala v. Mackie, 193 S.W.3d 575, 577-80 (Tex. 2006) (probate orders); Huston v. Federal Deposit Ins. Corp., 800 S.W.2d 845, 847 (Tex. 1990). *See also* TEX. FAM. CODE § 105.001 (temporary orders before final order);