

## MEMORANDUM

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**TO:** Supreme Court Advisory Committee

**FROM:** Judicial Administration Subcommittee

**RE:** Mechanisms for Obtaining a Trial Court Ruling

**DATE:** February 28, 2020

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### I. Matter Referred

Chief Justice Hecht's September 4, 2019 referral letter and Chairman Babcock's September 6, 2019 letter to the Judicial Administration Subcommittee address the following matter:

**Procedures to Compel a Ruling.** In the attached letter, Chief Justice Gray points out that litigants, particularly self-represented inmates, are often unable to get trial courts to timely rule on pending motions and proposes rule changes to address the issue. The Committee should consider Chief Justice Gray's proposals and other potential solutions.

### II. Background

As requested in the referral, the Judicial Administration Subcommittee has discussed issues related to the difficulty that incarcerated pro se litigants encounter in obtaining rulings on motions. As a practical matter, the inability of incarcerated pro se litigants to communicate with courts and court staff by means other than the United States Postal Service leaves few options if a court fails to act on motions and requests for rulings on previously filed motions.

These circumstances lead to pro se mandamus proceedings seeking to compel a ruling. In turn, these mandamus petitions frequently are denied due to (1) procedural deficiencies; or (2) the relator's inability to demonstrate that the motion at issue was brought to the trial court's attention but the trial court nonetheless failed to act on it. *See, e.g., In re Jerry Rangel*, 570 S.W.3d 968 (Tex. App.—Waco 2019, orig. proceeding).

Procedural issues surrounding difficulty in obtaining rulings is not limited to criminal cases. The subcommittee also received input from Justice Tracy Christopher, who noted that the Houston appellate courts have encountered repeated mandamus filings in connection with failures to rule in civil cases.

### III. Discussion

The subcommittee identified two threshold questions on which the full committee's input was solicited at the November 2019 meeting to provide direction for the subcommittee's further deliberations.

The first question was whether the discussion should focus solely on the specific circumstances discussed in *In re Rangel* involving pro se inmate litigants, or instead should encompass the full range of situations in which a failure to rule may prompt mandamus proceedings.

The second question focused on the optimal approach to use in addressing failures to rule. Multiple potential approaches were identified based on discussions within the subcommittee and informal polling of the chief justices of the intermediate appellate courts.

- Create a universal request-for-a-ruling form, which would start the clock running for purposes of a deemed ruling denying the motion by operation of law occurring a certain number of days after the request is submitted.
- Require the trial court clerk to present a report of all ruling requests to the judge at least once monthly to create a presumption that the trial court had been informed of the motion and request. A litigant could rely upon this presumption in mandamus proceedings to establish that the trial judge had been made aware of the motion or request at issue.
- Reliance on a default rule under which a motion is denied by operation of law a certain number of days after filing. This approach already is used in a number of specific circumstances. *See, e.g.,* Tex. R. Civ. P. 329b(c) (motion for new trial overruled by operation of law 75 days after filing in absence of an express order); Tex. R. App. P. 21.8(c) (motion for new trial in a criminal case is deemed denied 75 days after imposing or suspending sentence in open court); Tex. Civ. Prac. & Rem. Code § 27.008(a) (TCPA motion to dismiss overruled by operation of law if trial court does not rule by 30th day following the date on which the hearing on the motion concludes).
- All Texas judges are under a duty to analyze their dockets and take action to bring overdue or pending matters to a conclusion pursuant to the Rules of Judicial Administration and the Code of Judicial Conduct. In conjunction with these existing duties, judges could be required to provide quarterly reports to the presiding judge of their administrative judicial region (or to the Office of Court Administration) identifying matters submitted for more than a threshold number of days and still awaiting a decision. Presiding judges would bear responsibility to determine the reasons for a failure to rule and appropriate follow up steps, perhaps including appointment of visiting judges to address a backlog. Reliance on this administrative approach would avoid concerns that may arise due to the reluctance of litigants to “remind” judges about long-pending but unresolved motions out of concern for provoking an adverse response.

These approaches were discussed at the November 2019 meeting, along with additional approaches suggested by Justice Christopher. These additional approaches included requiring trial judges to create a mechanism for reviewing motions without an oral hearing; educating trial judges and clerks regarding continuing jurisdiction to rule on motions after a final judgment is signed; creating a reminder mechanism that parties can send to judges; requiring judges to file a response

to a failure-to-rule mandamus; and reporting mechanisms to the judicial conduct commission for repeated failures to rule. Discussion at the November 2019 meeting considered whether this issue should be approached solely in a criminal context, or in a civil context as well.

After the meeting, the subcommittee received additional guidance from the Court of Criminal Appeals and the Texas Supreme Court about the scope of this inquiry. This guidance indicated that the subcommittee should focus its efforts on circumstances in civil cases rather than criminal cases. The Texas Supreme Court's guidance asked the subcommittee to consider a civil rule that (1) applies generally, not just to self-represented litigants; (2) focuses on a request-for-a-ruling mechanism to trigger an operation-of-law event; and (3) encompasses a result other than a deemed ruling, such as a presumption that the trial court has been informed of the motion and request.

The subcommittee conferred again after receiving this guidance and reached a consensus that a request-for-a-ruling mechanism in the civil context should: (1) create a presumption that the trial court is aware of the motion and requested relief, which would establish a basis for seeking mandamus relief to compel a ruling; and (2) exclude any circumstance in which a deadline to rule or a deemed ruling already is provided for under existing rules or statutes, such as motions for new trial and anti-SLAPP motions to dismiss under the TCPA. The subcommittee believes the better course is to create a narrower mechanism limited to creating a presumption of trial court awareness that will allow a mandamus to be filed seeking to compel a ruling, as opposed to creating a deemed denial situation that could result in unintended consequences such as (1) loss of substantive rights from a deemed denial/overruling on the merits; (2) missed appellate deadlines triggered by a request to rule resulting in a deemed denial; and (3) anomalies such as rulings being deemed to have occurred after the trial court has lost plenary power.