

## MEMORANDUM

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**TO:** Supreme Court Advisory Committee

**FROM:** Judicial Administration Subcommittee

**RE:** Review of Local Rules

**DATE:** February 2, 2022

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### **I. Matter Referred to Subcommittee**

The subcommittee has been asked to revisit a topic that was the subject of a previous discussion in 2018 regarding the mechanism for reviewing and approving trial court local rules pursuant to Texas Rule of Civil Procedure 3a and Texas Rule of Judicial Administration 10. *See Ex. 1.*

The problem identified in the earlier referral focuses on the proliferation of local rules and the requirement for approval of such rules by the Supreme Court of Texas. The need outpaces the resources available for review and approval, and delays are the consequence. *See id.* The matter for consideration is how the review process for trial court local rules should be modified to (1) account for resource limitations, and (2) expedite review.

### **II. Potential Approaches to the Local Rule Review Process**

The subcommittee solicits the views of the Supreme Court Advisory Committee as a whole about the following potential approaches that can serve as the basis of specific rule amendments for further subcommittee development.

- **Approach No. 1 (Approval by the Supreme Court or its “appointed entity” required for certain local rules).** Prior subcommittee deliberations resulted in 2018 proposed amendments to TRCP 3a and TRJA 10. *See id.* The 2018 proposed amendments remain under consideration by the Supreme Court.
  - The 2018 proposed amendment to TRCP 3a removed language requiring Supreme Court approval of local rules.
  - The Supreme Court approval requirement was incorporated in the 2018 proposed amendment to TRJA 10. Under that 2018 proposal, approval “by the Supreme Court of Texas or its appointed entity” still would be required unless the rule addresses only standards of decorum; procedures for handling uncontested matters in civil cases; or “content required by Section 74.093(b) of the Government Code” pertaining to matters such as docketing, designation of court divisions, and case load distribution.

- **Approach No. 2 (Supreme Court approval not required).** In fall 2021, the Supreme Court asked the subcommittee to consider additional versions of proposed revisions to TRCP 3a.
  - **2021 Version 1** of TRCP 3a contains no Supreme Court review or approval process. This version provides broadly that local rules and standing orders must not conflict with other laws and rules; and cannot be enforced unless published on the Office of Court Administration’s website. *See Ex. 2.*
  - **2021 Version 2** of TRCP 3a provides for a limited form of Supreme Court review, but does not require approval. Instead, the Supreme Court would have the opportunity to prevent local rules from going into effect.
    - Under this version, submission to the Supreme Court is required for certain local rules that address topics other than topics required under Section 74.093(b) of the Texas Government Code. *See Ex. 3.*
    - The non-mandatory topics for which rule approval would be required potentially include court schedules; management of specific classes of cases; transfer of cases; DWOPs; conference requirements and procedures; obtaining and removing settings; hearings by submission; and remote hearings and other proceedings.
    - When submission to the Supreme Court is required, approval would be obtained first from the regional presiding judge; once obtained, the proposed local rules as approved by the regional presiding judge then would be submitted electronically to the Supreme Court.
    - Local rules would become effective 45 days after submission to the Supreme Court unless otherwise directed by the Supreme Court.
- **Approach No. 3. (Review and approval by an authority other than the Supreme Court).** In fall 2021, the subcommittee considered whether an entity other than the Supreme Court can be enlisted to review local rules or certain types of local rules—either before or after implementation. The Supreme Court has expressed potential interest in a post-implementation mechanism by which interested parties could submit a challenge to the regional presiding judge for a determination as to whether a particular local rule conflicts with other laws and rules, or otherwise is problematic. Criteria or a standard would need to be developed for identifying the type of rule or challenge that would be considered for this procedure, and how the ultimate determination would be made by the regional presiding judge.