

## **BURNS ANDERSON JURY & BRENNER, L.L.P.**

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From the Desk of:  
**BOB BURNS**

Board Certified, Personal Injury Trial Law,  
Texas Board of Legal Specialization

Certified, Civil Trial Law,  
National Board of Legal Specialty  
Certification

January 27, 2009

**VIA FACSIMILE: 512.463.1365 and**  
**VIA REGULAR MAIL**

Honorable Nathan L. Hecht  
SUPREME COURT OF TEXAS  
P.O. Box 12248  
Austin, TX 78711

RE: Administration of Rules of Evidence Committee Recommendation

Dear Justice Hecht:

Attached are proposed Rule of Evidence 1010 "Use in Lieu of Sworn Declaration" and the required amendment to the Penal Code to add a penalty for perjury for violation of this rule. Both have been approved unanimously by the full Committee with a recommendation for adoption.

I have discussed the enclosed with our Supreme Court Advisory Committee Liaison Buddy Low and with our State Bar Board Advisor Mark Sales. I have also forwarded a copy of each to KaLyn Laney, our Legislative Liaison.

The purpose of the Rule is to provide a means for affidavits and other documents to be admitted into evidence without the necessity of using a notary public. This will simplify filing and reduce the costs involved in completing many procedures. In particular, it will permit affidavits to be obtained more efficiently and with less expense.

Also enclosed is a copy of §132.001 of the Penal Code, which currently provides for the use by inmates of unsworn declarations. This statute was the primary source for language used in the proposed Rule. A legislative amendment for this statute, removing its limitation for use only by inmates, could be requested; however, a proposal expanding permissible use of unsworn

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January 27, 2009  
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declarations was defeated in a prior term by the lobbying efforts of notary publics. Since the primary application of the proposed Rule would be for admission of evidence, this Committee concluded that a Rule of Evidence was a viable alternative.

Since the Legislature is currently in session, AREC requests that the Supreme Court consider the proposed Rule 1010 for adoption as soon as possible. If the Rule is adopted, or conditionally adopted subject to passage of the criminal perjury amendment, by March 15, it is my understanding that the Legislative Committee will be in a position to seek passage of the corresponding statutory amendment.

Mark Sales and Buddy Low have agreed, given the time constraints, that I should forward this letter request and attachments directly to you. Please feel free to give any of us a call should you have any questions or would like any additional information or analysis.

Thank you for your consideration of this proposal.

Very truly yours,

BURNS ANDERSON JURY & BRENNER, L.L.P.



Robert B. Burns, Jr.  
Chair, Administration of Rules of Evidence Committee

RBB/mm  
Enclosures

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cc: **VIA FACSIMILE: 409.838.6959 and**  
**VIA REGULAR MAIL**

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January 27, 2009  
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**VIA FACSIMILE: 361.980.1050 and**

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Karon Kay Connelly (w/enclosures)  
THE ALLISON LAW FIRM  
5309 Inverness  
Corpus Christ, TX 78413

Proposed Rule of Evidence 1010. Use In Lieu Of Sworn Declaration.

(1)(a) Except as provided by subsection (1)(b), an unsworn declaration may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law.

(1)(b) This rule does not apply to an oath of office or an oath required to be taken before a specified official other than a notary public.

(2) An unsworn declaration made under this rule must be in writing and subscribed by the person making the declaration as true under penalty of perjury.

(3) The form of a declaration under this rule must be substantially as follows.

"My name is (First:) \_\_\_\_\_ (Middle:) \_\_\_\_\_  
(Last:) \_\_\_\_\_, my date of birth is \_\_\_\_\_, and my residence is  
(City:) \_\_\_\_\_, (State:) \_\_\_\_\_, (Zip Code:) \_\_\_\_\_, and  
(Country:) \_\_\_\_\_.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, Texas, on the \_\_\_\_ day of \_\_\_\_\_ (month),  
\_\_\_\_\_ (year).

\_\_\_\_\_  
Declarant"

Proposed Amendment to Texas Penal Code 37.02.

37.02. Perjury

(a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:

(1) he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath; or

(2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code; or

(3) he makes a false unsworn declaration under Texas Rule of Evidence 1010.

(b) An offense under this section is a Class A misdemeanor.

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January 27, 2009

### TELECOPIER TRANSMITTAL COVER SHEET

**FAX DEADLINE:** today

TO: Honorable Nathan L. Hecht  
FIRM: SUPREME COURT OF TEXAS

**FAX NO.:** 463.1365

TO: Buddy Low  
FIRM: ORGAIN, BELL & TUCKER, LLP

**FAX NO.:** 409.838.6959

TO: Mark Sales  
FIRM: KIRKPATRICK & LOCKHART  
PRESTON GATES EII

**FAX NO.:** 214.939.5849

TO: Karon Kay Connelly  
FIRM: THE ALLISON LAW FIRM

**FAX NO.:** 361.980.1050

RE: ADMINISTRATION OF RULES OF EVIDENCE COMMITTEE  
RECOMMENDATION

**Our File No.:** **RBB-AREC**

FROM: Robert B. Burns, Jr./mm  
BURNS ANDERSON JURY & BRENNER, L.L.P.  
FAX NO.: 512/338-5363  
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NO. OF PAGES SENT (INCLUDING THIS COVER PAGE): 9 pages

DESCRIPTION OF DOCUMENTS/NOTE: Please see attached.

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