

Memorandum



To: Supreme Court Advisory Committee

From: Rule 171-205 Subcommittee

Date: June 12, 2019

Re: Issue 3 on Chief Justice Hecht's Referral Letter

Our subcommittee was assigned the third matter **Expedited Actions** in Chief Justice Hecht's referral letter and SB 2342.

I. Changes to Government Code §22.004

SB 2342, among other changes, amends Government Code §22.004(h) and adds a new subsection (h-1).

SECTION 1. Section [22.004](#), Government Code, is amended by amending Subsection (h) and adding Subsection (h-1) to read as follows:

(h) The supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions. The rules shall apply to civil actions in district courts, county courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed \$100,000. The rules shall address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system. The supreme court may not adopt rules under this subsection that conflict with other statutory law ~~{a provision of:~~

- ~~{(1) Chapter 74, Civil Practice and Remedies Code;~~
- ~~{(2) the Family Code;~~
- ~~{(3) the Property Code; or~~
- ~~{(4) the Tax Code}.~~

(h-1) In addition to the rules adopted under Subsection (h), the supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed \$250,000. The rules shall balance the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions. The supreme court may not adopt rules under this subsection that conflict with other statutory law.

An earlier version of this bill, would have just amended (h) to raise the limit to \$250,000 for all cases but the final version instead added (h-1). The Supreme Court has until 1/1/21 to adopt the new rule.

In connection with the new rules, our subcommittee has identified the following issues:

1. Find out why the final version was limited to county courts.
2. Notwithstanding the legislative amendment, should the Court consider a rule that would apply in all courts for cases between \$100,000 and \$250,000?
3. Could we just amend current rule 169 and up the limit to \$250,000?
At first glance, most of the committee does not recommend doing that because:
 - a. discovery may be too limited for a case where the amount in controversy is between \$100,000 and \$250,000 (currently level one discovery in Rule 169)
 - b. the trial time limits may be too restrictive (currently eight hours per side)
 - c. the amount in controversy is not defined in the same way in (h) and (h-1). This is important because the new \$250,000 limit for county courts excludes interest, statutory or punitive damages and penalties, and attorney's fees and costs, which can be substantial.
 - d. If all cases in a court fall into the limit (most county court cases), there would be no ability to move to the top of the docket.
4. Because we have time to work on this matter, should we get input from trial judges and lawyers as to whether or not Rule 169 is working as it is written? [Anecdotal very few parties have invoked Rule 169 in Harris County, and those that do almost always request a continuance. Justice Christopher is gathering comments from the Harris County district judges.]
5. Given the deletion of certain actions in (h) should we remove the current restrictions in Rule 169(a)(2), that exempts suits under the Family Code, the Property Code, the Tax Code and Chapter 74 CPRC (medical malpractice)? Suggested language: This rule applies to the extent it does not conflict with other state law.

II. The remainder of the changes

The remainder of SB 2342 amends various sections of Chapter 25 on statutory county courts. As a reminder, each county has a variety of county courts with different jurisdiction levels and specialties. For example in Dallas County, the county civil courts have concurrent jurisdiction with district courts, regardless of the amount in controversy. In Comal County, the county courts have concurrent jurisdiction with the district court in family cases. The remainder of SB 2342 appears to be enabling legislation to:

1. Allow many county courts to have a higher limit of cases (upping it from 50,000 or 200,000 to 250,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs) and
2. For those county courts that already have higher limits, requiring a 12 member jury for any case where the amount in controversy is over \$250,000, unless the parties agree to a lesser number or its waived.
3. Increases the jurisdiction in justice courts to \$20,000.

In connection with these changes, we need to change:

1. Rule 47

- (c) (3) monetary relief over \$100,000 but not more than ~~\$200,000~~ \$250,000; or
- (4) monetary relief over ~~\$200,000~~ \$250,000 but not more than \$1,000,000

2. Rule 500.3

- (a) *Small claims case*. . . The Claim can be for no more than ~~\$10,000~~ \$20,000. . .

3. Possible changes to Rules 224, 225, 229, 231, 232, 233, 234

Rule 224, 225, 229, 231, 232, 233, 234 reflect 12 member juries in district court and 6 member juries in county court. These rules are basically unchanged from 1941 (except for some changes to 233 in 1989) and did not reflect the fact that some county courts already had twelve member juries before this latest change. (For example Austin County already required twelve member juries in a family case in county court.)

The committee does not recommend making changes to these rules—some are archaic and we think that the county courts that have a 12 member jury will know to follow the 12 member rules.

If we are going to change these rules, we should look at them and update them.

4. Possible change to Rule 226a

Rule 226a references both 6 and 12 without mentioning the court level but does not deal with a situation where the parties can agree to a lesser number than 12.

The committee does not think we need to change 226a as the odds are small that someone will agree to a jury with less than 12 but more than 6 and if they do, they should just agree on what the verdict split can be.

Maybe we could add a comment rather than a rule change?

