

Zamen, Shiva

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Sent: Friday, March 11, 2022 3:01 PM
To: Zamen, Shiva
Cc: aestevéz77@yahoo.com
Subject: Agenda for 3-25-2022 SCAC meeting
Attachments: Pages from 2021-10-25 Referral letter and email re TRCP 163 nonsuit and dismissal.pdf; 2021-12-07 Subcommittee report on TRCP 162.pdf

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Shiva:

Regarding the Agenda for the March 25, 2022 SCAC meeting, Subcommittee on Rules 15 through 165a could prepared to present the following: (1) Update on TRCP 76a; (2) Update on TRCP 162.

1. Rule 76a update. My suggestion would be to present two items as background information regarding the ongoing work evaluating TRCP 76a: (i) a description of sealing practices in Federal courts compared to Rule 76a; and (ii) The Sedona Conference proposal (December 2021) of a uniform rule for filing ESI and sealing records in Federal district court.

These are not action items. They are important background information to the issue of whether portions of Rule 76a should be changed, or whether an appellate rule for sealing records should be adopted by the Texas Supreme Court.

If our meeting agenda is crowded, we can definitely put this off to a later date, or to the date when recommendations are being made by the subcommittee. However, if there is time in the Agenda this would be good topics to delve into at the March 25 meeting, so that committee members can have these ideas percolating through their thoughts in advance of seeing recommendations about Rule 76a.

2. Rule 162. At the last SCAC meeting, the Subcommittee submitted the attached report, recommending a fix requested by Judge Robert Schaffer for lawyers non-suiting personal injury cases involving minors instead of submitting settlement for court approval. The subcommittee report addressed but did not make recommendations on discontinuities between nonsuit and dismissal. Here was our “official” recommendation:

We would suggest the following change to the second paragraph of Rule 162:

Any dismissal pursuant to this rule shall not prejudice the right of an adverse party to be heard on a pending claim for affirmative relief or excuse the payment of all costs taxed by the clerk. A dismissal under this rule shall have no effect on any motion for sanctions, attorney’s fees or other costs, pending at the time of dismissal, as determined by the court. **Any dismissal pursuant to this rule involving a next of friend shall not be effective unless approved by the Court pursuant to Rule 44.** Any dismissal pursuant to this rule which terminates the case shall authorize the clerk to tax court costs against dismissing party unless otherwise ordered by the court.

This fix does not work if the suit is non-suited without dismissal. It may be that insurance companies would always require a take-nothing judgment before they pay a claim by a minor. However, non-institutional defendants may not be so cautious.

Non-suit is also addressed in TRCP 91a, DISMISSAL OF BASELESS CAUSES OF ACTION, and I am not aware of any attempt to consider the interplay between Rule 162 and Rule 91a.

The Subcommittee could bring forward recommendations regarding dismissal vs. nonsuit. This is not an urgent topic, so it can be put on any future agenda if time is needed for other items on the agenda for the March 25, 2022 meeting, or if the Court is uninterested in further discussion of Rule 162.

Thanks.

Richard R. Orsinger

Chair, Subcommittee on Rules 15-165a