

2021-06-13 - Report of Judicial Subcommittee

The Judicial Administration Subcommittee met by conference call on Friday June 11 and makes the following recommendations in response to the urgent June 2 referrals assigned to this subcommittee.

JUDICIAL ADMINISTRATION SUBCOMMITTEE RECOMMENDATIONS

The urgent referrals made to this subcommittee involve the same basic inquiry: Should applicable rules (either Judicial Administration or TRCP) be amended to reflect or refer to specific changes/restrictions added in newly passed legislation?

1. HB 2950 amends Government Code section 74.1625(a) to prohibit the MDL panel from transferring a Texas Medicaid Fraud Prevention Act action brought by the Texas AG's consumer protection provision. ***Should Rule of Judicial Administration 13.1 be amended to reflect this statutory change?***
 - a. SUBCOMMITTEE RECOMMENDATION: **No.** The prior version of the statute has had exclusions that were not referenced in Rule 13.1, so it seems unnecessary to treat this revised exception differently. The Attorney General's office will be able to assert this statutory limit if this circumstance arises.
2. For a case involving a family violence protective order under Family Code section 85.006, HB 39 shortens the time period for a default judgment that otherwise would be governed by TRCP 107(h). ***Should TRCP 107(h) be amended to reflect this exception; alternatively, should this statutory exception be noted in a comment to the rule?***
 - a. SUBCOMMITTEE RECOMMENDATION: ***The text of Texas Rule of Civil Procedure 107(h) should be amended to reflect this statutory change to the timeframe for obtaining a default judgment in this specific circumstance.*** As a threshold matter, the subcommittee questioned whether this topic is more within the realm of the Rule 15-165a subcommittee; at a minimum, that subcommittee should be consulted. The consensus of the Judicial Administration subcommittee is that (1) Rule 107(h)'s text should be amended to alert litigants of this significant timing change, and state that proceedings seeking a family violence protective order under Family Code section 85.006 are an exception; and (2) a change to the rule's text is preferable to adding a comment to provide maximum notice and clarity. If the full SCAC concludes that a comment is preferable, then a comment similar to the one following TRCP 18a would be appropriate.
3. HB 567 adds new Family Code section 263.4011 setting a 90-day deadline for rendering a final order in a child protection case after the date on which trial commences. ***Should Rule of Judicial Administration 6 be amended, or a comment added, to reflect this new time limit?***
 - a. SUBCOMMITTEE RECOMMENDATION: ***There was no clear consensus on an answer to this question, so the subcommittee recommends consideration of multiple options by the full SCAC.*** This topic prompted considerable discussion about the current form of Rule of Judicial Administration 6. The following points were discussed.

- i. Rules 6.1 and 6.2 are framed as non-mandatory guidelines with reasonable flexibility for timelines within which specified matters should be brought to final disposition “so far as reasonably possible.” In contrast, the deadline set in section 263.4011 is mandatory, with a specific procedure for extending the mandatory deadline only upon a showing of “good cause.” There is a possibility of confusion if references to mandatory statutory deadlines are mixed together in Rule 6 with language discussing more flexible/aspirational timelines set out in Rules 6.1 and 6.2.
 - ii. There is concern that other statutorily mandated deadlines may exist in the Family Code and elsewhere, and that confusion could be created if some statutory deadlines are specifically referenced in Rule 6 while others are omitted.
 - iii. For these reasons, the SCAC may want to consider adding a phrase to Rule 6.1’s preamble – or as a stand-alone preamble to the entirety of Rule 6 – clarifying that any statutorily mandated deadlines for specific types of matters control over the flexible/aspirational guidelines set out in in Rule 6.
- b. Options for consideration by the full SCAC.
 - i. Leave Rule 6 unchanged in light of the potential for confusion as discussed above.
 - ii. Add a preamble or a separate subsection to Rule 6 to emphasize that nothing in Rule 6 displaces mandatory deadlines that may be set by statute.