Jody Hughes

From: Wm. C. Martin, III [w3martin@sbcglobal.net]
Sent: Thursday, June 01, 2006 9:26 PM
To: Jody Hughes
Subject: RE: Proposed change to Rule 21 noice requirements

Jody:

Thank you for responding.

First, the family code refers to Rule 21 or "the rules of civil procedure" in several places. I lack the resources to cite them in time for Friday's meeting. Those provisions were drafted assuming the stability of long settled practices.

Second, temporary orders hearings are generally set within fourteen days (used to be ten, which did not track with the work week and it took twenty years to get that changed) with a minimum of three days. This allows courts to set the hearings, which often concern temporary restraining orders and temporary custody and access issues, in a pattern based on service and notice (for instance "the first Thursday occurring three days after notice at 10:00 a.m." so that each case does not have to be specially set). If you build in an assumption of longer notice instead of putting the burden on the respondent to seek a continuance (which usually means a consultation and an agreement on a "band aid" to let everyone live until they can get to court), then there is no relief available for too long a time. Also, programming these matters for an orderly docket becomes a nightmare.

Third, not all family matters have their notices specifically prescribed by the family code, even by reference top the rules. Some, as in the foster care docket over which I now preside in nine counties, have timely hearing requirements prescribed by the federal adoption and safe families act regardless of service or notice! Others are ancillary to proceedings for which notice is prescribed in the family code. Others, such as personal protection injunctions between people who are not in the same household, are governed entirely by the Rules and some, quite properly, require no notice at all, though they are not operative until the respondent knows about them. Still others are enforcement proceedings simple enough with the issue being perishable or fragile, or violently volatile.

If the burden is on the applicant for relief to approach the court *ex parte* for a shortening of hearing times by leave of court, the trial courts aside from the purely civil metro courts will have little time to hear anything else. I could see excepting the family code matters as a quick and dirty solution, but that will in some instances result in a circularity (statutes and rules referring to one another).

Permit me, respectfully, to sound the warning of unintended consequences if the notice rules are altered with out careful study and analysis. I will help if asked, but I don't have a wonderfully simple solution right now.

Wm. C. Martin, III

From: Jody Hughes [mailto:Jody.Hughes@courts.state.tx.us]
Sent: Thursday, June 01, 2006 9:44 AM
To: Wm. C. Martin, III
Subject: RE: Proposed change to Rule 21 noice requirements

Judge Martin:
To clarify, are you suggesting that the specific types of orders you list should excepted altogether from the advance notice requirement, or that a notice period shorter than 10 days (such as the 3-day period under existing TRCP 21) should govern such orders? To the extent that these orders require issuance on iess than 3 days'

notice under the current rule, I assume counsel usually seek relief under the "unless shortened by the court" exception, which also exists (in slightly differently worded form) under the proposed rule ("except . . . upon written motion and leave of court for good cause shown").

From: Wm. C. Martin, III [mailto:w3martin@sbcglobal.net]
Sent: Thursday, June 01, 2006 8:35 AM
To: Jody Hughes
Subject: Proposed change to Rule 21 noice requirements

Please remember to except family law and restraining orders, temporary injunctions, and enforcement motions. These matters are extremely important, but require prompt attention. Often they are part of an ongoing struggle which has to be referreed with vigor or they get worse. The patterns of practice have been set for many years and counsel are either used to responding to the "fire bell" or they do not practice in these courts or these matters, not all of which are brought under the family code. I note that the proposal is from a civil district court that handles complex civil litigation. I am in my 35th year in family law.

Respectfully,

Wm. C. Martin, III
Senior District Judge from the
307th Family District Court
currently sitting in nine counties

Jody Hughes

From: Richard Orsinger [Richard@momnd.com]
Sent: Thursday, June 01, 2006 6:13 PM
To: Jody Hughes; Senneff, Angie; Sullivan, Judge Kent (DCA)
Subject: FW: Proposed Amendment to TRCP 21

From: Harry L. Tindall [mailto:htindall@tindallfoster.com]
Sent: Thursday, June 01, 2006 5:55 PM
To: Richard Orsinger; Ann Coover (E-mail); Ann McClure (E-mail); Brian Webb (E-mail); Charla Bradshaw Conner (E-mail); Charles Hodges (E-mail); Chris Negem (E-mail 2); Christopher K. Wrampelmeier (E-mail); David McClure (E-mail); Dean Rucker (E-mail); Diana Friedman (E-mail); Don Royall (E-mail); Douglas Woodburn (E-mail); Ellen Yarrell (E-mail); Gary Nickelson (E-mail); Heather King (E-mail); Hector Mendez (E-mail); Heidi Cox (E-mail); J. Lindsey Short (E-mail); Jack Marr (E-mail); James Loveless (E-mail); Jeff Anderson (E-mail); Joal Cannon Sheridan (E-mail); Joan Jenkins (E-mail); Joe McKnight (E-mail); John Compere (E-mail); John Sampson (E-mail); Judy Warne (E-mail); Kathryn Murphy (E-mail); Larry Schwartz (E-mail); MaryJo McCurley; Michael B. Paddock (E-mail 2); Michael Jarrett (E-mail); Mike Gregory (E-mail); Mike McCurley; Pamela George (E-mail); Paula Larsen (E-mail); Scott Downing; Sally Emerson (E-mail); Sherry Evans (E-mail); Tom Vick (E-mail); Victor Negron (E-mail); Warren Cole (E-mail); ken@koonsfuller.com; wendy@brfamilylaw.com; lah@fullenweider.com; jimmy@mccullarvaught.com; firm@webb-ackels.com; sjn@nickfamlaw.com
Subject: RE: Proposed Amendment to TRCP 21

I concur with Chris Wrampelmeier. 10 days can be far too long in a family law case. The requirement that all responsive docs be filed in advanced is not realistic in family cases. I therefore oppose this change.

Harry L Tindall
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Jody Hughes

From: Richard Orsinger [Richard@momnd.com]
Sent: Thursday, June 01, 2006 5:55 PM
To: Jody Hughes; Senneff, Angie; Sullivan, Judge Kent (DCA)
Subject: FW: Proposed Amendment to TRCP 21

From: Lindsey Short [mailto:LShort@SHORT-JENKINS.COM]
Sent: Thursday, June 01, 2006 5:51 PM
To: Richard Orsinger
Subject: RE: Proposed Amendment to TRCP 21

I have been licensed for 39 years, practicing exclusively family law for 30 years. I believe I understand the need to extend the amount of time for notice from 3 days to 7 to 10 days and with some carved out exceptions, I have no quarrel with the concept. The problem occurs when children, the potential for domestic violence or the cutting off of credit or funds has occurred and a family is in extremis. I think there is widespread abuse by family lawyers regarding relief from courts by simply calling EVERYTHING "an emergency". Since carving out appropriate exceptions is probably impossible, my belief is if Family Law cannot have an exclusion, perhaps as much as 5 days would be manageable if there were really a reason to do any of this. This response may be shared.

Jody Hughes

From: Richard Orsinger [Richard@momnd.com]
Sent: Thursday, June 01, 2006 5:49 PM
To: Jody Hughes
Cc: Senneff, Angie; Sullivan, Judge Kent (DCA)
Subject: FW: Proposed Amendment to TRCP 21

From: Chris Wrampelmeier [mailto:Chris.Wrampelmeier@uwlaw.com]
Sent: Thursday, June 01, 2006 5:37 PM
To: Richard Orsinger; Ann Coover (E-mail); Ann McClure (E-mail); Brian Webb (E-mail); Charla Bradshaw Conner (E-mail); Charles Hodges (E-mail); Chris Negem (E-mail 2); David McClure (E-mail); Dean Rucker (E-mail); Diana Friedman (E-mail); Don Royall (E-mail); Douglas Woodburn (E-mail); Ellen Yarrell (E-mail); Gary Nickelson (E-mail); Harry Tindall (E-mail); Heather King (E-mail); Hector Mendez (E-mail); Heidi Cox (E-mail); J. Lindsey Short (E-mail); Jack Marr (E-mail); James Loveless (E-mail); Jeff Anderson (E-mail); Joal Cannon Sheridan (E-mail); Joan Jenkins (E-mail); Joe McKnight (E-mail); John Compere (E-mail); John Sampson (E-mail); Judy Warne (E-mail); Kathryn Murphy (E-mail); Larry Schwartz (E-mail); MaryJo McCurley; Michael B. Paddock (E-mail 2); Michael Jarrett (E-mail); Mike Gregory (E-mail); Mike McCurley; Pamela George (E-mail); Paula Larsen (E-mail); Scott Downing; Sally Emerson; Sherry Evans (E-mail); Tom Vick (E-mail); Victor Negron (E-mail); Warren Cole (E-mail); ken@koonsfuller.com; wendy@brfamilylaw.com; lah@fullenweider.com; jimmy@mccullarvaught.com; firm@webb-ackels.com; sjn@nickfamlaw.com
Subject: RE: Proposed Amendment to TRCP 21

I am willing to go on record as opposing the change. First, I do not find that the three-day notice requirement is broken, so I do not see why it should be changed. What is Judge Sullivan's reasoning? Second, there are many instances in which you need a short (three to seven day) notice period, such as motion for continuances based on last minute developments. The difficulty in getting a hearing setting in three days is enough of a check on short notices of hearing. Will courts be overloaded with requests for variances from the limitation "for cause shown"? To get that variance, do you have to apply for a hearing at least ten days out? Third, a change in the three-day notice requirement may trigger a myriad of other changes. A thorough examination of all the statutes (not just the Family Code and not just TROs) will be needed to see how this change affects them.

Chris Wrampelmeier

Jody Hughes

From: Richard Orsinger [Richard@momnd.com]
Sent: Thursday, June 01, 2006 5:40 PM
To: Jody Hughes
Cc: Senneff, Angie
Subject: FW: Proposed Amendment to TRCP 21

From: Ann Coover [mailto:Ann@cooverandcoover.com]
Sent: Thursday, June 01, 2006 5:32 PM
To: Richard Orsinger
Subject: RE: Proposed Amendment to TRCP 21

Dear Richard:
I would like to formally offer my objection to Judge Sullivan's proposal to amend TRCP 21. In family law matters, three days notice is an engrained time table for temporary orders hearings. I believe the notice presently in effect is sufficient, and necessary in matters of financial injunctions, payments of immediate support to a spouse and children, and setting aside use of property and credit cards. Without immediate attention to these matters, and absent a TRO, a spouse may punish, terrorize, or financially strap another party. The court's prompt attention to these issues often is a method to impose some certainty and serenity to a family in divorce. Please feel free to use this response on the record.
Ann Coover
Family Law Council Member 2002-present