

TRCP 42b. Complex Litigation.

42b.1 Purpose. This rule shall be construed so as to provide for the fair and efficient resolution of complex litigation involving multiple parties and/or multiple cases pending in different courts in the state by providing for the assignment of multiple related cases to a single court regardless of original venue, and the regulation of the attorney-client relationship in complex litigation.

42b.2 Definitions. For purposes of this rule:

(a) “*Complex litigation*” means:

- (1) civil actions involving one or more common questions of fact which are pending in different district courts in the same or different counties;
- (2) a single civil action involving multiple unrelated claimants, claimants seeking recoveries under theories involving claims which derivative of claims of multiple unrelated persons or entities;
- (3) a single civil action involving more than three interventions;
- (3) mass tort litigation; or
- (4) mass disaster litigation;

(b) “*Mass tort litigation*” means civil actions arising out of one or more related occurrences or transactions involving multiple defendants and multiple unrelated claimants, including without limitation:

- (1) products liability cases;
- (2) securities cases;
- (3) toxic exposure cases; and,
- (4) toxic environmental damage cases.

(c) “*Mass disaster litigation*” means civil actions arising out of a single catastrophic event involving multiple unrelated claimants, including without limitation:

- (1) common carrier disasters;
- (2) explosions;
- (3) plant emissions;
- (4) edifice collapses;
- (5) flooding;
- (6) products liability cases;
- (7) toxic exposure cases; and,
- (8) toxic environmental damage cases.

42b.3. Judicial Panel for Complex Litigation.

- (a) The Supreme Court shall establish Judicial Panel for Complex Litigation, consisting of five members, who are active court of appeals justices, administrative judges and district court judges, designated from time to time by the Chief Justice of the Supreme Court; no two of them shall be from the same county, administrative district or appellate district. The concurrence of three members shall be necessary to any action by the panel.

42b.4 Designation and Venue of Complex Litigation.

- (a) **Complex litigation pending in a single court.** When civil actions involving one or more common questions of fact are pending in the same court, the cases may be designated as complex litigation for the purpose of coordination or consolidation for pretrial proceedings and/or trial on the merits. Proceedings for the designation as complex litigation under this section may be initiated by –

- (i) the trial court upon its own initiative;
- (ii) the Judicial Panel for Complex Litigation upon its own initiative, or
- (iii) motion filed with the Judicial Panel for Complex Litigation by a party

in any action in which transfer for coordinated or consolidated proceedings under this chapter may be appropriate. A copy of such motion shall be filed in the court in which the moving party's action is pending.

(b) Multi-court complex litigation. When civil actions involving one or more common questions of fact are pending in different constitutional county courts, county courts-at-law, probate courts or district courts, such actions may be transferred to any district court for coordinated or consolidated pretrial proceedings and/or trial on the merits. Such transfers shall be made in accordance with the provisions of Tex. Civ. Prac. & Rem. Code §15.002(b) by the Judicial Panel for Complex Litigation upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions, provided, however, that for purposes of §15.002(b) a motion for transfer is deemed, under this rule, to have been timely filed.

(i) Each action so transferred shall be remanded by the Panel at or before the conclusion of such pretrial proceedings to the court from which it was transferred; provided, however, that the Panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.

(ii) Such coordinated or consolidated pretrial proceedings shall be conducted by a judge or judges to whom such actions are assigned by the Judicial Panel for Complex Litigation. For this purpose, upon request of the Panel, a sitting or senior district judge may be designated and assigned temporarily for service in the transferee district court by the Chief Justice of the Supreme Court, as may be required, in accordance with the provisions of the Government Code. The judge or judges to whom such actions are assigned, the members of the Judicial Panel for Complex Litigation, and other district judges designated when needed by the panel may exercise the powers of a district judge in any county in the state for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.

(iii) Proceedings for the transfer of an action under this section may be initiated by –

(A) the Judicial Panel for Complex Litigation upon its own initiative, or

- (B) motion filed with the Judicial Panel for Complex Litigation by a party in any action in which transfer for coordinated or consolidated proceedings under this chapter may be appropriate. A copy of such motion shall be filed in the court in which the moving party's action is pending.

(iv) The Panel shall give notice to the parties in all actions in which transfers for coordinated or consolidated pretrial proceedings are contemplated, and such notice shall specify the time and place of any hearing to determine whether such transfer shall be made. Orders of the Panel to set a hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed in the office of the clerk of the court in which a transfer hearing is to be or has been held. The Panel's order of transfer shall be based upon a record of such hearing at which material evidence may be offered by any party in an action pending in any district that would be affected by the proceedings under this action, and shall be supported by findings of fact and conclusions of law based upon such record. Orders of transfer and such other orders as the Panel may make thereafter shall be filed in the office of the clerk of the court of the transferee district and shall be effective when thus filed. The clerk of the transferee district court shall forthwith transmit a certified copy of the Panel's order to transfer to the clerk of the court from which the action is being transferred. An order denying transfer shall be filed in each county wherein there is a case pending in which the motion for transfer has been made.

(c) Mandatory Venue Challenge. This rule does not alter the provisions of Rules 86 and 87 with respect to Sections 15.011-15.017 (Mandatory Venue), Civil Practice and Remedies Code, but take priority over permissive venue provisions.

(d) Interlocutory Appellate Review.

(1) No interlocutory review of a designation of complex litigation or order of the Judicial Panel for Complex Litigation may be permitted except by extraordinary writ pursuant to the provisions of Section 15.0642.

(2) Petitions for an extraordinary writ to review a designation of complex litigation or an order of the Panel to set a transfer hearing and other orders of the Panel issued prior to the order either directing or denying transfer shall be filed only in the court of appeals having jurisdiction over the district in which a hearing is to be or has been held. Petitions for an extraordinary writ to review an order to transfer or orders subsequent to transfer shall be filed in the supreme court.

Except as provided herein, there shall be no other appeal or review of a designation of complex litigation or an order of the Panel granting or denying a motion to transfer for consolidated or coordinated proceedings, or remanding a transferred case.

42b.5 Applicability of Rule 8

Rule 8 applies to all proceedings under this rule.

42b.6 Moratoria on Signing Up or Settling Certain Cases.

- (a) The Judicial Panel for Complex Litigation upon its own initiative, or upon verified motion filed with the Judicial Panel for Complex Litigation by a potential or other interested party, may issue an order declaring a moratorium on the employment of claimants' counsel in cases involving mass disaster.
- (b) During the designated moratorium, no licensed attorney, directly or indirectly, may advertise or otherwise seek to establish an attorney-client relationship with a potential claimant.
- (i) Any agreement for legal services contracted prior to the moratorium shall be subject to court review.
- (ii) Any agreement for legal services contracted during the moratorium shall be voidable at the insistence of the client or upon court order.
- (iii) Any referral of cases prior to or during the moratorium shall be void.
- (c) Any moratorium period shall not exceed sixty (60) days, and may be extended only once.
- (d) During the designated moratorium, no potentially responsible party (as defined in Tex. Civ. Prac. & Rem. Code §33.011) shall engage in settlement discussions, negotiations or agreements with a potential claimant without express approval of the Panel and modification of the order of moratorium to permit a prospective settling claimant to seek the effective assistance of counsel, whose fee shall be paid on an hourly basis only. Any settlement reached during the moratorium involving a claimant whom is not represented

by counsel is voidable at the insistence of the claimant unless previously approved by the Panel or another court of competent jurisdiction.

- (e) This rule applies only to the rendition of legal services for personal injury, wrongful death and products liability matters. The provision of criminal, commercial law, real estate, transactional law, family law, tax and probate legal services are not subject to this section.