

# Tab A



## The Supreme Court of Texas

CHIEF JUSTICE  
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June 3, 2023

Mr. Charles L. "Chip" Babcock  
Chair, Supreme Court Advisory Committee  
Jackson Walker L.L.P.  
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters that arise from legislation passed by the 88th Legislature. Some require immediate attention, while others are longer-range initiatives.

The Committee should be prepared to discuss the following projects at its June 16-17, 2023 meeting and conclude its work on them by its August 18-19, 2023, meeting:

**Discovery in Family Law Cases.** HB 2850 adds Chapter 301 to the Family Code to move discovery procedures in family law cases from the Texas Rules of Civil Procedure to statute. The Committee should consider whether the discovery rules should be changed or a comment added to reference or restate the statute and draft any recommended amendments.

**Suspension of Money Judgment Pending Appeal.** Civil Practice and Remedies Code § 52.006 and Texas Rule of Appellate Procedure 24.2(a)(1) govern the amount of a supersedeas bond when the judgment is for money. HB 4381, by adding Civil Procedure and Remedy Code § 52.007, requires a court to allow a judgment debtor worth less than \$10 million to post "alternative security with value sufficient to secure the judgment" if the judgment debtor shows that the amount required by CPRC § 52.006 and TRAP 24.2(a)(1) would "require the judgment debtor to substantially liquidate the judgment debtor's interests in real or personal property necessary to normal course of the judgement debtor's business." The Committee should consider whether Texas Rule of Appellate Procedure 24.2 should be changed or a comment added to reference or restate the statute and draft any recommended amendments.

**Conduct of Judicial Candidates.** HB 367 adds Government Code § 33.02105 to authorize the State Commission on Judicial Conduct to accept complaints, conduct investigations, and take disciplinary action against judicial candidates. The Committee should consider whether the Code of Judicial Conduct and the Procedural Rules for the Removal or Retirement of Judges should be changed or a comment added to reference or restate the statute and draft any recommended amendments.

**Judicial Disclosures and Education.** HB 2384 imposes ballot application disclosure requirements on judicial candidates and education requirements on judges. Section 2 of the bill adds Government Code § 33.032 to make public any sanction the State Commission on Judicial Conduct issues against a judicial candidate for making false ballot application disclosures, along with related records. Section 3 adds Government Code §§ 39.003–.004 to provide for the suspension and removal of judges who do not comply with education requirements. The Committee should consider whether the Code of Judicial Conduct and the Procedural Rules for the Removal or Retirement of Judges should be changed or a comment added to reference or restate the statutes and draft any recommended amendments.

**Court Confidentiality.** Section 1 of SB 372 adds Government Code § 21.013 to make it a criminal offense for court staff to knowingly disclose judicial work product and to require court staff and judges to comply with Court rules governing judicial work product. Section 2 directs the Court to adopt any rules necessary to implement § 21.013. The Committee should draft any recommended rules.

**SVP Magistrate Referrals.** SB 1179 (Section 10) and SB 1180 (Section 1) add Civil Practice and Remedies Code Chapter 14A to govern actions brought by a sexually violent predator who has filed a Statement of Inability to Afford Payment of Court Costs. New § 14A.061 directs the Court to adopt rules that provides for referral of a Chapter 14A action to a magistrate for review and recommendation. The Committee should draft any recommended rules.

**Permissive Appeals.** On September 15, 2022, the Court asked the Committee to study permissive appeals, and the Committee discussed the issue at its February 17, 2023 meeting. The Court now asks that the Committee supplement its study and propose any recommended amendments in light of SB 1603. SB 1603 adds Civil Practice and Remedies Code § 51.014(g) and (h) to require a court of appeals that does not accept a permissive appeal to “state in its decision the specific reason for finding that the appeal is not warranted” and to expressly allow the Court to review de novo the decision not to accept a permissive appeal and direct the court of appeals to accept the appeal. The Committee should consider whether Texas Rule of Appellate Procedure 28.3 should be changed or a comment added to reference or restate the statute and draft any recommended amendments.

The Committee should conclude its work on the following projects by its October 13, 2023, meeting:

**Clerk’s Record.** Section 17.001 of HB 3474 adds Civil Practice and Remedies Code § 51.018 to permit appealing parties to file an appendix in lieu of the clerk’s record and to prohibit a clerk from charging a fee for the appendix. The Committee should consider whether the Texas Rules of Appellate Procedure governing the clerk’s record should be changed or a comment added to reference or restate the statute and draft any recommended amendments.

**Business Court.** HB 19, by adding Government Code Chapter 25A, creates a business court and gives it jurisdiction over certain business matters. HB 19 includes several rulemaking directives. First, new § 25A.016 directs the Court to adopt rules “for the issuance of written opinions by the business court.” Second, new § 25A.018 directs the Court to set fees for filings and actions in the business court. Finally, new § 25A.020 directs the Court to “adopt rules of civil procedure as the Court deems necessary,” including rules “for the timely and efficient removal and remand of cases to and from the business court” and “the assignment of cases to judges of the business court.” The Committee should draft recommended procedural and administrative rules.

**Fifteenth Court of Appeals.** SB 1045 creates a Fifteenth Court of Appeals. Section 1.05 adds Government Code § 22.220(d) to give the Fifteenth Court of Appeals exclusive intermediate appellate jurisdiction over certain civil matters, including certain matters brought by or against the State and matters involving the Office of Attorney General that challenge the constitutionality or validity of a state statute or rule. Section 1.08 directs the Court, by adding Government Code § 73.001(c), to adopt rules for (1) transferring an appeal incorrectly filed in the Fifteenth Court of Appeals to the appropriate court of appeals and (2) transferring appeals incorrectly filed in the other courts of appeals to Fifteenth Court of Appeals. The Committee should make recommendations and draft recommended procedural and administrative rules.

The Committee should conclude its work on the following project in fall 2024:

**Uniform Interstate Depositions and Discovery Act.** Section 1 of HB 3929 permits the Court to adopt by rule the Uniform Interstate Depositions and Discovery Act, which is a model statute adopted by 48 states to establish a uniform process for obtaining depositions and discovery in concert with other participating states. Section 2 repeals a conflicting statute—Civil Practice and Remedies Code § 20.002—upon the Court’s adoption of rules. The Committee should consider whether the discovery rules should be changed and draft any recommended amendments.

The Committee should conclude its work on the following project as it is able:

**Court Interpreter Cost.** Both HB 3474 (Section 10.07) and SB 380 (Section 1) amend Government Code § 57.002(g) to clarify that a person who has filed a Statement of Inability to Afford Payment of Court Costs need not pay interpreter costs unless the statement is successfully challenged. The Committee should consider whether Texas Rule of Civil Procedure 183 should be changed or a comment added to reference or restate the statute and draft any recommended amendments.

**SVP Statement of Inability to Afford Payment of Court Costs.** SB 1179 (Section 10) and SB 1180 (Section 1) add Civil Practice and Remedies Code Chapter 14A to govern actions brought by a sexually violent predator who has filed a Statement of Inability to Afford Payment of Court Costs. New § 14A.054 allows a court to order the sexually violent predator to pay court costs but allows payment by installment. The Committee should consider whether Texas Rule of Civil Procedure 145 should be changed or a comment added to reference or restate the statute and draft any recommended amendments.

**Notice by Qualified Delivery Methods.** HB 785, SB 1373, SB 1457, and SB 2248 amend multiple sections of the Estates Code to allow service in guardianship and probate proceedings by certain qualified delivery methods, including private delivery services like UPS and FedEx. The Committee should consider whether the Texas Rules of Civil Procedure governing citation and

service should be changed or a comment added to reference or restate the statutes and draft any recommended amendments.

**Waiver of Citation in Probate Proceedings.** Sections 14 and 18 of SB 1373 amend Estates Code §§ 202.056 and 258.002 to allow for waiver of citation on minors in heirship and probate proceedings. The Committee should consider whether the citation rules should be changed or a comment added to reference or restate the statutes and draft any recommended amendments.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Hecht", with a long horizontal flourish extending to the right.

Nathan L. Hecht  
Chief Justice

Attachments