HERRING & IRWIN, L.L.P.
701 BRAZOS STREET, SUITE 650
AUSTIN, TEXAS 78701

TEL: 512-320-0665 **FAX: 512-320-0931**

June 9, 2009

Mr. Pete Schenkkan
Graves, Dougherty, Hearon & Moody, P.C.
401 Congress Avenue, Ste 2200
Austin, Texas 78701

Dear Pete:

Thanks for calling and emailing me concerning the proposed amendments to Tex. R. Civ. P. 191.3(e) and 215. I will try to address your questions as I understand them and as reflected in my notes, but if I omit a point of interest, please call or email me. While the State Bar Board of Directors and the Legal Services to the Poor in Civil Matters Committee have jointly requested these rule amendments,[1] I obviously offer only my personal views.

Introduction

The basic proposal is to amend the discovery sanctions rules, Rules 191.3(e) and 215, to create an explicit option for monetary sanctions devoted to legal services to the poor. At present, monetary sanctions in the form of a penalty "paid into court"[2] simply flow into the county's general fund—not benefitting directly either the courts or legal services. The intent of these amendments is to create an explicit option so that in appropriate cases, trial courts may issue monetary sanctions awards that will benefit legal services to the poor. (Amending Rule 215 also catches Rule 13, the groundless pleadings/motions rule, which expressly authorizes sanctions under Rule 215.)

The proposed amendments are shown in underlining below:

[1] I have attached as Exhibit 1 a copy of the resolution passed by the Legal Services to the Poor in Civil Matters Committee, approved by the Bar Board.

[2] Section 10.004(c)(2) of the Texas Civil Practice & Remedies Code authorizes as one sanction option "an order to pay a penalty into court." Thus, Rule 191.3(e), which currently authorizes sanctions under Chapter 10, also permits that type of monetary penalty.

Rule 191.3(e): "*Sanctions.* If the certification is false without substantial justification, the court may, upon motion or its own initiative, impose upon the person who made the certification, or the party on whose behalf the request, notice, response, or objection was made, or both, an appropriate sanction as for a frivolous pleading or motion under Chapter 10 of the Civil Practice and Remedies Code, or impose a monetary sanction to be paid into the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to the indigent."

Rule 215.2(b)(2): ". . . an order charging all or any portion of the expenses of discovery or taxable court costs or both against the disobedient party or the attorney advising him, or requiring such party or attorney to pay a monetary sanction into the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to the indigent . . . ."[3]

You know the general policy reasons for the proposed changes: The national economic downturn has severely damaged Texas legal services providers. The interest rate drop has drastically reduced IOLTA revenue. Contributions from charitable donors also have declined substantially. On the other hand, unemployment numbers have risen dramatically, along with the number of newly impoverished families threatened with foreclosure and homelessness and an expanding array of related legal needs.

Specific Questions

Here are my answers to your specific questions:

Question #1: How frequent are monetary sanction awards and how much money would this proposal raise?

Answers:

1. Of course no one can predict with any specificity how much money these changes would raise for legal services. On the other hand, in the shoestring-budget world of legal service providers, any amount helps. And as you know, the drastic decrease in interest rates has reduced IOLTA revenues from an estimated $20 million in 2007 to $1.5 million this year.

[3] Note that arguably Rule 215.2(b) already permits such a monetary award directed to legal services. In the instances specified in that introductory paragraph, that provision broadly authorizes "such orders in regard to the failure as are just, and among others the following . . . ." We have suggested adding the proposed language to Rule 215.2(b)(2) for two reasons: (1) to make clear and explicit the legal-services sanctions option; and (2) to permit that option under Rule 215.3, which addresses discovery abuse sanctions in broader terms and which cross-references several of the sanctions options under the subdivisions of Rule 215.2(b) but does not refer to that introductory paragraph of Rule 215.2(b).

2. Sanctions statistics are generally unavailable in Texas. Reported appellate decisions obviously reflect only a small percentage of the cases decided in trial courts. However, we know that trial courts issue many sanctions orders. A general Westlaw search on sanctions topics produces over 300 Texas appellate decisions for 2008 alone.[4] State and federal appellate court decisions have reported instances in which trial courts have awarded substantial monetary sanctions, sometimes a million dollars or more.[5]

   Moreover, even if statistics on the number of sanctions imposed under the current rules were available, that would not tell us what trial courts might do if this new option becomes available. (Two judges on our Legal Services to the Poor in Civil Matters Committee have volunteered to discuss the proposed rule amendment at the judicial conference in August.) Because the existing option of a penalty paid into court simply transfers money to the county general fund, and does not directly benefit the court system, much less directly benefit legal services to the poor, the new proposed option may be more attractive to some judges in some settings. Most monetary sanctions awards are compensatory awards of attorney's fees, and undoubtedly the proposed rule amendments will not change that fact. However, having this explicit option to benefit legal services may serve as a useful and desirable alternative in some cases.

Question #2: Does the Texas Supreme Court have authority to adopt a rule that would permit a trial court to impose a monetary sanction to benefit legal services to the poor, and more specifically, to require a payment to a specific state fund?

---

[4] The large number of reported appellate decisions concerning sanctions is not surprising—even though the Texas Supreme Court handed down its landmark sanctions decision in *TransAmerican v. Powell*, 811 S.W.2d 917 (Tex. 1991), almost eighteen years ago. The *TransAmerican* standards, quite properly in my view, speak in general terms—sanctions must be "just"; a "direct relationship" must exist between the offensive conduct and the sanction imposed"; just sanctions must not be "excessive"; a sanction must be "no more severe than necessary to satisfy its legitimate purposes"; etc. Yet appellate review often turns on specific facts.

[5] *See, e.g., Low v. Henry*, 221 S.W.3d 609 (Tex. 2007) (reversing and remanding $50,000 in penalty sanctions awarded under §10.004(c)(2)); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S. Ct. 2123 (1991) (affirming an inherent-power sanctions award of almost $1 million); *Cass v. Stephens*, 156 S.W.3d 38 (Tex. App.—El Paso 2004, pet. denied) (affirming a $978,492 sanctions award); *Kugle v. DaimlerChrysler Corp.*, 88 S.W.3d 355 (Tex. App.—San Antonio 2002, pet. denied) (affirming a sanction of more than $865,000); *FDIC v. Hurwitz*, 384 F. Supp. 2d 1039 (S.D. Tex. 2005) (imposing sanctions of $72,255,147.51), *rev'd in part and remanded, FDIC v. MAXXAM, Inc.*, 523 F.3d 566 (5th Cir. 2008); *Compaq Computer Corp. v. Ergonome Inc.*, 387 F.3d 403 (5th Cir. 2004) (sanctions of $2,765,026.90); *Crowe v. Smith*, 151 F.3d 217 (5th Cir. 1998) (reversing $5.075 million in sanctions); *Lubrizol Corp. v. Exxon Corp.*, 957 F.2d 1302 (5th Cir. 1992) ($2,424,462 in inherent-power sanctions); *American Cash Card Corp. v. AT&T Corp.*, 184 F.R.D. 521 (S.D.N.Y. 1999), *aff'd*, 210 F.3d 354 (2d Cir. 2000) ($108 million sanctions default judgment); *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 534 F. Supp. 2d 224 (D. Mass. 2008) ($10 million inherent-power sanction); *cf.* GREGORY JOSEPH, SANCTIONS: THE FEDERAL LAW OF LITIGATION ABUSE §3(B), at 1-16 (4th ed. 2008) ("Many sanctions awards [are] in excess of $1 million.").

Answers:

1. I think that the starting point is simply to note the supreme court's broad rulemaking authority, which exists under both the Texas Constitution and Texas statutes.[6] The court has "full rulemaking power," except that the rules must not "abridge, enlarge, or modify the substantive rights of a litigant."[7] An important practical point is that the rules and amendments "remain in effect unless and until disapproved by the legislature."[8] To implement that "full rulemaking power in civil actions," the Texas Government Code further provides that a rule adopted "repeals all conflicting laws and parts of laws governing practice and procedure in civil actions," though not substantive law.[9] Thus, the rules generally have the "same force and effect as statutes."[10]

   The Texas Supreme Court has endorsed the use of "creative sanction[s]." *See, e.g., Braden v. Downey*, 811 S.W.2d 922, 926, 930 (Tex. 1991) ("[W] e do not criticize this type of creative sanction [which ordered Braden's attorney to perform 10 hours of community service for Child Protective Services Agency of Harris County] . . . .").

2. You asked if the supreme court has authority to adopt a rule permitting a monetary sanction to be paid to a specific state fund. The court already has done that—in existing Rule 191.3(e). In 1998 the court adopted the discovery-certification rule, Rule 191.3.[11] Rule 191.3(e) provides for sanctions for certain false certifications: "an appropriate sanction as for a frivolous pleading or motion under Chapter 10 of the Civil Practice and Remedies Code." The supreme court thus incorporated by reference that particular statutory sanction—and did so simply by adopting the rule, without express underlying statutory authorization for doing so (other than the general constitutional and statutory authority discussed above). Section 10.004(c)(2), in turn, provides for a sanction (among others) in the form of an order to "pay a penalty into court." As explained below, such a penalty goes into the general fund of the county. Thus, the supreme court adopted the new sanction rule that permits a trial court to impose a sanction payable to a government fund, and the court did so under its general constitutional and statutory rulemaking authority.

---

[6] See generally TEX. CONST. art. V, § 31 (stating that the supreme court shall promulgate rules of civil procedure "not inconsistent with the laws of the state"); Tex. Gov't Code § 22.004.

[7] Tex. Gov't Code § 22.004(a).

[8] Tex. Gov't Code § 22.004(b).

[9] Tex. Gov't Code § 22.004(c); *see also* TEX. CONST. art. V, § 31(b) (providing that the supreme court shall promulgate rules of civil procedure "not inconsistent with the laws of the state").

[10] *In re City of Georgetown*, 53 S.W.3d 328, 332 (Tex. 2001).

[11] Rule 191.3 is based on Fed. R. Civ. P. 26(g).

(You asked about why penalties paid into court flow into the general fund of the county. David Escamilla, County Attorney of Travis County, has explained the fund transfer at some length. Various provisions in the Texas Local Government Code establish "salary funds" into which certain fees, fines, and similar monies flow, but the Code also permits counties to automatically transfer such monies into the county's general fund, which apparently is the practice in at least the large urban counties in Texas. See Tex. Loc. Gov't Code §§113.021 (". . . (a) The fees, commissions, funds, and other money belonging to a county shall be deposited with the county treasurer by the officer who collects the money. . . . (b) The county treasurer shall deposit the money in the county depository in a special fund to the credit of the officer who collected the money. If the money is fees, commissions, or other compensation collected by an officer who is paid on a salary basis, the appropriate special fund is the applicable salary fund created under Chapter 154."), 154.023(a) ("A salary fund shall be created in the county to be known as the "officers' salary fund of _____ County, Texas."); 154.042 ("(a) A salary fund shall be created in the county for each district, county, and precinct officer to be known as the '(officer's title) salary fund of (name of county) County, Texas.' The purpose of the fund is to pay: (1) the salary of the officer; (2) the salaries of the officer's deputies, assistants, clerks, stenographers, and investigators; and (3) authorized and approved expenses of the office of the officer."); 154.007 ("(a) At its first regular meeting in the first month of each fiscal year, the commissioners court may direct, by order entered in its minutes, that all money that otherwise would be deposited in a salary fund created under this chapter shall be deposited in the general fund of the county. (b) In a county in which the order is adopted, a reference in this chapter to a salary fund means the general fund.").)

3. The basic difference in the proposed rule amendments is that the monetary sanction would flow to a different government fund from the general fund of the county—that is, the proposed rule would create a monetary sanctions option directing the funds to the "basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to the indigent." That particular fund was selected principally because it is the same fund that *pro hac vice* fees go into, as provided in Section 82.0361 of the Texas Government Code, to fund such legal services. Thus, the supreme court already is familiar with the operations and oversight of that fund.

4. On the other hand, specifying that particular fund—or specifying any *government* fund—is certainly not the only possible approach. For example, you might consider these other options, which would have essentially the same result in directing monetary awards to benefit legal services to the poor:

. . . to pay a monetary sum to a nonprofit provider of legal services to the poor in civil matters.

. . . to pay a monetary sum to a nonprofit entity selected by the trial court from a list compiled by the State Bar of Texas of providers of legal services to the poor in civil matters.

. . . to pay a monetary sum to the State Bar of Texas[12] for use in providing legal services to the poor in civil matters.

5. Separate from the specific statutory and rule bases for sanctions is the inherent power of courts to sanction bad faith conduct in litigation. That inherent power to sanction is "staggeringly broad."[13] Because our issues relate to a specific proposed rule, I will not venture an extended discussion here.[14]

6. As noted above, Rule 215.2(b) broadly permits a trial court to make "such orders . . . as are just . . . ." For example, courts have construed that language to permit "fines."[15] The groundless-pleadings rule, Rule 13, cross-references that rule, authorizing "an appropriate sanction available under Rule 215 . . . ." Those broad authorizations would appear to permit a trial

---

[12] Note, however, that the State Bar is a "public corporation and an administrative agency of the judicial department of government." Tex. Gov't Code §81.011(a).

[13] GREGORY P. JOSEPH, SANCTIONS: THE FEDERAL LAW OF LITIGATION ABUSE §2(E), at 1-50 (4th ed. 2008).

[14] See generally *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S. Ct 2123 (1991) (recognizing the courts' "inherent power to impose sanctions for . . . bad faith-conduct" in litigation; stating that a "primary aspect of [inherent power] discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process"; and stating generally that "[i]t has long been understood that '[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution,' powers 'which cannot be dispensed with in a Court, because they are necessary to the exercise of all others.'" (quoting from *United States v. Hudson*, 7 Cranch 32, 34 3 L.Ed. 259 (1812)); *In re Bennett*, 960 S.W.2d 35, 40 (Tex. 1997) ("Courts possess inherent power to discipline an attorney's behavior. *See Lawrence v. Kohl*, 853 S.W.2d 697, 700 (Tex.App.-Houston [1st Dist.] 1993, no writ) (holding that trial courts have the power to sanction parties for bad faith abuse of the judicial process not covered by rule or statute); *Kutch v. Del Mar College*, 831 S.W.2d 506, 509-10 (Tex.App.-Corpus Christi 1992, no writ) (same); *see also Public Util. Comm'n v. Cofer*, 754 S.W.2d 121, 124 (Tex.1988) (recognizing the inherent power of courts to ensure an adversarial proceeding); *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398-99 (Tex.1979) (recognizing that a court has inherent power "which it may call upon to aid in the exercise of its jurisdiction, in the administration of justice, and in the preservation of its independence and integrity"). A court has the inherent power to impose sanctions on its own motion in an appropriate case."); *In re A.T.M.*, 2009 WL 1492832, at *1 (Tex. App.—Tyler 2009, no pet. h.) ("Under its inherent power, the trial court may require a party to pay attorney's fees or order other monetary sanctions such as heavy fines.").

[15] *See, e.g., Clark v. Bres*, 217 S.W.3d 501, 515 n.2 (Tex. App.—Houston [14th Dist.] 2006, pet. denied); *CitiBank (South Dakota) N.A. v. Hanke*, 2006 WL 952538 (Tex. App.—Austin 2006, no pet.); *cf. Owens-Corning Fiberglas Corp. v. Caldwell*, 807 S.W.2d 413 (Tex. App.—Houston [1st Dist.] 1991,) (holding that a monetary fine imposed under Rule 215(2)(b) would have been permissible under the broad authorization of "such orders . . . as are just," but was not permissible under Rule 215(3), which did not contain that broad authorizing language).

court to impose a monetary sanction directed to a legal services fund, but my research has not identified a specific decision in which a court has done so. However, courts have relied on such broad sanctions rules to impose mandatory CLE and pro bono performance.[16]

Question #3: Should the Texas Supreme Court establish standards for trial courts to use in deciding the amount of penalty sanctions and/or how to divide total sanctions?

Answers:

1. I think that the Texas Supreme Court has provided ample and sufficient guidance in its decisions in *TransAmerican* and *Low*, and should not attempt to specify in the rules how a court might divide or allocate various types of sanctions. Both of those decisions identify general factors for trial courts to consider in addressing various types of sanctions awards in different contexts (*TransAmerican*, discovery sanctions; *Low*, Chapter 10 sanctions). Not surprisingly, disputed sanctions hearings in trial courts and appellate challenges will continue. Nonetheless, I think that the system works pretty well now. Occasional abuses occur in sanctions practice, just as in other areas of the law; however, after *TransAmerican* and *Low*, counsel and courts have substantial analytical tools to address the propriety of sanctions. Could the supreme court provide further specification for how to divide sanctions? Yes—but I think that should be through decisional law and not in a rule. *Cf. Low v. Henry*, 221 S.W.3d 609, 620 n.5 (Tex. 2007) (quoting the "nonexclusive list" of factors helpful in guiding the "***often intangible process***" of determining penalty sanctions). Keep in mind that the broad language in Rule 215.2 and Chapter 10 authorize a wide variety of sanctions, including (explicitly or implicitly): reprimands; mandatory CLE; penalties paid into court; fines; attorney's fees; expenses; orders precluding the introduction of evidence; orders of dismissal; default judgment; etc.[17] Attempting to specify

---

[16] *See, e.g., Clark v. Bres*, 217 S.W.3d 501 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (affirming a sanction that required a lawyer to attend eight hours of ethics CLE); GREGORY P. JOSEPH, SANCTIONS: THE FEDERAL LAW OF LITIGATION ABUSE §16(B)(6), at 2-246 (4th ed. 2008) ("Just as a court may penalize a lawyer financially for a violation of the Rule, it can achieve the same effect by ordering the lawyer to spend time for which he or she could otherwise be charging clients in the representation of pro bono litigants. See *Bleckner v. General Acc. Ins. Co. of Am.*, 713 F. Supp. 642, 653 (S.D.N.Y. 1989) . . . ."); AMERICAN BAR ASSOCIATION, SECTION OF LITIGATION, STANDARDS AND GUIDELINES FOR PRACTICE UNDER RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE §L(1)-(2), 121 F.R.D. 101 (1988) ("1. Generally. The district court is vested with broad discretion to fashion an appropriate sanction for violation of Rule 11. . . . 2. Types of Sanctions. Among the types of sanctions that the court, in its discretion, may choose are: . . . b. mandatory continuing legal education; c. a fine . . . .").

[17] *See, e.g.*, Tex. R. Civ. P. 215.2 (authorizing "orders . . . as are just," including orders disallowing further discovery, orders charging discovery expenses or taxable court costs or both, orders that matters or facts be "taken to be established," orders refusing to permit a party to support or oppose designated claims or defenses or prohibiting the introduction of certain evidence, and orders striking pleadings or staying proceedings or dismissing an action or rendering default judgment); Tex. Gov't Code §§10.002(c) (authorizing an award of reasonable expenses and

how to "divide" sanctions among the available options seems to me to be inadvisable.

2. In *TransAmerican* and its progeny, the supreme court has identified multiple purposes for sanctions: remedying the prejudice to the innocent party; securing compliance with discovery requirements; deterring discovery abuse; punishing violators.[18]

   In *Low* the court identified a non-exclusive list of some thirteen "helpful" factors for a trial court to consider in determining penalty sanctions under Chapter 10.[19]

   Some of the factors quoted in *Low* focus on the conduct and status of the offended party, or on the sanction goals or the burdens on the court system. For example: "e. the reasonableness and necessity of the out-of-pocket expenses incurred by the offended person as a result of the misconduct; f. the nature and extent of prejudice, apart from out-of-pocket expenses, suffered by the offended person as a result of the misconduct; . . . j. the impact of the sanction on the offended party, including the offended person's need for compensation; k. the relative magnitude of sanction necessary to achieve the goal or goals of the sanction; l. burdens on the court system attributable to the misconduct, including consumption of judicial time and incurrence of juror fees and other court costs; . . . n. the degree to which the offended person's own behavior caused the expenses for which recovery is sought . . . ." *Id.* at 620 n.5.

---

attorney's fees incurred in presenting or opposing the motion, and "if no due diligence is shown," an award of "all costs for inconvenience, harassment, and out-of-pocket expenses incurred or caused by the subject litigation"), 10.004(c) (authorizing sanctions that "include" directives to "perform, or refrain from performing, an act," an order to pay a penalty into court, and an order to pay reasonable expenses, including attorney's fees, caused by the filing of the offending pleading or motion); AMERICAN BAR ASSOCIATION, SECTION OF LITIGATION, STANDARDS AND GUIDELINES FOR PRACTICE UNDER RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE §L(2), 121 F.R.D. 101 (1988) (identifying twelve categories of permissible sanctions); GREGORY P. JOSEPH, SANCTIONS: THE FEDERAL LAW OF LITIGATION ABUSE §16(B)(3), at 2-235, 2-238, 2-239 (4th ed. 2008) (identifying sixteen categories of sanctions "among the types of sanctions" that a court may impose under Rule 11, and noting that "[t]here are few limits placed on judicial creativity in fashioning an appropriate sanction").

[18] *See, e.g., Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 849 (Tex. 1992) ("The legitimate purposes of discovery sanctions are threefold: 1) to secure compliance with discovery rules; 2) to deter other litigants from similar misconduct; and 3) to punish violators. *Bodnow Corp. v. City of Hondo*, 721 S.W.2d 839, 840 (Tex.1986).").

[19] "Although we do not require a trial court to address all of the factors listed in the report to explain the basis of a monetary sanction under Chapter 10, it should consider relevant factors in assessing the amount of the sanction." *Low*, 221 S.W.3d at 621-22. Interestingly, the court in *Low* quoted Justice Gonzalez's concurring opinion in *TransAmerican*. Justice Gonzalez, in turn, described the factors quoted as being "standards and guidelines to be considered when determining whether to assess sanctions." 811 S.W.2d at 920. The standards he quoted were from the ABA Section of Litigation "Standards and Guidelines for Practice Under Rule 11 of the Federal Rules of Civil Procedure." See 121 F.R.D. 101. The specific factors he quoted were from Section L(6), which addresses "mitigating and aggravating factors" in determining an "appropriate sanction." *Id.* at 125.

Thus, in some instances a court presumably might decide not to award compensatory monetary sums to the offended party—or might decide to focus more on the punitive and deterrence purposes rather than on the compensatory purpose.

In some other instances, even when sanctionable conduct occurs, compensatory attorney's fees may nonetheless be inappropriate as a sanction.[20]

Thanks for considering my comments, and please call if I can be of any assistance.

Sincerely,

Chuck Herring

c: Chip Babcock

[20] *Cf. Clark v. Bres*, 217 S.W.3d 501, 515 n.2 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) ("In this case, a sanction limited to the attorney's fees incurred by Ms. Bres, the innocent party, would have been meaningless since the attorney's fees she incurred as a direct result of Betty Clark's sanctionable conduct were minimal and would not have accomplished any of the purposes for discovery sanctions."); GREGORY P. JOSEPH, SANCTIONS: THE FEDERAL LAW OF LITIGATION ABUSE §16(B)(17)(a)(ii), at 2-267 (4th ed. 2008) ("A *pro se* litigant who is also a lawyer is not entitled to an award of attorney's fees that is calculated as though the litigant were represented by counsel.").

APPROVED BY THE STATE BAR BOARD OF DIRECTORS
APRIL 17, 2009

RESOLUTION OF THE STATE BAR OF TEXAS
LEGAL SERVICES TO THE POOR IN CIVIL MATTERS STANDING COMMITTEE

WHEREAS, the Legal Services to the Poor in Civil Matters Standing Committee's purpose is to concern itself with the delivery of legal services to persons who are unable to afford counsel to represent themselves in civil matters; and

WHEREAS, declining interest rates have drastically depleted revenue from interest on lawyers' trust accounts (IOLTA), which is a major source of funding for civil legal services in Texas, and that loss has created a funding crisis for civil legal services to the poor, and

WHEREAS, the courts currently have broad authority under the Texas Rules of Civil Procedure and the Texas Civil Practice & Remedies Code to impose monetary sanctions related to discovery abuse and frivolous pleadings, and

WHEREAS, Rules 13, 191.3, and 215 of the Texas Rules of Civil Procedure collectively address both discovery sanctions and frivolous-pleading sanctions, with Rule 13 incorporating Rule 215 sanctions, and

WHEREAS, Rules 191.3 and 215 may be amended to specifically mention a monetary sanctions option permitting an award to be paid into "the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to the indigent," and

WHEREAS, such amendment could produce significant awards in some cases that would benefit the provision of legal services to the poor, and

WHEREAS, the above-quoted language already appears in the Texas Government Code's pro hac vice fee provision, Section 82.0361,

THEREFORE BE IT RESOLVED that the Legal Services to the Poor in Civil Matters Standing Committee respectfully requests that the Supreme Court of Texas and the Court's Advisory Committee consider amending Rules 191.3 and 215 of the Texas Rules of Civil Procedure to specify a new option for monetary sanctions permitting an award to be paid into "the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to the indigent" or some similar option that would benefit the provision of civil legal services for the poor in Texas.

EXHIBIT 1