

Proposed Texas Rule of Judicial Administration, Rule 14 (changes since 10/11/15 meeting are tracked)

[Rule 14 is currently blank, as it was repealed by Tex. Sup. Ct. Misc. Docket No. 14-9168]

Transition language for order giving final approval to rule:

Rule of Judicial Administration 14 governs all cases to which Rule 14.1 applies that are filed or otherwise pending in the district court on or after the effective date of this rule. For cases that were filed before the effective date, including any that are remanded to the district court on or after that date, the attorney general may file a petition to convene under Rule 14.2(b) within 60 days after the date the district court acquires jurisdiction over the case.

14.1 Applicability

This rule applies to cases filed in a district court in this state in which the State of Texas or a Texas state officer or agency is a defendant in a claim that:

- (a) challenges the finances or operations of this state's public school system; or
- (b) involves the apportionment of districts for the house of representatives, the senate, the State Board of Education, or the United States Congress, or state judicial districts.

14.2 Procedure for Petition to Convene a Special Three-Judge District Court in Applicable Cases

- (a) The attorney general may petition the chief justice of the Supreme Court to convene a special three-judge district court in any case to which Rule 14.1 applies.
- (b) A petition under this rule must be filed with the Supreme Court clerk within 60 days¹ after the State of Texas or a Texas state officer or agency is first served with a petition or intervenes as a

¹ The law is silent regarding the time of filing a petition to convene the three-judge court, but it recognizes the Supreme Court's authority to adopt rules for the procedures and operation of the three-judge court, which in the subcommittee's view includes establishing filing deadlines. See Tex. Gov't Code §§ 22A.001, 22A.004(b).

The issue was discussed on the House floor, and the sponsor confirmed his understanding that setting deadlines would be within the Supreme Court's rulemaking authority:

"MOODY: So the attorney general could actually go through some of these litigations and then, as a delay tactic, wait to ask for this and then bring in a three-judge panel as requested of the Supreme Court justice. So it cuts both ways, there's no time requirement here.

"SCHOFIELD: The bill allows the Supreme Court, as they do in many of the bills we send them regarding litigation, to set the rules under which both the three-judge panel would operate and under which any appeal from the three-judge panel would operate up until the point that the timelines for litigation would be included in that rule.

"MOODY: But up until that point at which we have a three-judge panel, there's nothing here that requires the attorney general to request this option within a certain amount of time of the petition being filed.

"SCHOFIELD: Again, I anticipate without being able to—I won't, I'm sure, be sitting on the Supreme Court's committee that will draft the rules, but I would assume that the timetable for litigation would be included in the rules. That would be left up to the Supreme Court to determine."

H.J. of Tex., 84th Leg., R.S 3338-39 (2015).

defendant in a case alleging a claim to which Rule 14.1 applies. A copy of the Petition to Convene must be filed with the district court in which the original case is pending and service of the Petition to Convene must be made on all parties in the original case.

(c) Upon the filing of the petition under this rule, all proceedings in the original district court are stayed until the chief justice acts on the petition.

14.3 Form of Petition to Convene

(a) Notwithstanding other rules governing original proceedings in the Supreme Court, the attorney general may file with the Supreme Court clerk a "Petition to Convene a Special Three-Judge District Court."

(b) The Petition to Convene must contain:

- (1) the cause number, style, district court, name of the judge, and name of the clerk of the court in which the original case is pending;
- (2) the names of the parties to the original case, together with the names, addresses, telephone numbers, fax numbers, and email addresses of all counsel;
- (3) the date the State of Texas or a Texas state officer or agency was first served with a petition alleging a claim to which this rule applies;
- (4) a summary of the dispute and the claims made against the State of Texas or a Texas state officer or agency in the original case; and
- (5) any argument that a claim made in the original case qualifies under Rule 14.1.

(c) The attorney general must attach as exhibits to the Petition to Convene all pleadings on file in the original case and the docket sheet. The attorney general may attach to the Petition to Convene such other exhibits as are relevant under the standards of this rule.

(d) The Petition to Convene must include a certificate of service on the district court in which the original case is pending and all parties to the original case.

14.4 Response to Petition to Convene

Any party to the original case wishing to respond to a Petition to Convene filed by the attorney general under this rule may file a Response with the Supreme Court clerk within 10 days of the filing of the Petition to Convene.

14.5 Creation of Special Three-Judge District Court

(a) Within a reasonable time after receipt of a Petition to Convene and any responses filed under this Rule, the chief justice will consider the filings. If the Petition to Convene establishes the applicability of this rule, the chief justice must grant the petition.

(b) The order granting a Petition to Convene under this rule will include:

- (1) an order transferring the original case to a special three-judge district court; and

- (2) the appointment of three persons to serve on the court:
 - (A) the district judge of the judicial district to which the original case was assigned;
 - (B) one district judge who serves a judicial district in a different county from the judicial district to which the original case was assigned; and
 - (C) one justice of a court of appeals who serves a court of appeals district:
 - (1) different from the one in which the original case was assigned; and
 - (2) different from the one in which the district judge appointed under Rule 14.5(b)(2)(B) sits.

(c) A judge or justice appointed under Rule 14.5(b)(2)(B) or (C) must have been elected to that office and may not be serving an appointed term of office.

Rule 14.6 Rules Governing Proceedings in a Special Three-Judge District Court

(a) Except as provided by this rule, the Texas Rules of Civil Procedure and all other statutes and rules applicable to civil litigation in a district court in this state apply to proceedings before a special three-judge district court.

(b) A special three-judge district court convened under this rule will conduct all hearings **and trial** in the original district court and may use the courtroom, other facilities, and administrative support of the district court.

~~(c) The Office of Court Administration of the Texas Judicial System shall pay the travel expenses and other incidental costs related to convening a special three-judge district court under this rule.²~~

14.7 Actions by Judge or Justice Serving on a Special Three-Judge District Court

(a) With the unanimous consent of the three judges sitting on a special three-judge district court, a judge or justice of the court may:

- (1) independently conduct pretrial proceedings; and
- (2) sign interlocutory orders before trial.

(b) A judge or justice of a special three-judge district court may not independently order a temporary restraining order, temporary injunction, or an order that finally disposes of a claim before the court.

(c) Any independent action taken by one judge or justice of a special three-judge district court related to a claim before the court may be reconsidered by the entire court at any time before final judgment.

² The House sponsor of the three-judge district court law intends to introduce legislation next session to remove the statutory requirement that OCA pay these costs. Because it is not necessary to address the payment of these costs by rule, and given that payment responsibility may change, the subcommittee no longer recommends including part (c).

(d) The judges and justice of a special three-judge district court must decide among them who will serve as a presiding judge over trial or over contested hearings not conducted by a single judge or justice under Rule 14.7(a). A presiding judge will be named by a special three-judge district court before the commencement of a trial or hearing in the matter and may not be changed during the trial or hearing.

14.8 Transfer and Consolidation of Related Cases

(a) "Related case" means any case in which the State of Texas or a Texas state officer or agency is a defendant that is pending in any district court or other court in this state and arises from the same nucleus of operative facts as the claim before a special three-judge district court convened under this Rule, regardless of the legal claims or causes of action asserted in the related case.

(b) Any party to a case assigned to a special three-judge district court under Rule 14.5 may file a "Motion to Transfer Related Case" with the special three-judge district court within 45 days after (1) the State of Texas or a Texas state officer or agency is first served with a petition in a related case, or (2) the order granting a petition to convene a special three-judge district court.

(c) Upon the filing of a Motion to Transfer Related Case under this rule, the special three-judge district court or the district court in which the allegedly related case is pending may stay all or part of any court proceedings pending a ruling on the motion by the special three-judge district court.

(d) A Motion to Transfer Related Case must be in writing and must contain:

- (1) the cause number, style, court, name of the judge, and name of the clerk of the court in which the allegedly related case is pending;
- (2) the names of the parties to the allegedly related case, together with the names, addresses, telephone numbers, fax numbers, and email addresses of all counsel;
- (3) a statement of the operative facts involved in the case before the special three-judge district court and the allegedly related case;
- (4) an explanation of how the nucleus of operative facts is the same in those cases;
- (5) a clear and concise explanation of the reasons that transfer is appropriate under this rule;
- (6) a clear and concise statement of the reasons that consolidation is appropriate under this rule; and
- (6) a statement whether all parties in the case before the special three-judge district court and the allegedly related case agree to the motion.

(e) The movant must attach as an exhibit to the motion the operative petition on file in the allegedly related case. The movant may attach to the motion such other exhibits as are relevant under the standards of this rule.

(f) Any party to the case assigned to the special three-judge district court or the allegedly related case may file a Response in Opposition to the Motion to Transfer Related Case with the special three-judge district court. Any response must:

- (1) be filed within 20 days after the party filing a Response is served with a Motion to Transfer; and
- (2) be filed in writing and address directly why the allegedly related case does not meet the definition of “related case” under this rule.

(g) After consideration of a Motion to Transfer Related Case, Response, if any, and oral hearing, if any, the special three-judge district court by written order must grant the motion if it concludes that the case is related. If the court grants the motion, it will **consolidate** the related case with the case before the court.

(h) A case **consolidated** under Rule 14.8(g) must be **transferred** to the special three-judge district court if the court finds that transfer is necessary.³ The transfer may occur without the consent of the parties to the related case or of the court in which the related case is pending.

Rule 14.9 Appeals and Original Proceedings

An appeal from an appealable interlocutory order or final judgment of a special three-judge district court is to the Supreme Court under Texas Rule of Appellate Procedure 57. An original appellate proceeding seeking extraordinary relief from an action of a three-judge district court must be filed with the Supreme Court under Texas Rule of Appellate Procedure 52.

Corresponding amendment to Texas Rule of Appellate Procedure

Rule 57. Direct Appeals to the Supreme Court

57.2. Jurisdiction

The Supreme Court may not take jurisdiction over a direct appeal from the decision of any court other than a district court, a special three-judge district court, or county court, or over any question of fact. The Supreme Court may decline to exercise jurisdiction over a direct appeal of an interlocutory order if the record is not adequately developed, or if its decision would be advisory, or if the case is not of such importance to the jurisprudence of the state that a direct appeal should be allowed.

[Note: The other revisions to Rule 57 suggested at the last meeting are being discussed by the Appellate Rules Subcommittee. If a new version of Rule 57 is adopted based on that subcommittee’s work, the addition to Rule 57.2 proposed above may no longer be necessary.]

³ Rules 14.8(g) and (h) track the statute, which provides that a related case pending in another court must first be consolidated with the cause of action before the three-judge court, but consolidated cases must then be transferred to the three-judge court only if that court finds the transfer is necessary. See Tex. Gov’t Code § 22A.003(b)-(c). Because it is difficult to understand how cases in two different courts could be consolidated without a transfer, the terms transfer and consolidate may have inadvertently been transposed in the statute. If the committee is inclined to require a three-judge court to decide transfer first and give the court discretion to order consolidation as necessary following transfer, the highlighted terms could be switched in Rules 14.8(g) and (h).