

MEMORANDUM

TO: Supreme Court Advisory Committee

FROM: Judicial Administration Subcommittee

RE: Mechanisms for Obtaining a Trial Court Ruling

DATE: August 24, 2020

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. Procedural issues surrounding difficulty in obtaining rulings are not limited to criminal 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 specific circumstances 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 would take appropriate follow up steps, perhaps including appointment of visiting judges to address a backlog.

These approaches were discussed at the November 2019 meeting. Additional approaches also were discussed including 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. An additional consideration is that litigants may be reluctant to “remind” judges about long-pending but unresolved motions out of concern for provoking an adverse response.

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, if used, 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. If a request-for-a-ruling mechanism is used, 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.

IV. Draft Rules

After further discussion this spring, the subcommittee has developed two alternative draft rules for consideration and discussion. The first reflects an administrative reporting approach; the second reflects a request-for-a-ruling mechanism.

The subcommittee did not reach consensus on the approach to be used; therefore, both are set out below for consideration.

Alternative No. 1: Administrative Reporting

Proposed Addition to Texas Rule of Judicial Administration 6.1

(f) Reporting of matters awaiting decision 90 days after submission in civil and family cases.

(1) When a judge has not issued a decision on a matter **[motion]** within 90 days after it was submitted, the judge must send the Office of Court Administration **[and also the Regional Presiding Judge and the Local Administrative Judge?]** a description of the matter and a brief explanation of why it remains pending. The description and explanation may be sent by email, and must be signed by the judge and filed with the papers in the case.

(2) A matter has been submitted when the parties have presented their positions and the judge has not asked for additional argument or information.

Comment

Trial judges are expected to make timely rulings after trials on the merits and after pretrial matters have been submitted to them for decision. Section (f) implements longstanding rules that remind judges to dispose of judicial business promptly and efficiently. *See* Administrative Rule 3e (Regional Presiding Judges "shall . . . (1) determine the existence of . . . (f) cases tried

and awaiting entry of judgment"); Administrative Rule 7a (2) (Trial judges "shall . . . rule on a case within three months after the case is taken under advisement"); and Administrative Rule 9a (Local Administrative Judge is responsible for "the expeditious dispatch of business" in the trial courts). *See also* Code of Judicial Conduct Canon 3-B-(9) ("A judge should dispose of all judicial matters promptly, efficiently and fairly") and 3-C-(3) (A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities").

Section (f) does not apply to matters *filed* but not yet submitted. Nor does it require reports from *all* trial judges. It requires reports (and is a duty under Canon 3 of the Code of Judicial Conduct) *only* for judges who have one or more trials or pretrial matters still awaiting decision 90 days or more *after submission*.

When a matter was heard by a colleague or by an assigned judge instead of the active judge of the court, the requirement applies to the judge who heard the matter.

Alternative No. 2: Request for a Ruling

Tex. R. Civ. P. ____ Notice of Ruling Needed

A party who has filed a motion that has not been ruled on may trigger a time period for the trial court to rule on the motion by filing a Notice Of Ruling Needed, unless the motion has a timeline determined by statute or another rule. A notice under this rule must identify the specific pending motion that has not been ruled upon (and the **[approximate]** date that the motion was filed) and cannot be filed as part of any other document. If the motion identified in the notice has not been ruled upon within **[21/35/60/90]** days after the notice is filed, then the party may file a petition for a writ of mandamus to compel a ruling. If a petition for a writ of mandamus is filed to compel a ruling on the motion the appellate court will presume the trial court is aware of the motion and that sufficient time has passed to rule on the motion unless the record or a response to the mandamus petition evidences why the trial court has not yet ruled or why additional time is needed before a ruling is rendered by the trial court **[alternative phrasing: unless the record or a response to the mandamus rebuts the presumption]**.

Both proposals were discussed and voted on at the full committee's June 2020 meeting, with these results.

- The full committee voted in favor of following the request-for-a-ruling approach (Alternative No. 2) rather than the administrative reporting approach (Alternative No. 1).
- A request-for-a-ruling rule should address only civil actions by prisoners – not criminal matters, and not all civil matters.
- The subcommittee was instructed to explore whether any additional steps can or should be taken by the presiding judge of the administrative judicial region if there is an issue with a particular judge involving a persistent failure to rule.

The subcommittee met again to discuss next steps following these votes.

There was sentiment among members of the subcommittee that it may not be useful to proceed with consideration of a narrowly drawn request-for-a-ruling rule that excludes all criminal matters and most civil matters – including the DNA testing circumstances under Code of Criminal Procedure Chapter 64 that prompted Chief Justice Gray’s initial letter to the Texas Supreme Court on this issue. *See In re Jerry Rangel*, 570 S.W.3d 968 (Tex. App.—Waco 2019, orig. proceeding). If a narrowly drawn rule is considered along the lines of the full committee vote at the June 2020 meeting, the following revision would limit its scope.

Tex. R. Civ. P. ____ Notice of Ruling Needed

In an action involving a “claim” by an “inmate” as defined under Chapter 14 of the Civil Practices and Remedies Code, an inmate ~~A party~~ who has filed a motion that has not been ruled on may trigger a time period for the trial court to rule on the motion by filing a Notice of Ruling Needed, unless the motion has a timeline determined by statute or another rule. A notice under this rule must identify the specific pending motion that has not been ruled on (and the [approximate] date that the motion was filed) and cannot be filed as part of any other document. If the motion identified in the notice has not been ruled on within [21/35/60/90] days after the notice is filed, then the inmate may file a petition for a writ of mandamus to compel a ruling. If a petition for a writ of mandamus is filed to compel a ruling on the motion, the appellate court will presume that the trial court is aware of the motion and that sufficient time has passed to rule on the motion unless the record or a response to the mandamus petition evidences why the trial court has not ruled or why additional time is needed before the trial court rules [alternative phrasing: unless the record or a response to the mandamus rebuts the presumption].

Although this language narrows the proposed rule’s scope in line with the full committee vote, the subcommittee has concern that linking the rule to CPRC Chapter 14 involving actions by inmates who have filed an affidavit or unsworn declaration of inability to pay costs could be in tension with section 14.014; this section states as follows: “Notwithstanding Section 22.004, Government

Code, this chapter may not be modified or repeated by a rule adopted by the supreme court.” Additional discussion among the subcommittee members focused on where such a rule should be located if it were to be adopted.

The subcommittee also considered ideas raised at the June 2020 meeting concerning additional actions that could be taken by the presiding judge of the administrative judicial region if there is an issue with a particular judge involving a persistent failure to rule. Ideas included authorizing transfer of cases or a mechanism for filing a motion with the presiding judge to obtain a ruling when the trial court judge has failed to do so. The subcommittee’s consensus was that further formal procedures involving the presiding judges was not an optimal approach. Judges already have a duty to “dispose of all judicial matters promptly, efficiently, and fairly” under Canon 3(B)(9), and there is concern about creating additional written or rule-based duties directed at presiding judges to address circumstances that often can be handled with informal counseling. The subcommittee recommends outreach to the presiding judges to solicit their views about optimal strategies for addressing persistent failures to rule.