SCAC Meeting Agenda
Friday, June 27, 2025
9:00 a.m.

Location: Travis County Civil and Family Courts Facility
1700 Guadalupe Street
Austin, TX 78701

Welcome from Chief Justice Tracy Christopher

Status Report from Justice Jane Bland

Justice Bland will report on Supreme Court actions and those of other courts related to the Supreme Court Advisory Committee since the March 7, 2025 meeting.

Comments from Justice Evan Young

I. Procedural Rules for the State Commission on Judicial Conduct

Conduct Commission Procedural Rules Task Force:

Hon. Bill Boyce – Chair
Hon. Jerry Bullard
Hon. Maria Salas Mendoza
Hon. Robert Schaffer
Hon. Gary Steel
Macey Reasoner Stokes
Zindia Thomas
Hon. Ken Wise
Kennon Wooten

June 20, 2025 Memo re: Proposed Revisions to Procedural Rules for the State Commission on Judicial Conduct

Exhibit A – Proposed Procedural Rules for SCJC
Exhibit B – SB 293
Exhibit C – SJR 27

II. Business Court

Business Court Subcommittee:

Marcy Hogan Greer – Chair
Robert Levy – Vice Chair
Hon. Harvey G. Brown
Hon. Jerry Bullard

Rusty Hardin
Hon. Peter Michael Kelly
Hon. Emily Miskel
Christopher D. Porter
Hon. H.R. Wallace, Jr.
Hon. John F. Warren

June 24, 2025 Memo re: Proposed Amendments to the TRCP and RJA for the Business Court

Exhibit A – Proposed Amendments to Texas Rules of Civil Procedure

III. Bail Appeals

Bail Appeals Subcommittee:

Hon. Emily Miskel – Chair
Hon. Tracy E. Christopher
Hon. David L. Evans
Hon. Ana E. Estevez
Hon. Peter Michael Kelly
Hon. Maria Salas Mendoza

June 20, 2025 Memo re: Appeals of Orders Granting Bail in Amounts Considered Insufficient by the State

Exhibit 1 – Proposed TRAP 31.8
Exhibit 2 – SB 9

IV. Texas Rule of Evidence 412

Evidence Subcommittee:

Hon. Harvey G. Brown – Chair
Roger W. Hughes – Vice Chair
Prof. Elaine A. G. Carlson
Jack P. Carroll
Marcy Hogan Greer
Prof. Lonny S. Hoffman
Hon. Peter Michael Kelly

June 20, 2025 Memo re: TRE 412

V. Summary Judgment

Rule 15-165a Subcommittee:

Richard Orsinger – Chair

Hon. Ana E. Estevez – Vice Chair
Prof. Elaine A. G. Carlson
Prof. William V. Dorsaneo III
John H. Kim
Hon. Emily Miskel
Giana Ortiz
Pete Schenkkan
Hon. John F. Warren

June 20, 2025 Memo re: Rule 166a, Summary Judgment
June 20, 2025 Memo from Giana Ortiz
June 20, 2025 Email re: Possible Change to RJAs

VI. Prohibiting the Central Docket

Judicial Administration Subcommittee:
Hon. Bill Boyce – Chair
Kennon Wooten – Vice Chair
Hon. Nicholas Chu
Hon. Tom Gray
Michael A. Hatchell
Prof. Lonny S. Hoffman
Hon. Maria Salas Mendoza
Macey Reasoner Stokes

June 20, 2025 Memo re: Proposed Amendments to Rules of Judicial Administration 7.2 and 8
Exhibit 1 – February 7, 2025 Referral Letter
Exhibit 2 – Proposed Amendments to RJA 7.2 and 8

VII. Eliminating Pre-Grant Merits Briefing

Appellate Subcommittee:

Hon. Bill Boyce – Chair
Constance H. Pfeiffer – Vice Chair
Prof. Elaine A. G. Carlson
Prof. William V. Dorsaneo III
Hon. David Keltner
Hon. Emily Miskel
Richard B. Phillips, Jr.
Macey Reasoner Stokes
Charles R. Watson, Jr.

June 20, 2025 Memo re: Petition for Review Practice

VIII. Court Attorneys and Pro Bono

Judicial Administration Subcommittee:

Hon. Bill Boyce – Chair
Kennon Wooten – Vice Chair
Hon. Nicholas Chu
Hon. Tom Gray
Michael A. Hatchell
Prof. Lonny S. Hoffman
Hon. Maria Salas Mendoza
Macey Reasoner Stokes

June 20, 2025 Memo re: Court Attorneys and Pro Bono

IX. Texas Rules of Evidence

Evidence Subcommittee:

Hon. Harvey G. Brown – Chair
Roger W. Hughes – Vice Chair
Prof. Elaine A. G. Carlson
Jack P. Carroll
Marcy Hogan Greer
Prof. Lonny S. Hoffman
Hon. Peter Michael Kelly

June 20, 2025 Memo re: FRE Amendments Effective December 1, 2024

Tab I-Procedural Rules for the State Commission on Judicial Conduct

MEMORANDUM

TO: Supreme Court Advisory Committee

FROM: JCC Rules Task Force

DATE: June 20, 2025

RE: Proposed Revisions to Procedural Rules for the State Commission on Judicial Conduct

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The Texas Supreme Court appointed the Task Force to review the Procedural Rules for the State Commission on Judicial Conduct ("SCJC" or "Commission") and draft amendments for the Court's consideration.

The proposed amendments attached as **Exhibit A** reflect changes to implement SB 293, which passed during the recent legislative session concluded on June 2, 2025. The proposed amendments also reflect changes that will go into effect under SJR 27 if the constitutional amendments reflected therein are passed in November 2025. SB 293 is attached as **Exhibit B**. SJR 27 is attached as **Exhibit C**.

Here is an overview of the major changes reflected in SB 293 and SJR 27 with respect to the operations of the Commission that are reflected in proposed rule revisions. A number of additional changes were made (e.g., establishing a statute of limitations and administrative penalties for a false complaint) that are not reflected in the proposed rule revisions.

- SB 293
    - Section 3: Amends or adds definitions in Government Code § 33.001(a) for "Judge," "Official misconduct," "Review tribunal."
    - Section 4: Amends definition of "wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" in Government Code § 33.001(b). Definition includes "failure to meet deadlines, performance measures or standards, or clearance rate requirements by state,

administrative rule, or binding court order." Definition also includes "persistent or wilful violation of Article 17.15, Code of Criminal Procedure" and "persistent or willful violation of Section 23.302(a).

- Section 5: Amends Government Code § 33.0211 to allow a persona who files a complaint with the Commission to submit additional documentation in support of the complaint.

- Section 7: Amends Government Code § 33.0212 to specify procedures for a report and recommendation on filed complaints.

- Section 8: Amends Government Code § 33.0213 addressing procedures if the Commission receives notice that a law enforcement agency is investigating an action for which a complaint has been filed with the Commission.

- Section 9: Amends Government Code § 33.022 addressing procedures after a preliminary investigation.

- Section 10: Amends Government Code § 33.023 addressing procedures related to substance abuse or physical or mental incapacity, and suspension.

- Section 11: Amends Government Code § 33.034 addressing procedures for providing notice of a public reprimand.

- Section 12: Amends Government Code § 33.037 addressing suspension from office for a persistent or will violation of Code of Criminal Procedure Art. 17.15.

- SJR 27

  - Addressing private and public admonitions, and appointment of a Master to conduct proceedings.

PROCEDURAL RULES FOR THE STATE COMMISSION ON JUDICIAL CONDUCT

(Adopted and Promulgated Pursuant to Article V, Section 1-a(11), Texas Constitution and Chapter 33, Texas Government Code)[1]

RULE 1.[2] DEFINITIONS

In these rules, unless the context or subject matter otherwise requires:

(a) "Commission" means the State Commission on Judicial Conduct.

(b) "Judge" means any Justice or Judge of the Appellate Courts and District and Criminal District Courts; any County Judge; any Judge of a County Court-at-Law, a Probate Court, or a Municipal Court; any Justice of the Peace; any Judge or presiding officer of any special court created by the Legislature; any retired judge or former judge who continues as a judicial officer subject to assignment to sit on any court of the state; any Master or Magistrate appointed to serve a trial court of this state; and any candidate for an office named in this definition.[3]

(c) "Judicial Candidate" means any person seeking election as Chief Justice or Justice of the Supreme Court; Presiding Judge or Judge of the Court of Criminal Appeals; Chief Justice or Justice of a Court of Appeals; Judge of a District Court; Judge of a Statutory County Court; Judge of a Statutory Probate Court; or Judge of the Court of Justice of the Peace.

(d) "Chairperson" includes the acting Chairperson of the Commission.

(e) "Special master" means an individual appointed by the Supreme Court upon request of the Commission pursuant to Article V, Section 1-a, Paragraph (8)(iii)[4] of the Texas Constitution.

(f) "Sanction" means any admonition, warning, reprimand, or requirement that the person obtain additional training or education, issued publicly or privately, by the Commission

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[1] Should any other statutes or authorities be referenced here?

[2] Rule numbers listed and cross-referenced below will need to be checked and updated once the numbering of new rules is determined.

[3] For discussion: This addition incorporates a constitutional amendment adding judicial candidates to the Commission's jurisdiction *See* Art. V, Sec. 1-a(13-a). JCC recommends keeping the separate definition of "Judicial Candidate" in subsection (c), rather than expanding the definition of a "Judge" to include candidates. JCC also notes that some municipal court judges are elected; is the definition broad enough? There was also concern on the Task Force that adding the language to subsection (b) could be confusing because the definition would define "Judge" to include persons who are not judges; not all candidates are judges when they run for a judicial office.

[4] Cite will need to be amended if SJR 27 passes in November 2025.

pursuant to the provisions of Article V, Section 1-a, Paragraph (8)(i)-(ii)[5] of the Texas Constitution. A sanction is remedial in nature. It is issued prior to the institution of formal proceedings to deter similar misconduct by a judge or judicial candidate in the future, to promote proper administration of justice, and to reassure the public that the judicial system of this state neither permits nor condones misconduct.

(g) "Censure" means an order issued by the Commission pursuant to the provisions of Article V, Section 1-a, Paragraph (8-a)(i)[6] of the Texas Constitution or an order issued by a Review Tribunal pursuant to the provisions of Article V, Section 1-a, Paragraph (9) of the Texas Constitution. An order of censure is tantamount to denunciation of the offending conduct, and is more severe than the remedial sanctions issued prior to a formal hearing.[7]

(h) "Special Court of Review" means a panel of three court of appeals justices selected by lot by the Chief Justice of the Supreme Court on petition, to review a censure or sanction issued by the Commission.

(i) "Review Tribunal" means a panel of seven court of appeals justices selected by the Chief Justice of the Supreme Court[8] to review the Commission's recommendation for the removal or retirement of a judge as provided in Article V, Section 1-a, Paragraph (9) of the Texas Constitution.

(j) "Formal proceeding" means the proceedings ordered by the Commission concerning the possibility of a public censure of a judge or judicial candidate or the removal or retirement of a judge.

(k) "Examiner" means the person, including appropriate Commission staff or Special Counsel, appointed or employed[9] by the Commission to gather and present evidence before a special master, or the Commission, a Special Court of Review or a Review Tribunal.

(l) "Shall" is mandatory and "may" is permissive.

(m) "Mail" means First Class United States Mail.

[10] **[SB 293 sections 3 and 4 reference the definitions of "official misconduct" in conformity with CCP Art. 3.04 and "wilful or persistent conduct that is clearly**

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[5] Cite will need to be amended if SJR 27 passes in November 2025.

[6] Cite will need to be amended if SJR 27 passes in November 2025.

[7] For discussion: Is censure always public? If so, should "censure" be defined as "public censure"?

[8] SB 293 section 3.

[9] This edit clarifies that Commission staff may gather or present evidence. It comports with Texas Government Code section 33.001(5), which defines "Examiner" to include appropriate Commission staff.

[10] Neutral terms are employed below.

inconsistent with the proper performance of a judge's duties." Do these definitions need to be included in the rules?][11]

[SB 293 section 6 refers to "Statute of Limitation" and "False Complaints". Do we want to add rules for each of those sections?]

[HB4344 requires the JCC to provide the Legislature with annual reports regarding complaints filed with the JCC. Does that requirement need to be addressed in rules?]

RULE 2. MAILING OF NOTICES AND OF OTHER MATTER

Whenever these rules provide for giving notice or sending any matter to a judge or judicial candidate, the same shall, unless otherwise expressly provided by the rules or requested in writing by the judge or judicial candidate, be sent to the judge or judicial candidate by email or mail at their office or last known place of residence; provided, that when the judge or judicial candidate has a guardian or guardian ad litem, the notice or matter shall be sent to the guardian or guardian ad litem by mail at their office or last known place of residence. Any communication with the judge or judicial candidate by email shall use their email address in the judicial directory established by the Texas Judicial System's Office of Court Administration.[12]

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RULE __. INITIATION OF PROCEEDINGS AND MAINTAINANCE OF FILE[13]

(a) Commission proceedings may be initiated by filing a written complaint with the Commission, or by **[a complaint filed by]**[14] the Commission on its own initiative.

(b) The Commission shall maintain a file on each written complaint. The file shall include the following information:

(1) the name of the person who filed the complaint;

(2) the date on which the complaint was received or initiated;

(3) the subject matter of the complaint;

(4) any additional documentation supporting the complaint;

[11] JCC recommends adding a definition of "official misconduct" but not "wilful and persistent misconduct."

[12] SB 293 section 13. Should this language be broader to include "electronic communication" not just an email format?

[13] SB 293 section 5.

[14] For discussion: Should it be necessary for the Commission to file a complaint? One possible reason to require this is to make the record-keeping requirement consistent for proceedings initiated by outside complaints and by the Commission itself. JCC recommendation: No because the Commission generally initiates a complaint based on a news article or indictment. The Commission uses that as the complaint instead of actually filing a complaint form. The Commission then votes on whether to initiate a complaint.

(5) the name of each person contacted in relation to the complaint;

(6) a summary of the results of the review or investigation of the complaint;

(7) a summary of the results of the review or investigation of the complaint; and

(8) an explanation of the reason for closing the file, if the Commission closed the file without taking action other than to investigate the complaint.

(c) A person who files a complaint with the Commission may submit additional documentation to support the complaint not later than 45 days after filing the complaint.

RULE ___ : REPORT AND RECOMMENDATION ON FILED COMPLAINTS[15]

(a) As soon as practical after a complaint is filed with the Commission, the Commission staff shall conduct a preliminary investigation of the filed complaint and draft recommendations for Commission action.

(b) After completing a preliminary investigation, Commission staff may commence a full investigation if it is determined that a full investigation is necessary before the next Commission meeting. Not less than seven business days after the date on which Commission staff commences a full investigation, Commission staff shall provide written notice of the full investigation to the judge[16] who is the subject of the complaint in compliance with Government Code section 33.022(c)(1)(B).

(c) Not later than the tenth day before a scheduled Commission meeting, Commission staff shall prepare and file with each member of the Commission a report containing the following information:

(1) a list of complaints for which a preliminary investigation has been conducted under subsection (a) but for which an investigation report has not been finalized;

(2) the results of the preliminary investigation, including whether Commission staff commenced a full investigation; and

(3) the Commission staff's recommendations for Commission action regarding the complaint, including any recommendation for further investigation or termination of the investigation and dismissal of the complaint.

(d) Not later than 120 days following the date of the first Commission meeting at which a complaint is included in the report specified in subsection (c), the Commission

[15] SB 293 section 7.

[16] Depending on the decision as to expanding the definition of "Judge" to include judicial candidates, or having a separate definition of "Judicial Candidate," the language around this requirement may need to be modified; also additional references to "Judge" in the rules.

shall finalize the investigation report and determine any action to be taken regarding the complaint. The following actions may be taken:

(1) public sanction;

(2) private sanction;[17]

(3) suspension;

(4) an order of education;

(5) acceptance of resignation in lieu of discipline;

(6) dismissal of the complaint; or

(7) initiation of formal proceedings.

(e) After the Commission meeting at which an investigative report is finalized and an action is determined under subsection (d), the Commission shall provide to the judge who is the subject of a complaint the following: [18]

(1) written notice of the action to be taken regarding the complaint. If the Commission determines that no further action will be taken on the complaint, the written notice shall be provided not more than five business days after the Commission meeting at which this determination is made. If the Commission determines to take any further action on the complaint, including pursuit of further investigation, the written notice shall be provided not more than seven business days after the Commission meeting at which this determination is made; and

(2) as the Commission deems appropriate, the Commission may publish notice of the action to be taken by posting the notice on the Commission Internet website not less than five business days after notice is provided under subdivision (e)(1).

(f) If the Commission is unable to finalize an investigation report and determine the action to be taken regarding a complaint before the 120th day following the date of the first Commission meeting at which a complaint is included in the report filed under subsection (c), then the Commission may order an extension of not more than 240 days from the date of the first Commission meeting at which a complaint is included in the report filed under subsection (c).

[17] This option could be affected if SJR 27 passes in November 2025. A judge still could receive one private sanction as long as the judge has not been issued one previously, or the complaint does not allege engagement in a criminal offense.

[18] For discussion: Should notice be provided to the judge as soon as a complaint is filed? Would such a requirement be an impermissible addition to statutory requirements? Would such a requirement create recusal problems?

(g) If a complaint against a judge alleges multiple instances of misconduct or the Commission determines multiple complaints have been submitted against the judge, the Commission may order an additional extension of not more than 90 days after the date on which the extension under subsection (f) expires.

(h) Each member of the Commission shall certify an investigation report finalized under subsection (d) by signing the report. The signature may be electronic.

(i) If the Commission orders an extension of time under subsections (f) or (g), the Commission must timely inform the Governor; the Lieutenant Governor; the Speaker of the House of Representatives; the presiding officer of each legislative standing committee with primary jurisdiction over the judiciary; the Chief Justice of the Supreme Court; the Office of Court Administration of the Texas Judicial System; and the Presiding Judge of the administrative judicial region in which is located the court of the judge who is the subject of the complaint.[19]

(j) The Commission may not disclose to a person informed under subsection (i) any confidential information regarding the complaint.

RULE ___ : COMMISSION ACTION ON COMPLAINT[20]

(a) Commission staff shall recommend that the Commission terminate the investigation and dismiss the complaint upon determining that an allegation or appearance of misconduct or disability is unfounded or frivolous.

(b) Commission staff may terminate the investigation and dismiss the complaint without action by the Commission after conducting a preliminary investigation and determining that administrative deficiencies in the complaint preclude further investigation.

(c) If a complaint is dismissed under subsection (a) or (b), then the Commission shall notify the judge in writing of the dismissal not more than five business days after the dismissal date.

(d) If the Commission does not determine that an allegation or appearance of misconduct or disability is unfounded or frivolous after conducting a preliminary investigation, then the Commission shall take the following actions:

(1) conduct a full investigation of the circumstances surrounding the allegation or appearance of misconduct or disability; and

(2) not more than seven business days after the Commission staff commences a full investigation under subsection (d)(1), notify the judge in writing of the commencement of the investigation, the nature of the allegation or appearance of misconduct or disability being investigated, and the judge's

[19] For discussion: Does this requirement need to be in the rules?

[20] SB 293 section 9.

right to attend each Commission meeting at which the complaint is included in the report filed with the Commission members.

(e) In addition to the actions set forth in subsection (d) the Commission may:

(1) order the judge to submit a written response to the allegation or appearance of misconduct or disability;

(2) order the judge to appear informally before the Commission;

(3) order the deposition of any person; or

(4) request the complainant to appear informally before the Commission.

RULE : NOTIFICATION OF LAW ENFORCEMENT AGENCY INVESTIGATION[21]

(a) The Commission may place a complaint file on hold and decline any further investigation upon notification by any law enforcement agency investigating an action for which a complaint has been filed with the Commission if the Commission's investigation would jeopardize the law enforcement agency's investigation.

(b) In the event the Commission does not place a complaint on hold under subsection (a), the Commission shall continue an investigation that would not jeopardize a law enforcement investigation regarding the conduct subject to the complaint, and may issue a censure or sanction based on the complaint.

RULE : SUBSTANCE ABUSE; PHYSICAL OR MENTAL INCAPACITY OF JUDGE; SUSPENSION[22]

(a) The Commission shall conduct a preliminary investigation and present the results thereof to each member of the Commission not later than 30 days after a complaint is filed questioning a judge's ability to perform official duties based upon allegations of substance abuse or physical or mental incapacity.

(b) The Commission shall provide written notice of the complaint and subpoena the judge to the appear before the Commission at its next regularly scheduled meeting if the Commission determines based on the preliminary investigation that the judge's alleged substance abuse or physical or mental incapacity brings into question the judge's ability to perform official duties.

(c) Following the judge's appearance pursuant to subsection (b), the Commission may require the judge to submit to a physical or mental examination. If such an

[21] SB 293 section 8.

[22] SB 293 section 10.

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RULE 3. PRELIMINARY INVESTIGATION ¶
The Commission may, upon receipt of a verified statement, upon its own motion, or otherwise, make such preliminary investigation as is appropriate to the circumstances relating to an allegation or appearance of misconduct or disability of any judge or judicial candidate to determine that such allegation or appearance is neither unfounded nor frivolous. ¶
If the preliminary investigation discloses that the allegation or appearance is unfounded or frivolous, the Commission shall terminate further proceedings. ¶
RULE 4. FULL INVESTIGATION ¶
If the preliminary investigation discloses that the allegations or appearances are neither unfounded nor frivolous, or if sufficient cause exists to warrant full inquiry into the facts and circumstances indicating that a judge or judicial candidate may be guilty of willful or persistent conduct which is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice, or that he has a disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature, the Commission shall conduct a full investigation into the matter. ¶
The Commission shall inform the judge or judicial candidate in writing that an investigation has commenced and of the nature of the matters being investigated. ¶
The Commission may request the judge's or judicial candidate's response in writing to the matters being investigated.

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examination is required, the Commission shall suspend the judge from office with pay for up to 90 days, provide written notice of the suspension to the judge, order the judge to submit to a physical or mental examination by one or more qualified physicians or psychologists selected and paid for by the Commission, and provide written notice of the examination to the judge at least 10 days before the date of the examination.

(d) The examination notice provided under subsection (c) must include the examiner's name and the date, time, and place of the examination.

(e) Each examiner shall file a written report of the examination with the Commission, which shall be received as evidence. The Commission shall give the judge a copy of the report upon request. The examiner may be required to provide oral or deposition testimony at the Commission's request or upon written demand of the judge.

(f) If the Commission determines based on a report or testimony under subsection (e) that a judge is unable to perform official duties because of substance abuse or physical or mental incapacity, the Commission shall:

(1) recommend suspension of the judge from office to the Supreme Court; or

(2) enter into an indefinite voluntary agreement with the judge for suspension with pay until the Commission determines that the judge is physically and mentally competent to resume official duties.

(g) The Commission may petition a district court for an order compelling the judge to submit to a physical or mental examination and recommend suspension of the judge from office to the Supreme Court if the judge refuses to submit to a physical or mental examination ordered by the Commission.

RULE : PUBLIC REPRIMAND FOR WILFUL OR PERSISTENT VIOLATION OF CODE OF CRIMINAL PROCEDURE ARTICLE 17.15 [23]

If the Commission issues a public reprimand of a judge based on the judge's wilful or persistent violation of Code of Criminal Procedure Article 17.15, the Commission shall send notice of the public reprimand to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the presiding officer of each legislative standing committee with primary jurisdiction over the judiciary, the Chief Justice of the Supreme Court, the Office of Court Administration of the Texas Judicial System, the Presiding Judge of the administrative judicial region in which is located the court of the judge who is the subject of the complaint, and each judge of a constitutional county court in the geographic region in which the reprimanded judge serves.

RULE 5. ISSUANCE, SERVICE, AND RETURN OF SUBPOENAS

(a) In conducting an investigation, formal proceedings, or proceedings before a Special Court of Review, the Chairperson or any member of the Commission, or a special

[23] SB 293 section 11. For discussion: Does this requirement need to be in the rules?

master when a hearing is being conducted before a special master, or member of a Special Court of Review, may, on their own motion, or on request of appropriate Commission staff, the examiner, or the judge or judicial candidate, issue a subpoena for attendance of any witness or witnesses who may be represented to reside within the State of Texas.

(b) The style of the subpoena shall be "The State of Texas". It shall state the style of the proceeding, that the proceeding is pending before the Commission, the time and place at which the witness is required to appear, and the person or official body at whose instance the witness is summoned. It shall be signed by the Chairperson or some other member of the Commission, or by the special master when a hearing is before the special master, and the date of its issuance shall be noted thereon. It shall be addressed to any peace officer of the State of Texas or to a person designated by the Chairperson to make service thereof.

(c) A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(d) Subpoenas may be executed and returned at any time, and shall be served by delivering a copy of such subpoena to the witness. The person serving the subpoena shall make due return thereof, showing the time and manner of service, or service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena.

RULE 6. INFORMAL APPEARANCE

(a) Before terminating an investigation, the Commission may offer a judge or judicial candidate an opportunity to appear informally before the Commission.

(b) An informal appearance is confidential except that the judge or judicial candidate may elect to have the appearance open to the public or to any person or persons designated by the judge or judicial candidate. The right to an open appearance does not preclude placing of witnesses under the rule as provided by Rule 267 of the Texas Rules of Civil Procedure.

(c) No oral testimony other than the judge's or judicial candidate's shall be received during an informal appearance, although documentary evidence may be received. Testimony of the judge or judicial candidate shall be under oath. A recording of such testimony shall be taken, and a copy of such recording shall be furnished to the judge or judicial candidate upon request.

(d) The judge or judicial candidate may be represented by counsel at the informal appearance.

(e) Notice of the opportunity to appear informally before the Commission shall be given by mail or email at least ten days prior to the date of the scheduled appearance.

RULE 7. COMMISSION VOTING

A quorum shall consist of seven members of the Commission. Proceedings shall be by majority vote of those present, except that recommendations for retirement, censure, suspension or removal of any Judge shall be by affirmative vote of at least seven members of the Commission.

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RULE 8. RESERVED FOR FUTURE PROMULGATION

RULE 9. REVIEW OF COMMISSION DECISION[24]

(a) A judge or judicial candidate who has received from the Commission a sanction or censure under Article V, Section 1-a(8) or (8-a)[25] of the Texas Constitution may file with the Chief Justice of the Supreme Court a written request for appointment of a Special Court of Review, not later than the 30th day after the date on which the Commission issued its sanction or censure. This subsection does not apply to a decision by the Commission to institute formal proceedings.

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(b) Within 15 days after appointment of the Special Court of Review, the Commission shall furnish the petitioner and each justice on the Special Court of Review a charging document which shall include a copy of the sanction issued as well as any additional charges to be considered in the de novo proceeding and the papers, documents, records, and evidence upon which the Commission based its decision. The sanction and other records filed with the Special Court of Review are public information upon filing with the Special Court of Review.

(c) Within 30 days after the date upon which the Commission files the charging document and related materials with the Special Court of Review, the Special Court of Review shall conduct a hearing. The Special Court of Review may, if good cause is shown, grant one or more continuances not to exceed a total of 60 days. The procedure for the hearing shall be governed by the rules of law, evidence, and procedure that apply to civil actions, except the judge or judicial candidate is not entitled to trial by jury, and the Special Court of Review's decision shall not be appealable. The hearing shall be held at a location determined by the Special Court of Review, and shall be public.

(d) Decision by the Special Court of Review may include dismissal, affirmation of the Commission's decision, imposition of a lesser or greater sanction, or order to the Commission to file formal proceedings.

(e) The opinion by the Special Court of Review shall be published if, in the judgment of a majority of the justices participating in the decision, it is one that: (1) establishes a new rule of ethics or law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases; (2) involves a legal or ethical issue of continuing public interest; (3) criticizes existing legal or ethical principles; or (4) resolves an apparent conflict of authority. A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the above indicated criteria, but in such event the majority opinion shall be published as well.

[24] SB 293 section 11.

[25] Cite will need to be revised if SJR27 passes in November 2025.

RULE 10. FORMAL PROCEEDINGS

(a) NOTICE

(1) If, after the investigation has been completed, the Commission concludes that formal proceedings should be instituted, the matter shall be entered in a docket to be kept for that purpose and written notice of the institution of formal proceedings shall be issued to the judge or judicial candidate without delay. Such proceedings shall be entitled:

"Before the State Commission on Judicial Conduct Inquiry Concerning a Judge or Judicial Candidate, No. _____"

(2) The notice shall specify in ordinary and concise language the charges against the judge or judicial candidate, and the alleged facts upon which such charges are based and the specific standards contended to have been violated, and shall advise the judge or judicial candidate of their right to file a written answer to the charges against them within 15 days after service of the notice upon them.

(3) The notice shall be served by personal service of a copy thereof upon the judge or judicial candidate by a member of the Commission or by some person designated by the Chairperson, and the person serving the notice shall promptly notify the Commission in writing of the date on which the same was served. If it appears to the Chairperson upon affidavit that, after reasonable effort during a period of ten days, personal service could not be had, service may be made by emailing or by mailing, by registered or certified mail, copies of the notice addressed to the judge or judicial candidate at their last known residence and, if a judge, at the judge's chambers, and the date of mailing shall be entered in the docket.

(b) ANSWER

Within 15 days after service of the notice of formal proceedings, the judge or judicial candidate may file with the Commission an original answer, which shall be verified, and twelve legible copies thereof.

(c) SETTING DATE FOR HEARING AND REQUEST FOR APPOINTMENT OF A SPECIAL MASTER

(1) Upon the filing of an answer or upon expiration of the time for its filing, the Commission shall set a time and place for hearing before itself or before a special master and shall give notice of such hearing by mail to the judge or judicial candidate at least 20 days prior to the date set.

(2) If the Commission directs that the hearing be before a special master, the Commission shall, when it sets a time and place for the hearing, transmit a written request to the Supreme Court to appoint a special master for such hearing, and the Supreme Court shall, within 10 days from receipt of such request, appoint an active or retired district judge, a justice of a court of appeals, either active or retired, or a retired justice of the Court of Criminal Appeals or Supreme Court to hear and take evidence in such matters.

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(d) HEARING

(1) At the time and place set for hearing, the Commission, or the special master when the hearing is before a special master, shall proceed with the hearing as nearly as may be according to the rules of procedure governing the trial of civil causes in this State, subject to the provisions of Rule 5, whether or not the judge or judicial candidate has filed an answer or appears at the hearing. The examiner or other authorized officer shall present the case in support of the charges in the notice of formal proceedings.

(2) The failure of the judge or judicial candidate to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for removal or retirement. The failure of the judge or judicial candidate to testify in their own behalf or their failure to submit to a medical examination requested by the Commission or the master may be considered, unless it appears that such failure was due to circumstances unrelated to the facts in issue at the hearing.

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(3) The proceedings at the hearing shall be reported by a phonographic reporter or by some qualified person appointed by the Commission and taking the oath of an official court reporter.

(4) When the hearing is before the Commission, not less than seven members shall be present while the hearing is in active progress. The Chairperson, when present, the Vice-Chairperson in the absence of the Chairperson, or the member designated by the Chairperson in the absence of both, shall preside. Procedural and other interlocutory rulings shall be made by the person presiding and shall be taken as consented to by the other members unless one or more calls for a vote, in which latter event such rulings shall be made by a majority vote of those present.

(e) EVIDENCE

At a hearing before the Commission or a special master, legal evidence only shall be received as in the trial of civil cases, except upon consent evidenced by absence of objection, and oral evidence shall be taken only on oath or affirmation.

(f) AMENDMENTS TO NOTICE OR ANSWER

The special master, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge or judicial candidate shall be given reasonable time both to answer the amendment and to prepare and present their defense against the matters charged thereby.

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(g) PROCEDURAL RIGHTS OF JUDGES AND JUDICIAL CANDIDATES

(1) In the proceedings for a judge's removal or retirement a judge shall have the right to be confronted by his accusers, the right and reasonable opportunity to defend against the charges by the introduction of evidence, the right to be represented by counsel, and the right

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to examine and cross-examine witnesses. The judge also shall have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers and other evidentiary matter.

(2) When a transcript of the testimony has been prepared at the Commission's expense, a copy thereof shall, upon request, be available for use by the judge or judicial candidate and their counsel in connection with the proceedings, or the judge or judicial candidate may arrange to procure a copy at their expense. The judge or judicial candidate shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at their expense.

(3) If the judge or judicial candidate is adjudged insane or[26] incompetent, or if it appears to the Commission at any time during the proceedings that the judge or judicial candidate is not competent to act for themselves, the Commission shall appoint a guardian ad litem unless the judge or judicial candidate has a guardian who will represent them. In the appointment of a guardian ad litem, preference shall be given, so far as practicable, to members of the judge's or judicial candidate's immediate family. The guardian or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge or judicial candidate with the same force and effect as if claimed, exercised, or made by the judge or judicial candidate, if competent.

(h) REPORT OF SPECIAL MASTER

(1) After the conclusion of the hearing, the special master shall promptly prepare and transmit to the Commission and the Supreme Court[27] a report which shall contain a brief statement of the proceedings had and findings of fact based on a preponderance of the evidence with respect to the issues presented by the notice of formal proceedings and the answer thereto, or if there be no answer, the special master's findings of fact with respect to the allegations in the notice of formal proceedings. The report shall be accompanied by an original and two copies of a transcript of the proceedings before the special master.

(2) Upon receiving the report of the special master, the Commission shall promptly send one copy to the judge or judicial candidate who is the subject of the report, and one copy of the transcript shall be retained for that judge's or judicial candidate's use.

(i) OBJECTIONS TO REPORT OF SPECIAL MASTER

Within 15 days after mailing of the copy of the special master's report to the judge or judicial candidate, the examiner or the judge or judicial candidate may file with the Commission an original and twelve legible copies of a statement of objections to the report of the special master, setting forth all objections to the report and all reasons in opposition to the findings as sufficient grounds for removal or retirement. A copy of any such statement filed by the examiner shall be sent to the judge or judicial candidate.

(j) APPEARANCE BEFORE COMMISSION

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[27] To be added if SJR 27 passes in November 2025.

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If no statement of objections to the report of the special master is filed within the time provided, the findings of the special master may be deemed as agreed to, and the Commission may adopt them without a hearing. If a statement of objections is filed, or if the Commission in the absence of such statement proposes to modify or reject the findings of the special master, the Commission shall give the judge or judicial candidate and the examiner an opportunity to be heard orally before the Commission, and written notice of the time and place of such hearing shall be sent to the judge or judicial candidate at least ten days prior thereto.

(k) EXTENSION OF TIME

The Chairperson of the Commission may extend for periods not to exceed 30 days in the aggregate the time for filing an answer, for the commencement of a hearing before the Commission, and for filing a statement of objections to the report of a special master, and a special master may similarly extend the time for the commencement of a hearing before the special master.

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(l) HEARING ADDITIONAL EVIDENCE

(1) The Commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent to the judge or judicial candidate at least ten days prior to the date of the hearing.

(2) The hearing of additional evidence may be before the Commission itself or before the special master, as the Commission shall direct; and if before a special master, the proceedings shall be in conformance with the provisions of Rule 10(d) to 10(g) inclusive.

(m) COMMISSION RECOMMENDATION

If, after hearing, upon considering the record and report of the special master, the Commission finds the judge or judicial candidate engaged in wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties or other good cause therefore, it:

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(1) shall issue for the person an order of public admonition, warning, reprimand, censure, or requirement that the judge or judicial candidate obtain additional training or education; or

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(2) may recommend to the Review Tribunal the removal, or retirement of the person and shall file with the tribunal the entire record before the Commission.[28]

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RULE 11. REQUEST BY COMMISSION FOR APPOINTMENT OF REVIEW TRIBUNAL

[28] Amendments if SJR 27 passes in November 2025.

Upon making a determination to recommend the removal or retirement of a judge, the Commission shall promptly file a copy of a request for appointment of a Review Tribunal with the clerk of the Supreme Court, and shall immediately send the judge notice of such filing.

RULE 12. REVIEW OF FORMAL PROCEEDINGS[29]

(a) A recommendation of the Commission for the removal or retirement, of a judge shall be determined by a Review Tribunal of seven justices selected from the courts of appeals. Members of the Review Tribunal shall be selected by the Chief Justice of the Supreme Court from all appellate justices sitting at the time of selection. No justice who is a member of the Commission shall serve on the Review Tribunal. The Chief Justice of the Supreme Court will select the justice who shall be chairperson of the Review Tribunal. The clerk of the Supreme Court will serve as the Review Tribunal's staff, and will notify the Commission when selection of the Review Tribunal is complete.

(b) After receipt of notice that the Review Tribunal has been constituted, the Commission shall promptly file a copy of its recommendation certified by the Chairperson or Secretary of the Commission, together with the transcript and the findings and conclusions, with the clerk of the Supreme Court. The Commission shall immediately send the judge notice of such filing and a copy of the recommendation, findings and conclusions.

(c) A petition to reject the recommendation of the Commission for removal or retirement of a judge may be filed with the clerk of the Supreme Court within 30 days after the filing with the clerk of the Supreme Court of a certified copy of the Commission's recommendation. The petition shall be verified, shall be based on the record, shall specify the grounds relied on and shall be accompanied by seven copies of petitioner's brief and proof of service of one copy of the petition and of the brief on the Chairperson of the Commission. Within twenty days after the filing of the petition and supporting brief, the Commission shall file seven copies of the Commission's brief, and shall serve a copy thereof on the judge.

(d) Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the Commission.

(e) Rules 9 and 74 of the Texas Rules of Appellate Procedure, shall govern the form and contents of briefs except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent.

(f) The Review Tribunal, may, in its discretion and for good cause shown, permit the introduction of additional evidence, and may direct that the same be introduced before the special master or the Commission and be filed as a part of the record in the Court.

(g) Oral argument on a petition of a judge to reject a recommendation of the Commission shall, upon receipt of the petition, be set on a date not less than 30 days nor more than 40 days from the date of receipt thereof. The order and length of time of argument shall, if not otherwise ordered or permitted by the Review Tribunal

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[29] Changes in blue would implement SJR 27 if it passes in November 2025.

(h) Within 90 days after the date on which the record is filed with the Review Tribunal, it shall order public censure, suspension without pay for a specified period, retirement, or removal, as it finds just and proper, or wholly reject the recommendation. The Review Tribunal, in an order for involuntary retirement for disability or an order for removal, shall also prohibit such person from holding judicial office in the future.

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(i) The opinion by the Review Tribunal shall be published if, in the judgment of a majority of the justices participating in the decision, it is one that: (1) establishes a new rule of ethics or law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases; (2) involves a legal or ethical issue of continuing public interest; (3) criticizes existing legal or ethical principles; or (4) resolves an apparent conflict of authority. A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the above indicated criteria, but in such event the majority opinion shall be published as well.

RULE 13. APPEAL TO SUPREME COURT

A judge may appeal a decision of the Review Tribunal to the Supreme Court under the substantial evidence rule.

RULE 14. MOTION FOR REHEARING

A motion for rehearing may not be filed as a matter of right. In entering its judgment, the Supreme Court or Review Tribunal may direct that no motion for rehearing will be entertained, in which event the judgment will be final on the day and date of its entry. If the Supreme Court or Review Tribunal does not so direct and the judge wishes to file a motion for rehearing, the judge shall present the motion together with a motion for leave to file the same to the clerk of the Supreme Court or Review Tribunal within 15 days of the date of the judgment, and the clerk of the Supreme Court shall transmit it to the Supreme Court or Review Tribunal for such action as the appropriate body deems proper.

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RULE 15. SUSPENSION OF A JUDGE[30]

(a) Any judge may be suspended from office with or without pay by the Commission immediately upon being indicted by a state or federal grand jury for a felony offense or charged with a misdemeanor involving official misconduct. However, the suspended judge has the right to a post-suspension hearing to demonstrate that continued service would not jeopardize the interests of parties involved in court proceedings over which the judge would preside nor impair public confidence in the judiciary. A written request for a post-suspension hearing must be filed with the Commission within 30 days from receipt of the Order of Suspension. Within 30 days from the receipt of a request, a hearing will be scheduled before one or more members or the executive director of the Commission as designated by the Chairperson of the Commission. The person or persons designated will report findings and make recommendations, and within 60 days from the close of the hearing, the Commission shall notify the judge whether the suspension will be continued, terminated, or modified.

[30] Changes in blue would implement SJR 27 if it passes in November 2025.

(b) Upon the filing with the Commission of a sworn complaint[31] charging a person holding such office with wilful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of office, wilful violation of the Code of Judicial Conduct, or wilful and persistent conduct that is clearly inconsistent with the proper performance of the judge's duties or casts public discredit upon the judiciary or the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission (under Rule 6), may recommend to the Supreme Court the suspension of such person from office with or without pay, pending final disposition of the charge.

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(c) When the Commission or the Supreme Court orders the suspension of a judge or justice, with or without pay, the appropriate city, county, and/or state officials shall be notified of such suspension by certified copy of such order.

(d) If a judge who is convicted of a felony or misdemeanor involving official misconduct appeals the conviction, the Commission shall suspend the judge from office without pay pending final disposition of the appeal.

(e) Not later than 21 days after the date on which the Commission initiates formal proceedings against a judge based on the judge's wilful or persistent violation of Code of Criminal Procedure Article 17.15, the Commission shall recommend to the Supreme Court that the judge be suspended from office pursuant to Article V, Section 1-a of the Texas Constitution.[32]

RULE 16. RECORD OF COMMISSION PROCEEDINGS AND EDUCATION NONCOMPLIANCE

(a) The Commission shall keep a record of all informal appearances and formal proceedings concerning a judge or judicial candidate. In all proceedings resulting in a recommendation to the Review Tribunal for removal or retirement, the Commission shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceeding.

(b) The Commission must publicly list on its website judges who have been suspended for noncompliance with judicial-education requirements set forth in governing statutes or rules.

RULE 17. CONFIDENTIALITY AND PRIVILEGE OF PROCEEDINGS

All papers filed with and proceedings before the Commission shall be confidential, and the filing of papers with, and the giving of testimony before the Commission shall be privileged; provided that:

[31] For discussion: SB 293 does not refer to a sworn, verified or complaint supported by an affidavit. Should "sworn" be deleted?

[32] SB 293 section 12.

(a) The formal hearing, and all papers, records, documents, and other evidence introduced during the formal hearing shall be public.

(b) If the Commission issues a public sanction, all papers, documents, evidence, and records considered by the Commission or forwarded to the Commission by its staff and related to the sanction shall be public.

(c) The judge or judicial candidate may elect to open the informal appearance hearing pursuant to Rule 6(b).

(d) Any hearings of the Special Court of Review shall be public and held at the location determined by the Special Court of Review. Any evidence introduced during a hearing, including papers, records, documents, and pleadings filed in the proceedings, is public.

RULE 18. *EX PARTE* CONTACTS BY MEMBERS OF THE COMMISSION

A Commissioner, except as authorized by law, shall not directly or indirectly initiate, permit, or consider *ex parte* contacts with any judge or judicial candidate who is the subject of an investigation being conducted by the Commission or involved in a proceeding before the Commission.

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AN ACT

relating to the discipline of judges by the State Commission on Judicial Conduct, notice of certain reprimands, judicial compensation and related retirement benefits, and the reporting of certain judicial transparency information; authorizing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 22.302(a), Government Code, is amended to read as follows:

(a) At the discretion of its chief justice or presiding judge, the supreme court, the court of criminal appeals, or a court of appeals may order that oral argument be presented through the use of teleconferencing technology. The [~~court and the~~] parties or their attorneys may participate in oral argument from any location through the use of teleconferencing technology. Unless exigent circumstances require otherwise, the court shall participate in oral argument presented through teleconferencing technology from a courtroom or other facility provided to the court by this state.

SECTION 2. Subchapter D, Chapter 23, Government Code, is amended by adding Section 23.303 to read as follows:

Sec. 23.303. PROCEDURES RELATED TO MOTIONS FOR SUMMARY JUDGMENT; ANNUAL REPORT. (a) The business court, a district court, or a statutory county court shall, with respect to a motion for summary judgment:

(1) hear oral argument on the motion or consider the motion without oral argument not later than the 45th day after the date the response to the motion was filed; and

(2) file with the clerk of the court and provide to the parties a written ruling on the motion not later than the 90th day after the date the motion was argued or considered.

(b) If a motion for summary judgment is considered by a court described by Subsection (a) without oral argument, the court shall record in the docket the date the motion was considered without argument.

(c) A clerk of a court described by Subsection (a) shall report the court's compliance with the times prescribed by this section to the Office of Court Administration of the Texas Judicial System not less than once per quarter using the procedure the office prescribes for the submission of reports under this subsection.

(d) The Office of Court Administration of the Texas Judicial System shall prepare an annual report regarding compliance of courts and clerks with the requirements of this section during the preceding state fiscal year. Not later than December 31 of each year, the office shall submit the report prepared under this section to the governor, lieutenant governor, and speaker of the house of representatives and make the report publicly available.

(e) Notwithstanding Section 22.004, Subsection (a) or (b) may not be modified or repealed by supreme court rule.

SECTION 3. Section 33.001(a), Government Code, is amended by amending Subdivisions (8) and (9) and adding Subdivision (8-a) to read as follows:

(8) "Judge" means a justice, judge, master, magistrate, justice of the peace, or retired or former judge as described by Section 1-a, Article V, Texas Constitution, or other person who performs the functions of the justice, judge, master, magistrate, justice of the peace, or retired or former judge.

(8-a) "Official misconduct" has the meaning assigned by Article 3.04, Code of Criminal Procedure.

(9) "Review tribunal" means a panel of seven justices of the courts of appeal selected [~~by lot~~] by the chief justice of the supreme court to review a recommendation of the commission for the removal or retirement of a judge under Section 1-a(9), Article V, Texas Constitution.

SECTION 4. Section 33.001(b), Government Code, is amended to read as follows:

(b) For purposes of Section 1-a, Article V, Texas Constitution, "wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" includes:

(1) wilful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business, including failure to meet deadlines, performance measures or standards, or clearance rate requirements set by statute, administrative rule, or binding court order;

(2) wilful violation of a provision of the Texas penal statutes or the Code of Judicial Conduct;

(3) persistent or wilful violation of the rules

promulgated by the supreme court;

(4) incompetence in the performance of the duties of the office;

(5) failure to cooperate with the commission; [~~or~~]

(6) violation of any provision of a voluntary agreement to resign from judicial office in lieu of disciplinary action by the commission;

(7) persistent or wilful violation of Article 17.15, Code of Criminal Procedure; or

(8) persistent or wilful violation of Section 22.302(a).

SECTION 5. Section 33.0211, Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) additional documentation supporting the complaint submitted under Subsection (a-1);

(5) the name of each person contacted in relation to the complaint;

(6) [~~(5)~~] a summary of the results of the review or investigation of the complaint; and

(7) [~~(6)~~] an explanation of the reason the file was

closed, if the commission closed the file without taking action other than to investigate the complaint.

(a-1) Not later than the 45th day after the date a person files a complaint with the commission, the person may submit to the commission additional documentation to support the complaint.

SECTION 6. Subchapter B, Chapter 33, Government Code, is amended by adding Sections 33.02111 and 33.02115 to read as follows:

Sec. 33.02111. STATUTE OF LIMITATIONS. (a) Except as provided by Subsection (b), the commission may not investigate and shall dismiss a complaint filed on or after the seventh anniversary of the date:

(1) the alleged misconduct occurred; or

(2) the complainant knew, or with the exercise of reasonable diligence should have known, of the alleged misconduct.

(b) The commission may investigate and not dismiss a complaint described by Subsection (a) if the commission determines good cause exists for investigating the complaint.

Sec. 33.02115. FALSE COMPLAINT; ADMINISTRATIVE PENALTY. (a) The commission may impose administrative sanctions, including an administrative penalty under Subsection (b), against a person who knowingly files a false complaint with the commission under this subchapter.

(b) The commission may impose on a person described by Subsection (a) an administrative penalty in the amount of:

(1) not more than $500 for the first false complaint;

(2) not more than $2,500 for the second false

complaint; and

(3) not less than $5,000 but not more than $10,000 for each false complaint filed subsequent to the second.

(c) An order imposing an administrative penalty or other sanction under this section is a public record. The commission shall publish notice of the penalty or other sanction on the commission's Internet website.

SECTION 7. Section 33.0212, Government Code, is amended to read as follows:

Sec. 33.0212. REPORT AND RECOMMENDATIONS ON FILED COMPLAINTS. (a) As soon as practicable after a complaint is filed with the commission, commission staff shall conduct a preliminary investigation of the filed complaint and draft recommendations for commission action.

(a-1) If, after completing a preliminary investigation under Subsection (a), commission staff determines that given the content of a complaint a full investigation is necessary before the next commission meeting, commission staff may commence the investigation. Not less than seven business days after the date commission staff commences a full investigation under this subsection, the staff shall provide written notice of the full investigation to the judge who is the subject of the complaint. Notice provided under this subsection shall comply with the requirements of Section 33.022(c)(1)(B).

(a-2) Not later than the 10th day before a scheduled commission meeting [~~120th day after the date a complaint is filed with the commission~~], commission staff shall prepare and file with

each member of the commission a report detailing:

(1) each complaint for which a preliminary investigation has been conducted under Subsection (a) but for which the investigation report has not been finalized under Subsection (b);

(2) the results of the preliminary investigation of the complaint, including whether commission staff commenced a full investigation under Subsection (a-1); and

(3) the commission staff's recommendations for commission action regarding the complaint, including any recommendation for further investigation or termination of the investigation and dismissal of the complaint.

(b) Not later than the 120th [~~90th~~] day following the date of the first commission meeting at which a complaint is included in the report filed with the commission under Subsection (a-2) [~~staff files with the commission the report required by Subsection (a)~~], the commission shall finalize the investigation report and determine any action to be taken regarding the complaint, including:

(1) a public sanction;

(2) a private sanction;

(3) a suspension;

(4) an order of education;

(5) an acceptance of resignation in lieu of discipline;

(6) a dismissal; or

(7) an initiation of formal proceedings.

(b-1) After the commission meeting at which an investigation report is finalized and an action is determined under Subsection (b), the commission shall provide to the judge who is the subject of a complaint:

(1) written notice of the action to be taken regarding the complaint not more than:

(A) five business days after the commission meeting if the commission determines no further action will be taken on the complaint; or

(B) seven business days after the commission meeting if the commission determines to take any further action on the complaint, including by pursuing further investigation; and

(2) as the commission determines appropriate, published notice of the action to be taken by posting the notice on the commission's Internet website not less than five business days after notice is provided under Subdivision (1).

(c) If, because of extenuating circumstances, the commission [~~staff~~] is unable to finalize an investigation report and determine the action to be taken regarding a complaint under Subsection (b) [~~provide an investigation report and recommendation to the commission~~] before the 120th day following the date of the first [~~the complaint was filed with the~~] commission meeting at which a complaint is included in the report filed with the commission under Subsection (a-2), the commission may order an extension [~~the staff shall notify the commission and propose the number of days required for the commission and commission staff to complete the investigation report and recommendations and finalize~~

~~the complaint. The staff may request an extension~~] of not more than 240 [~~270~~] days from the date of the first [~~the complaint was filed with the~~] commission meeting at which a complaint is included in the report filed with the commission under Subsection (a-2). [~~The commission shall finalize the complaint not later than the 270th day following the date the complaint was filed with the commission.~~]

(c-1) If a complaint against a judge alleges multiple instances of misconduct or the commission determines multiple complaints have been submitted against the judge, the commission may order an additional extension of not more than 90 days after the date the extension under Subsection (c) expires.

(c-2) Each member of the commission shall certify an investigation report finalized in accordance with this section by signing the report. The signature required under this subsection may be electronic.

(d) [~~The executive director may request that the chairperson grant an additional 120 days to the time provided under Subsection (c) for the commission and commission staff to complete the investigation report and recommendations and finalize the complaint.~~

[~~(e)~~] If the commission orders an extension of time under Subsection (c) or (c-1) [~~chairperson grants additional time under Subsection (d)~~], the commission must timely inform the following [~~legislature~~] of the extension:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the presiding officer of each legislative standing committee with primary jurisdiction over the judiciary;

(5) the chief justice of the supreme court;

(6) the Office of Court Administration of the Texas Judicial System; and

(7) the presiding judge of the administrative judicial region in which is located the court the judge who is the subject of the complaint serves.

(e) The commission may not disclose to a person informed under Subsection (d) [~~the legislature~~] any confidential information regarding the complaint.

SECTION 8. Section 33.0213, Government Code, is amended to read as follows:

Sec. 33.0213. NOTIFICATION OF LAW ENFORCEMENT AGENCY INVESTIGATION. On notice by any law enforcement agency investigating an action for which a complaint has been filed with the commission, the commission:

(1) may place the commission's complaint file on hold and decline any further investigation that would jeopardize the law enforcement agency's investigation; or

(2) shall[~~. The commission may~~] continue an investigation that would not jeopardize a law enforcement investigation regarding the conduct subject to the complaint and may issue a censure or sanction based on the complaint.

SECTION 9. Section 33.022, Government Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1) and

(b-2) to read as follows:

(b) If, after conducting a preliminary investigation under this section, [~~the~~] commission staff determine [~~determines~~] that an allegation or appearance of misconduct or disability is unfounded or frivolous, [~~the~~] commission staff shall recommend the commission [~~shall~~] terminate the investigation and dismiss the complaint.

(b-1) If, after conducting a preliminary investigation under this section, commission staff determine administrative deficiencies in the complaint preclude further investigation, commission staff may terminate the investigation and dismiss the complaint without action by the commission.

(b-2) If a complaint is dismissed under Subsection (b) or (b-1), the commission shall notify the judge in writing of the dismissal not more than five business days after the dismissal date.

(c) If, after conducting a preliminary investigation under this section, the commission does not determine that an allegation or appearance of misconduct or disability is unfounded or frivolous, the commission:

(1) shall:

(A) conduct a full investigation of the circumstances surrounding the allegation or appearance of misconduct or disability; and

(B) not more than seven business days after the commission staff commences a full investigation under this subsection, notify the judge in writing of:

(i) the commencement of the investigation;

[~~and~~]

(ii) the nature of the allegation or appearance of misconduct or disability being investigated; and

(iii) the judge's right to attend each commission meeting at which the complaint is included in the report filed with commission members under Section 33.0212(a-2); and

(2) may:

(A) order the judge to:

(i) submit a written response to the allegation or appearance of misconduct or disability; or

(ii) appear informally before the commission;

(B) order the deposition of any person; or

(C) request the complainant to appear informally before the commission.

SECTION 10. Section 33.023, Government Code, is amended to read as follows:

Sec. 33.023. SUBSTANCE ABUSE; PHYSICAL OR MENTAL INCAPACITY OF JUDGE; SUSPENSION. (a) For each filed complaint alleging substance abuse by, or the physical or mental incapacity of, a judge and questioning the judge's ability to perform the judge's official duties, the commission shall conduct a preliminary investigation of the complaint and present the results of the preliminary investigation to each member of the commission not later than the 30th day after the date the complaint is filed.

(b) If, after reviewing the results of the preliminary investigation, the commission determines the judge's alleged

substance abuse or physical or mental incapacity brings into question the judge's ability to perform the judge's official duties, the commission shall provide the judge written notice of the complaint and subpoena the judge to appear before the commission at the commission's next regularly scheduled meeting.

(c) If, following the judge's appearance before the commission at the next regularly scheduled meeting, the commission decides to require the judge to submit to a physical or mental examination, the commission shall:

(1) suspend the judge from office with pay for a period not to exceed 90 days;

(2) provide the judge written notice of the suspension;

(3) [~~In any investigation or proceeding that involves the physical or mental incapacity of a judge, the commission may~~] order the judge to submit to a physical or mental examination by one or more qualified physicians or a mental examination by one or more qualified psychologists selected and paid for by the commission; and

(4) provide[~~.~~

[~~(b) The commission shall give~~] the judge written notice of the examination not later than 10 days before the date of the examination.

(d) The notice provided under Subsection (c)(4) must include the physician's name and the date, time, and place of the examination.

(e) [~~(c)~~] Each examining physician shall file a written

report of the examination with the commission and the report shall be received as evidence without further formality. On request of the judge or the judge's attorney, the commission shall give the judge a copy of the report. The physician's oral or deposition testimony concerning the report may be required by the commission or by written demand of the judge.

(f) If, after receiving the written report of an examining physician or the physician's deposition testimony concerning the report, the commission determines the judge is unable to perform the judge's official duties because of substance abuse or physical or mental incapacity, the commission shall:

(1) recommend to the supreme court suspension of the judge from office; or

(2) enter into an indefinite voluntary agreement with the judge for suspension of the judge with pay until the commission determines the judge is physically and mentally competent to resume the judge's official duties.

(g) [~~(d)~~] If a judge refuses to submit to a physical or mental examination ordered by the commission under this section, the commission may petition a district court for an order compelling the judge to submit to the physical or mental examination and recommend to the supreme court suspension of the judge from office.

SECTION 11. Section 33.034, Government Code, is amended by amending Subsection (a) and adding Subsection (j) to read as follows:

(a) A judge who receives from the commission a sanction or

censure issued by the commission under Section 1-a(8), Article V, Texas Constitution, may request [~~or any other type of sanction is entitled to~~] a review of the commission's decision as provided by this section. This section does not apply to a decision by the commission to institute formal proceedings.

(j) If the commission issues a public reprimand of a judge based on the judge's persistent or wilful violation of Article 17.15, Code of Criminal Procedure, the commission shall send notice of the reprimand to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the presiding officer of each legislative standing committee with primary jurisdiction over the judiciary;

(5) the chief justice of the supreme court;

(6) the Office of Court Administration of the Texas Judicial System;

(7) the presiding judge of the administrative judicial region in which is located the court the reprimanded judge serves; and

(8) each judge of a constitutional county court in the geographic region in which the reprimanded judge serves.

SECTION 12. Section 33.037, Government Code, is amended to read as follows:

Sec. 33.037. SUSPENSION FROM OFFICE [~~PENDING APPEAL~~]. (a) If a judge who is convicted of a felony or a misdemeanor involving official misconduct appeals the conviction, the commission shall

suspend the judge from office without pay pending final disposition of the appeal.

(b) Not later than the 21st day after the date the commission initiates formal proceedings against a judge based on the judge's persistent or wilful violation of Article 17.15, Code of Criminal Procedure, the commission shall recommend to the supreme court that the judge be suspended from office pursuant to Section 1-a, Article V, Texas Constitution.

SECTION 13. Subchapter B, Chapter 33, Government Code, is amended by adding Section 33.041 to read as follows:

Sec. 33.041. JUDICIAL DIRECTORY; NOTICE. (a) The Office of Court Administration of the Texas Judicial System shall:

(1) establish a judicial directory that contains the contact information, including the e-mail address, for each judge in this state; and

(2) provide the commission with access to the directory for the purpose of providing to a judge written notice required by this subchapter.

(b) Written notice required by this subchapter may be provided to a judge by e-mail.

SECTION 14. Subchapter C, Chapter 72, Government Code, is amended by adding Section 72.0396 to read as follows:

Sec. 72.0396. JUDICIAL TRANSPARENCY INFORMATION. (a) Each district court judge shall submit to the presiding judge of the administrative judicial region in which the judge's court sits not later than July 20 or January 20, as applicable, information for the preceding six-month period in which the judge attests to:

(1) the number of hours the judge presided over the judge's court at the courthouse or another court facility; and

(2) the number of hours the judge performed judicial duties other than those described by Subdivision (1), including the number of hours the judge:

(A) performed case-related duties;

(B) performed administrative tasks; and

(C) completed continuing education.

(b) The presiding judge of each administrative judicial region shall submit the information submitted under Subsection (a) to the office in the manner prescribed by the supreme court.

(c) The office shall provide administrative support for the submission and collection of information under Subsection (a), including providing a system for electronic submission of the information.

(d) Not later than December 1 of each year, the office shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, and each presiding officer of a legislative standing committee with primary jurisdiction over the judiciary a written report compiling the information submitted under Subsection (b).

(e) The supreme court shall adopt rules establishing guidelines and providing instructions regarding the submission of information under Subsection (a), including rules:

(1) establishing a penalty for the submission of false information under that subsection; and

(2) providing guidance on the form and manner of

submitting information under that subsection.

SECTION 15. Section 73.003(e), Government Code, is amended to read as follows:

(e) At the discretion of its chief justice, a court to which a case is transferred may hear oral argument through the use of teleconferencing technology as provided by Section 22.302. [~~The court and the parties or their attorneys may participate in oral argument from any location through the use of teleconferencing technology.~~] The actual and necessary expenses of the court in hearing an oral argument through the use of teleconferencing technology shall be paid by the state from funds appropriated for the transfer of case, as specified in Subsection (d).

SECTION 16. Section 74.055(c), Government Code, is amended to read as follows:

(c) To be eligible to be named on the list, a retired or former judge must:

(1) have served as an active judge for at least 96 months in a district, statutory probate, statutory county, or appellate court;

(2) have developed substantial experience in the judge's area of specialty;

(3) not have been removed from office;

(4) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges, that:

(A) the judge has never been publicly reprimanded or censured by the State Commission on Judicial Conduct, excluding any reprimand or censure reviewed and rescinded by a special court

of review under Section 33.034;

(B) the judge has not received more than one of any other type of public sanction, excluding any sanction reviewed and rescinded by a special court of review under Section 33.034; and

(C) [~~(B)~~] the judge:

(i) did not resign or retire from office after the State Commission on Judicial Conduct notified the judge of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the judge as provided in Section 33.022 and before the final disposition of that investigation; or

(ii) if the judge did resign from office under circumstances described by Subparagraph (i), was not publicly reprimanded or censured as a result of the investigation;

(5) annually demonstrate that the judge has completed in the past state fiscal year the educational requirements for active district, statutory probate, and statutory county court judges; and

(6) certify to the presiding judge a willingness not to appear and plead as an attorney in any court in this state for a period of two years.

SECTION 17. Section 659.012, Government Code, is amended by amending Subsections (a) and (d) and adding Subsections (b-2) and (d-1) to read as follows:

(a) Notwithstanding Section 659.011 and subject to Subsections (b) and (b-1):

(1) a judge of a district court or a division of the

business court is entitled to an annual base salary from the state as set by the General Appropriations Act in an amount equal to at least $175,000 [~~$140,000~~], except that the combined base salary of a district judge or judge of a division of the business court from all state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is $5,000 less than the maximum combined base salary from all state and county sources for a justice of a court of appeals other than a chief justice as determined under this subsection;

(2) except as provided by Subdivision (3), a justice of a court of appeals [~~other than the chief justice~~] is entitled to an annual base salary from the state in the amount equal to 110 percent of the state base salary of a district judge as set by the General Appropriations Act, except that the combined base salary of a justice of the court of appeals [~~other than the chief justice~~] from all state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is $5,000 less than the base salary for a justice of the supreme court as determined under this subsection;

(3) a justice of the Court of Appeals for the Fifteenth Court of Appeals District [~~other than the chief justice~~] is entitled to an annual base salary from the state in the amount equal to $5,000 less than 120 percent of the state base salary of a district judge as set by the General Appropriations Act;

(4) a justice of the supreme court [~~other than the chief justice~~] or a judge of the court of criminal appeals [~~other~~

~~than the presiding judge~~] is entitled to an annual base salary from the state in the amount equal to 120 percent of the state base salary of a district judge as set by the General Appropriations Act; and

(5) the chief justice or presiding judge of an appellate court is entitled to additional compensation [~~an annual base salary~~] from the state in the amount equal to seven percent of [~~$2,500 more than~~] the state base salary provided for the other justices or judges of the court[~~, except that the combined base salary of the chief justice of a court of appeals from all state and county sources may not exceed the amount equal to $2,500 less than the base salary for a justice of the supreme court as determined under this subsection~~].

(b-2) Notwithstanding any other provision of this section, the additional compensation from the state paid to a chief justice or presiding judge of an appellate court in accordance with Subsection (a)(5) is not included as part of the judge's or justice's combined base salary from all state and county sources for purposes of determining whether the judge's or justice's salary exceeds the limitation.

(d) Notwithstanding any other provision in this section or other law, [~~in a county with more than five district courts,~~] a district judge who serves as a local administrative district judge under Section 74.091 is entitled to an annual base salary from the state in the amount provided under Subsection (a) or (b) and an additional annual [~~in the~~] amount from the state equal to:

(1) in a county with three or four district courts,

three percent of the annual base [~~$5,000 more than the maximum~~] salary for a judge of a district court [~~from the state to which the judge is otherwise entitled~~] under Subsection (a);

(2) in a county with more than four but fewer than 10 district courts, five percent of the annual base salary for a judge of a district court under Subsection (a); or

(3) in a county with 10 or more district courts, seven percent of the annual base salary for a judge of a district court under Subsection (a) [~~or (b)~~].

(d-1) Notwithstanding any other provision in this section or other law, a judge of a division of the business court who serves as administrative presiding judge under Section 25A.009 is entitled to an annual base salary from the state in the amount provided under Subsection (a) or (b) and an additional annual amount equal to the amount provided under Subsection (d)(3).

SECTION 18. Section 665.052(b), Government Code, is amended to read as follows:

(b) In this section, "incompetency" means:

(1) gross ignorance of official duties;

(2) gross carelessness in the discharge of official duties; [~~or~~]

(3) inability or unfitness to discharge promptly and properly official duties because of a serious physical or mental defect that did not exist at the time of the officer's election; or

(4) persistent or wilful violation of Article 17.15, Code of Criminal Procedure.

SECTION 19. Section 814.103, Government Code, is amended by

amending Subsections (a), (a-1), and (b) and adding Subsections (a-2) and (a-3) to read as follows:

(a) Except as provided by Subsection (a-1) or (b) and subject to Subsection (a-2), the standard service retirement annuity for service credited in the elected class of membership is an amount equal to the number of years of service credit in that class, times 2.3 percent of $175,000 [~~the state base salary, excluding longevity pay payable under Section 659.0445 and as adjusted from time to time, being paid to a district judge as set by the General Appropriations Act in accordance with Section 659.012(a)~~].

(a-1) Except as provided by Subsection (b), the standard service retirement annuity for service credited in the elected class of membership for a member of the class under Section 812.002(a)(3) whose effective date of retirement is on or after September 1, 2019, is an amount equal to the number of years of service credit in that class, times 2.3 percent of the state salary, excluding longevity pay payable under Section 659.0445 [~~and as adjusted from time to time~~], being paid in accordance with Section 659.012 to a district judge who has the same number of years of contributing service credit as the member on the member's last day of service as a district or criminal district attorney, as applicable.

(a-2) Beginning August 31, 2030, and every fifth anniversary of that date, the Texas Ethics Commission shall consider an equitable increase in the dollar amount on which the standard service retirement annuity is based under Subsection (a)

and increase the dollar amount as the commission considers appropriate. When determining an equitable increase in the dollar amount, the Texas Ethics Commission may consider any increase in compensation for elected officials and officers for salaries included in the General Appropriations Act.

(a-3) The Texas Ethics Commission shall develop, adopt, and make public a methodology for adjusting the dollar amount on which the standard service retirement annuity is computed under Subsection (a) not later than September 1, 2026, and apply the methodology for each equitable adjustment under Subsection (a-2).

(b) The standard service retirement annuity for service credited in the elected class may not exceed at any time 100 percent of, as applicable:

(1) the dollar amount on which the annuity is based under Subsection (a), subject to adjustment under Subsection (a-2); or

(2) the state salary of a district judge on which the annuity is based under Subsection [~~(a) or~~] (a-1) [~~, as applicable~~].

SECTION 20. Section 820.053(c), Government Code, is amended to read as follows:

(c) For purposes of this section, a member of the elected class of membership under Section 812.002(a)(2) shall have the member's accumulated account balance computed as if the contributions to the account were based on the dollar amount on which the standard service retirement annuity is based under Section 814.103(a), subject to adjustment under Section 814.103(a-2) [~~the state base salary, excluding longevity pay~~

~~payable under Section 659.0445, being paid a district judge as set by the General Appropriations Act in accordance with Sections 659.012(a)~~].

SECTION 21. Section 834.102, Government Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Notwithstanding Subsection (a) or (d) or any other law:

(1) any increase in the state base salary being paid to a district judge as set by the General Appropriations Act in accordance with Section 659.012 by the 89th Legislature, Regular Session, 2025, does not apply to a service retirement annuity computed under this section of a retiree or beneficiary if the retiree on whose service the annuity is based retired before September 1, 2025; and

(2) the amount of the state base salary being paid to a district judge as set by Chapter 1170 (H.B. 1), Acts of the 88th Legislature, Regular Session, 2023 (the General Appropriations Act), for the fiscal year ending August 31, 2025, in accordance with Section 659.012 continues to apply to the annuities described by Subdivision (1) until the effective date of legislation the 90th Legislature or a later legislature enacts that increases the state base salary paid to a district judge as set by the General Appropriations Act in accordance with Section 659.012.

(f) On the effective date of legislation the 90th Legislature or a later legislature enacts that increases the state base salary paid to a district judge, as described by Subsection (e), this subsection and Subsection (e) expire.

SECTION 22. Section 837.102(a), Government Code, is amended

to read as follows:

(a) A retiree who resumes service as a judicial officer other than by assignment described in Section 837.101 may not rejoin or receive credit in the retirement system for the resumed service, except [~~unless an election is made~~] as provided by Section 837.103.

SECTION 23. Section 837.103, Government Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1), (b-2), (c-1), and (c-2) to read as follows:

(b) Notwithstanding Sections 837.001(c) and 837.002(2) and subject to the requirements of this section [~~Subsection (d)~~], a retiree who resumes full-time service as a judicial officer other than by assignment described in Section 837.101 [~~described by Section 837.102(a)~~] may elect to rejoin the retirement system as a member [~~and receive service credit in the system for resuming service as a judicial officer~~] if, before taking the oath of office, the retiree has been separated from judicial service for at least six full consecutive months.

(b-1) The retiree shall provide notice of an [~~the~~] election to rejoin the retirement system under this section:

(1) not later than the 60th day after the date the retiree takes the oath of office; and

(2) in the form and manner prescribed by the system.

(b-2) A person who rejoins the retirement system under this section shall resume making member contributions at the rate of 9.5 percent of the person's state compensation.

(c) For a person who rejoins the retirement system [~~makes an~~

~~election~~] under this section and completes at least 24 months of resumed judicial service, on the person's subsequent retirement from resumed service [~~the resumption of annuity payments that have been suspended under Section 837.102~~], the retirement system shall recompute the annuity selected at the time of the person's original retirement to reflect:

(1) the highest annual state salary earned by the person while holding a judicial office included within the membership of the retirement system; and

(2) [~~to include~~] the [~~person's~~] additional service credit established during the person's period of resumed service [~~membership under this section~~].

(c-1) For a person who rejoins the retirement system under this section but who does not complete at least 24 months of resumed service, on the person's subsequent retirement from resumed service, the retirement system shall:

(1) resume annuity payments suspended under Section 837.102; and

(2) issue the person a refund of the person's accumulated member contributions made during the person's period of resumed service.

(c-2) If, at the time of the person's original retirement, a [~~the~~] person described by Subsection (c) or (c-1) selected an optional retirement annuity payable under Section 839.103(a)(3) or (4), the retirement system shall reduce the number of months of payments by the number of months for which the annuity was paid before the person resumed service.

SECTION 24. Section 840.1025(b), Government Code, is amended to read as follows:

(b) A member who elects to make contributions under Subsection (a) shall contribute 9.5 [~~six~~] percent of the member's state compensation for each payroll period in the manner provided by Sections 840.102(b)-(f).

SECTION 25. Section 840.1027(b), Government Code, is amended to read as follows:

(b) A member who elects to make contributions under Subsection (a) shall contribute 9.5 [~~six~~] percent of the member's state compensation for each payroll period in the manner provided by Sections 840.102(b)-(f).

SECTION 26. Section 837.103(e), Government Code, is repealed.

SECTION 27. Section 23.303, Government Code, as added by this Act, applies only to a motion for summary judgment filed on or after the effective date of this Act. A motion for summary judgment filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and that law is continued in effect for that purpose.

SECTION 28. Not later than March 1, 2026, the Texas Supreme Court and the Texas Court of Criminal Appeals shall adopt rules necessary to implement Section 22.302(a), Government Code, as amended by this Act, and Section 23.303, Government Code, as added by this Act.

SECTION 29. As soon as practicable after September 1, 2025, the State Commission on Judicial Conduct shall adopt rules to

implement Section 33.001(b), Government Code, as amended by this Act.

SECTION 30. Sections 33.001(b) and 665.052(b), Government Code, as amended by this Act, apply only to an allegation of judicial misconduct received by the State Commission on Judicial Conduct on or after September 1, 2025, regardless of whether the conduct or act that is the subject of the allegation occurred or was committed before, on, or after September 1, 2025.

SECTION 31. Section 33.02111, Government Code, as added by this Act, and Section 33.023, Government Code, as amended by this Act, apply only to a complaint filed with the State Commission on Judicial Conduct on or after September 1, 2025.

SECTION 32. As soon as practicable after the effective date of this Act, the Office of Court Administration of the Texas Judicial System shall:

(1) prescribe procedures as required by Section 23.303(c), Government Code, as added by this Act; and

(2) establish the judicial directory required by Section 33.041, Government Code, as added by this Act.

SECTION 33. As soon as practicable after September 1, 2025, the Texas Supreme Court shall adopt rules for purposes of Section 72.0396, Government Code, as added by this Act.

SECTION 34. A former or retired judge on a list maintained by a presiding judge under Section 74.055(a), Government Code, who is ineligible to be named on the list under Section 74.055(c), Government Code, as amended by this Act, shall be struck from the list on September 1, 2025, and may not be assigned to any court on or

after September 1, 2025.

SECTION 35. (a) Except as provided by Subsection (c) of this section, Sections 837.102 and 837.103, Government Code, as amended by this Act, apply only to:

(1) a former retiree of the Judicial Retirement System of Texas Plan Two who, on the effective date of this Act, holds a judicial office and has resumed membership in the retirement system; or

(2) a retiree who, on or after the effective date of this Act, resumes service as a judicial officer holding a judicial office included in the membership of the retirement system.

(b) A person described by Subsection (a)(1) of this section may purchase service credit for resumed judicial service performed before the effective date of this Act, including service performed before June 18, 2023, by depositing with the Judicial Retirement System of Texas Plan Two, for each month of service credit, member contributions calculated by multiplying 9.5 percent by the person's monthly judicial state salary on the effective date of this Act. Not later than September 1, 2027, the person must purchase service credit under this subsection and make the required deposits.

(c) Section 837.103(b-1)(1), Government Code, as added by this Act, applies only to an election to rejoin the Judicial Retirement System of Texas Plan Two under Section 837.103, Government Code, made on or after the effective date of this Act.

SECTION 36. Section 30 of this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas

Constitution. If this Act does not receive the vote necessary for immediate effect, Section 30 of this Act has no effect.

SECTION 37. Except as otherwise provided by this Act, this Act takes effect September 1, 2025.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 293 passed the Senate on March 12, 2025, by the following vote: Yeas 30, Nays 1; May 30, 2025, Senate concurred in part and refused to concur in part in House amendments; June 1, 2025, Senate requested appointment of Conference Committee; June 1, 2025, House granted request of the Senate; June 2, 2025, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 293 passed the House, with amendments, on May 27, 2025, by the following vote: Yeas 128, Nays 4, one present not voting; June 1, 2025, House granted request of the Senate for appointment of Conference Committee; June 2, 2025, House adopted Conference Committee Report by the following vote: Yeas 114, Nays 26, four present not voting.

Chief Clerk of the House

Approved:

Date

Governor

S.J.R. No. 27

SENATE JOINT RESOLUTION

proposing a constitutional amendment regarding the membership of the State Commission on Judicial Conduct, the membership of the tribunal to review the commission's recommendations, and the authority of the commission, the tribunal, and the Texas Supreme Court to more effectively sanction judges and justices for judicial misconduct.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1-a, Article V, Texas Constitution, is amended by amending Subdivisions (2), (3), (8), and (9) and adding Subdivisions (2-a), (2-b), and (8-a) to read as follows:

(2) The State Commission on Judicial Conduct consists of the following 13 [~~thirteen (13)~~] members[~~, to wit~~]:

(i) six judges or justices of courts in this state appointed by the Supreme Court with the advice and consent of the Senate, two of whom must be trial court judges [~~one (1) Justice of a Court of Appeals~~]; and

(ii) seven [~~one (1) District Judge; (iii) two (2) members of the State Bar, who have respectively practiced as such for over ten (10) consecutive years next preceding their selection; (iv) five (5)~~] citizens appointed by the Governor with the advice and consent of the Senate, who are[~~,~~] at least 35 [~~thirty (30)~~] years of age.

(2-a) A[~~, not licensed to practice law nor holding any~~

~~salaried public office or employment; (v) one (1) Justice of the Peace; (vi) one (1) Judge of a Municipal Court; (vii) one (1) Judge of a County Court at Law; and (viii) one (1) Judge of a Constitutional County Court; provided that no~~] person may not [~~shall~~] be appointed to or remain a member of the Commission if the person[~~, who~~] does not maintain physical residence within this State[~~,~~] or has [~~who shall have~~] ceased to retain the qualifications [~~above~~] specified in Subsection (2) of this Section for that person's appointment.

(2-b) A person appointed under Subsection (2) of this Section who is a judge or justice [~~respective class of membership, and provided that a Commissioner of class (i), (ii), (iii), (vii), or (viii)~~] may not be a judge or justice [~~reside or hold a judgeship~~] in the same type of court [~~of appeals district~~] as another member of the Commission who is a judge or justice. [~~Commissioners of classes (i), (ii), (vii), and (viii) above shall be chosen by the Supreme Court with advice and consent of the Senate, those of class (iii) by the Board of Directors of the State Bar under regulations to be prescribed by the Supreme Court with advice and consent of the Senate, those of class (iv) by appointment of the Governor with advice and consent of the Senate, and the commissioners of classes (v) and (vi) by appointment of the Supreme Court as provided by law, with the advice and consent of the Senate.~~]

(3) The regular term of office of Commissioners shall be six [~~(6)~~] years[~~, but the initial members of each of classes (i), (ii) and (iii) shall respectively be chosen for terms of four (4)~~

~~and six (6) years, and the initial members of class (iiii) for respective terms of two (2), four (4) and six (6) years~~]. Interim vacancies shall be filled in the same manner as vacancies due to expiration of a full term, but only for the unexpired portion of the term in question. Commissioners may succeed themselves in office only if the commissioner has [~~having~~] served less than three [~~(3)~~] consecutive years.

(8) After such investigation as it deems necessary, the Commission may, in its discretion:

(i) for a person holding an office or position specified in Subsection (6) of this Section who has never been issued an order under this subparagraph and in response to a complaint or report other than a complaint or report alleging the person engaged in conduct constituting a criminal offense, issue an order of private admonition, warning, reprimand, censure, or requirement that the person obtain additional training or education;

(ii) issue a [~~private or~~] public admonition, warning, reprimand, or requirement that the person obtain additional training or education;[~~,~~] or

(iii) if the Commission determines that the situation merits such action, [~~it may~~] institute formal proceedings and order a formal hearing to be held before it concerning a person holding an office or position specified in Subsection (6) of this Section, or it may in its discretion request the Supreme Court to appoint an active or retired District Judge or Justice of a Court of Appeals, or retired Judge or Justice of the Court of Criminal

Appeals or the Supreme Court, as a Master to hear and take evidence in the matter, and to report thereon to the Commission and to the Supreme Court.

(8-a) A [~~The~~] Master appointed under Subsection (8)(iii) of this Section shall have all the power of a District Judge in the enforcement of orders pertaining to witnesses, evidence, and procedure. If, after formal hearing under Subsection (8)(iii) of this Section, or after considering the record and report of a Master appointed under Subsection (8)(iii) of this Section, the Commission finds the person engaged in wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties or other good cause therefor, the Commission:

(i) [~~it~~] shall issue for the person an order of public admonition, warning, reprimand, censure, or requirement that the person holding an office or position specified in Subsection (6) of this Section obtain additional training or education;[~~,~~] or

(ii) may [~~it shall~~] recommend to a review tribunal the removal or retirement[~~, as the case may be,~~] of the person and shall [~~thereupon~~] file with the tribunal the entire record before the Commission.

(9) A tribunal to review the Commission's recommendation for the removal or retirement of a person holding an office or position specified in Subsection (6) of this Section is composed of seven [~~(7)~~] Justices [~~or Judges~~] of the Courts of Appeals who are selected [~~by lot~~] by the Chief Justice of the

Supreme Court. [~~Each Court of Appeals shall designate one of its members for inclusion in the list from which the selection is made.~~] Service on the tribunal shall be considered part of the official duties of a justice [~~judge~~], and no additional compensation may be paid for such service. The review tribunal shall review the record of the proceedings on the law and facts and in its discretion may, for good cause shown, permit the introduction of additional evidence. Within 90 days after the date on which the record is filed with the review tribunal, it shall order public censure, suspension without pay for a specified period, retirement or removal, as it finds just and proper, or wholly reject the recommendation. A Justice, Judge, Master, or Magistrate may appeal a decision of the review tribunal to the Supreme Court under the substantial evidence rule. Upon an order for involuntary retirement for disability or an order for removal, the office in question shall become vacant. The review tribunal, in an order for involuntary retirement for disability or an order for removal, shall [~~may~~] prohibit such person from holding judicial office in the future. The rights of a person [~~an incumbent~~] so retired to retirement benefits shall be the same as if the person's [~~his~~] retirement had been voluntary.

SECTION 2. Section 1-a(6)(A), Article V, Texas Constitution, is amended to read as follows:

(6) A. Any Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or

persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of the person's [his] duties or casts public discredit upon the judiciary or administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office, as provided by this section. Any person holding an office specified in this subsection may be suspended from office with or without pay by the Commission immediately on being indicted by a State or Federal grand jury for a felony offense or charged with a misdemeanor involving official misconduct. On the filing of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of the person's [his] duties or casts public discredit on the judiciary or on the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission, may recommend to the Supreme Court the suspension of such person from office with or without pay, pending final disposition of the charge. The Supreme Court, after considering [the record of such appearance and] the recommendation of the Commission, may suspend the person from office with or without pay, pending final disposition of the charge.

SECTION 3. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 89th Legislature, Regular Session, 2025, regarding the membership of the State Commission on Judicial Conduct, the membership of the tribunal to review the commission's recommendations, and the authority of the commission, the tribunal, and the Texas Supreme Court to more effectively sanction judges and justices for judicial misconduct. The constitutional amendment takes effect January 1, 2026.

(b) Notwithstanding any other law, the terms of the commissioners of the State Commission on Judicial Conduct serving before January 1, 2026, expire July 1, 2026.

(c) Notwithstanding any other law, the Texas Supreme Court, with the advice and consent of the Senate, shall appoint additional commissioners to the State Commission on Judicial Conduct to serve staggered terms beginning January 1, 2026, as follows:

(1) two commissioners to serve six-year terms;

(2) two commissioners to serve four-year terms; and

(3) two commissioners to serve two-year terms.

(d) Notwithstanding any other law, the governor shall appoint additional commissioners to the State Commission on Judicial Conduct to serve staggered terms beginning January 1, 2026, as follows:

(1) three commissioners to serve six-year terms;

(2) two commissioners to serve four-year terms; and

(3) two commissioners to serve two-year terms.

(e) Notwithstanding any other law and except as otherwise provided by this subsection, a complaint submitted to the State Commission on Judicial Conduct before January 1, 2026, shall be reviewed by the commissioners of the State Commission on Judicial Conduct appointed before January 1, 2026, unless the complaint has not been resolved by July 1, 2026, in which event the complaint shall be reviewed by the commissioners appointed on or after that date.

(f) Notwithstanding any other law, a complaint submitted to the State Commission on Judicial Conduct on or after January 1, 2026, shall be reviewed by the commissioners of the State Commission on Judicial Conduct appointed on or after that date.

(g) This temporary provision expires January 1, 2031.

SECTION 4. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 2025. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment regarding the membership of the State Commission on Judicial Conduct, the membership of the tribunal to review the commission's recommendations, and the authority of the commission, the tribunal, and the Texas Supreme Court to more effectively sanction judges and justices for judicial misconduct."

S.J.R. No. 27

President of the Senate

Speaker of the House

I hereby certify that S.J.R. No. 27 was adopted by the Senate on April 14, 2025, by the following vote: Yeas 27, Nays 4; and that the Senate concurred in House amendments on May 30, 2025, by the following vote: Yeas 27, Nays 4.

Secretary of the Senate

I hereby certify that S.J.R. No. 27 was adopted by the House, with amendments, on May 26, 2025, by the following vote: Yeas 119, Nays 17, four present not voting.

Chief Clerk of the House

Received:

Date

Secretary of State

Tab II- Business Court

MEMORANDUM

TO: **Supreme Court Advisory Committee**

FROM: **Business Court Subcommittee**

RE: **Proposed Amendments to the TRCP and Rules of Judicial Administration for the Business Court (HB 40) and June 5, 2025, Referral Letter**

DATE: **June 24, 2025**

Matters referred to subcommittee

The Court's June 5, 2025, Referral Letter instructed:

> **Business Court**. HB 40[1] adds Section 25A.0041 of the Government Code to direct the Court to adopt rules that "establish procedures for the prompt, efficient, and final determination of business court jurisdiction on the filing of an action in the business court." HB 40 also adds Section 25A.021 to provide for Court rules governing the transfer of certain civil actions commenced before September 1, 2024, to the business court. HB 40 may also necessitate conforming changes to Part III of the Texas Rules of Civil Procedure, including changes to address writs and disqualification or recusal and changes to the pleading requirements and removal process.

Per this request, we have extensively analyzed HB 40 and submit the attached Exhibit A as proposed amendments to the Texas Rules of Civil Procedure and the Rules of Judicial Administration.

Process

The Subcommittee consists of: Marcy Greer, Chair, Robert Levy, Vice Chair, Justice Emily Miskel, Judge Jerry Bullard,[2] Justice Peter Kelly, Justice Harvey Brown, Chris Porter, and John Warren. We asked Judge David Evans to continue his involvement with the subcommittee, and he has added valuable insights and opinions to the process. We also invited Jack DiSorbo, who has been following and reporting on the business court, to join our discussions, and he has also provided significant input.

[1] HB 40 was signed by Governor Abbott on June 20, 2025, and becomes effective September 1, 2025.

[2] Judge Bullard's insights as a member of the Business Court have been invaluable.

We first analyzed HB 40 to determine which provisions mandated, suggested, or implicated a rule or comment. The subcommittee concluded that, consistent with the Court's adoption of rules for the Business Court, certain provisions of the statute that are incorporated into the Texas Civil Practice and Remedies Code or the Government Code need not be implemented through rules or should be addressed in the local rules of the business court. The subcommittee focused on proposing rules that we believe will aid the courts and practitioners with respect to business court proceedings and the interplay between the business court and other Texas courts.

We then began drafting provisions and had extensive and robust discussions as a group in multiple Zoom meetings. We have vetted and exchanged multiple drafts of the proposed rules and believe the process has greatly enhanced the final product.

Recommendations

1. **Recusal.** HB 40, § 51, prescribes a procedure for recusal raised sua sponte by a business court judge. We had a vigorous debate over a proposed amendment to Texas Rule of Civil Procedure 18a[3] or a new rule in the business court rules and ultimately concluded that putting § 51 into a procedural rule could create more problems than would be solved because 18a is already applicable to business court judges and adding a provision relating solely to business court judges would add complexity and potential confusion to an already challenging recusal process. Further, a rule is not necessary because the § 51 procedures only apply to situations when a business court judge *sua sponte* decides to recuse; the business court judges and staff are already very familiar with the statute. We recommend adding a comment to Rule 18a directing attention to § 25A.0129(c) & (d) of the Government Code, which implements § 51.

2. **Time limits on notice of removal when not agreed.** The Legislature specifically amended § 25A.006(f) of the Government Code to change the language on the timing of removals when the parties do not agree. *See* HB 40, § 47(f)(1). Our proposed changes to corresponding Rule 355(c)(2) match the Legislature's directive.

3. **Written opinions to provide guidance on business court practice.** HB 40, § 46(a)(4) provides that "[t]he supreme court by rule shall establish procedures for the prompt, efficient, and final determination of business court jurisdiction on the filing of an action in the business court. In adopting rules under this section, the supreme court must consider: … the need for guidance on evolving usage of the business court and the Fifteenth Court of Appeals over time by business litigants and their counsel as the courts develop a body of precedent and practice." Following this directive, we propose amending Rule 360(a) to require the business court to issue written opinions:

> (3) as necessary to provide guidance on the evolving usage of and practice before the business court, including precedent from the Fifteenth Court of Appeals and the Supreme Court of Texas, regardless of the request.

[3] References to "Rule" or "Rules" in this memo are to the Texas Rules of Civil Procedure unless otherwise indicated.

We believe this provision is needed in light of § 46(a)(4) and that this placement makes the most sense. We added to the statutory language "the Supreme Court of Texas" to make clear that the Fifteenth Court is not the only source of precedent. We also added "regardless of request" to this alternative for consistency with Rule 360(a)(2), which also is independent of a party's request.

4. **Moving authority and venue challenges to proposed new Rule 361.** The Legislature specifically directed the Supreme Court to create rules to speed up and streamline the process for the business court to determine its authority[4] to hear disputes with the following objectives in mind:

> (a) The supreme court by rule shall establish procedures for the prompt, efficient, and final determination of business court jurisdiction on the filing of an action in the business court. In adopting rules under this section, the supreme court must consider:
>
> > (1) the business court's purpose of efficiently addressing complex business litigation in a manner comparable to or more effective than the business and commercial courts operating in other states;
> >
> > (2) the commonalities of law and procedure existing between the business court and district courts as trial courts functioning under the Texas Constitution and within the judicial branch of this state;
> >
> > (3) the limited potential for the movement of an action between a district court and the business court as it relates to issues of fundamental fairness or the preservation of constitutionally or statutorily protected rights of the parties; and
> >
> > (4) the need for guidance on evolving usage of the business court and the Fifteenth Court of Appeals over time by business litigants and their counsel as the courts develop a body of precedent and practice.

HB 40, § 46(a). The Legislature also gave the Supreme Court authority to adopt rules to:

- "provide for jurisdictional determinations to be made on pleadings or summary proceedings" and "establish appropriate standards of proof," *id.* § 46(b)(1) & (2);
- "establish limited periods during which issues or rights must be asserted, considered agreed to, or waived," *id.* § 46(b)(3); and

[4] We previously addressed the nuances of the Legislature's use of "jurisdiction" in HB 19 (continued in HB 40) to cover both core subject-matter jurisdiction and other forms of statutory authority in our November 6, 2023, memo, when proposing rules for the business court. We continue to recommend using the term "authority" in rules and allowing the courts to develop the distinction between subject-matter jurisdiction and other forms of authority in individual cases.

- "adopt, require, or prohibit interlocutory appeals" and provide procedures for the review of authority determinations by another business court judge or panel of business court judges and for accelerating those appeals, *id.* § 46(b)(4)–(7).

With the benefit of some experience with a now-active business court and the Legislature's guidance on how initial authority and venue determinations are and should be made, we propose moving all of the provisions governing determinations as to authority and venue from current Rules 354, 355, and 356 to a single rule, proposed Rule 361.

Part (a) of proposed Rule 361 deals with challenges to a business court's authority, whether to an initial filing in business court or a removal. Rule 361(a)(1) & (2) address the timing of making such a challenge. We attempted to strike a balance between the Legislature's directive to "establish limited periods during which rights must be asserted, considered agreed to, or waived," HB 40, § 46(b)(3), and the bedrock principle that subject-matter jurisdiction can be raised at any time. As a result, proposed Rule 361(a)(1) is permissive, encouraging filing within 30 days of the inception of the action in business court. For Rule 361(a)(2), dealing with all other authority challenges, the 30-day deadline is mandatory. We considered—but do not recommend—defining the distinction between subject-matter jurisdiction and other matters of business court authority by rule because we believe the business court, Fifteenth Court of Appeals, and Supreme Court should explore and develop that distinction through judicial decision-making in individual cases. Even though Rule 361(a)(1) is a permissive deadline, we believe that practitioners will be encouraged to file challenges to both subject-matter jurisdiction and other forms of authority within 30 days of inception to avoid any chance of waiver, thus fulfilling the Legislature's objective that litigants do not delay in making such challenges for strategic reasons.

We also took into account the concern that a party not joined to the suit until a later point should not be held to forego rights to challenge authority, which is consistent with federal constitutional law that a party named in a lawsuit does not have an obligation to take action until that party is served with process. *See Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

Proposed Rule 261(a)(3) suggests the ability to request limited discovery on the issue of the court's authority, subject to the court's discretion. Although we understand that the business court is already permitting some limited discovery in connection with challenges to its authority, we believe that it is important to specify by rule that it is not automatic and confirm to litigants that such discovery may be available in certain cases.

Proposed Rule 261(a)(4)(A) and (B) carries over the options for a business court to dispose of a case if it determines it lacks authority to hear it, keeping in place the requirement that it afford the parties an opportunity to be heard if the determination is made on the business court's initiative. Rule 261(a)(4)(C) takes up the Legislature's invitation to permit these authority decisions to be made based on the pleadings or summary proceedings, much like a more general plea to the jurisdiction. Considering that the law governing procedures for resolving a plea to the jurisdiction are complex and nuanced, we recommend providing explicit guidance by way of this proposed rule.

Proposed Rule 261(a)(5) codifies the Legislature's directive in HB 40, § 46(a)(1)–(3) that authority decisions be made promptly and take into account the specified factors of fundamental fairness and protection of rights, applicable rules, precedent, and authorities pertaining to the operation of district courts in Texas, and applicable authority from business and other commercial courts in other states. As noted above, we recommend that the directive to develop "guidance on the evolving usage of the business court and the Fifteenth Court over time" to "develop a body of precedent and practice," HB 40, § 46(a)(4), makes more sense as an addition to Rule 360 governing written opinions, as proposed above in ¶ 3.

5. **Interlocutory appeal.** As noted above, in HB 40, the Legislature expressly authorized the Court to decide whether to permit interlocutory appeals of business court decisions on its authority. We note that this provision appears to be a departure from the Legislature's historic practice to specify by statute when interlocutory appeals are permitted. We took this mandate seriously and debated all of the suggested forms of appellate review set out in HB 40, § 46(b)(4)–(6) and reached the following recommendations:

> *Business Court Presiding Judge or Panel Review of authority decisions.* We considered but rejected this possibility, as it will likely add layers of delay and additional workload to an already very busy court and presiding judge. The business court judges are currently issuing, circulating, and discussing written opinions on their authority decisions, and so already have an opportunity to address these issues internally to ensure consistency of approach. An interim appellate process in the business court would not materially advance the Legislature's goal.
>
> *Interlocutory appeal as of right*. We also considered a proposed rule that permitted any "party that did not prevail on a challenge to the business court's authority issue [to] pursue an interlocutory appeal to the Fifteenth Court of Appeals." The subcommittee (and the business court judges) had a lot of concern about the number of appeals that might be filed with the Fifteenth Court that would present repetitive issues that would not necessarily advance the development of the law on business court authority. Plus, the appeals would be time-consuming, expensive, and result in delay—contrary to the Legislature's directives. If the Court were to adopt an automatic-appeal rule, the subcommittee believes it should indicate that such appeals may be decided by summary disposition either in the rule or a comment.
>
> *Permissive interlocutory appeal.* The subcommittee also considered making the interlocutory appeal discretionary, meaning either (1) in accordance with § 51.014(d) (requiring permission of both the business court and the Fifteenth Court); or (2) by application to the Fifteenth Court (requiring only the Fifteenth Court's permission). As to the first option, that power is already available in § 51.014(d)—as recently amended to encourage the intermediate courts to take jurisdiction of certified orders—and the

certification process would further delay these appeals, so the subcommittee was more inclined to go with the second option.

Accelerated. Whether permissive or as of right, these interlocutory appeals should be accelerated per the Legislature's directive.

Procedures governing interlocutory appeals. The appeal should be governed by Texas Rules of Appellate Procedure 28 and 29.

6. **Venue challenges.** Proposed Rule 361(b) carries over the venue provisions from current Rule 354. The subcommittee believes that having these provisions in the same rule furthers the Legislative objection of resolving these threshold challenges promptly and efficiently.

7. **Inaccessibility of business court judge.** Proposed new rule 362 codifies HB 40, § 16, which amends § 65.022 of the Civil Practice and Remedies Code.

8. **Agreed transfers of cases pending before September 1, 2024, to business court.** Proposed Rule 363 implements the Legislature's directive in HB 40, § 56 to adopt rules to transfer "a civil action commenced before September 1, 2024, that is within the jurisdiction of the business court … on an agreed motion of a party and permission of the business court." Proposed Rule 363 provides for an agreed-motion process first to the judge of the court in which the case is pending and ultimately referred to the regional presiding judge for that court. It includes the legislative considerations for deciding whether to transfer the case, and provides a procedure for effecting the transfer if the motion is granted. It is similar to the process for recusal and disqualification in Rule 18a but is more streamlined for this particular situation. We considered including these provisions in current Rule 356, which may be preferable, but would require a restructuring of that rule, which is currently designed for transfers initiated by a court rather than the parties. The subcommittee points out that HB 40 uses the term "district court" in the factors to be considered but does not limit this transfer provision to district courts. If the intention is to limit this provision to district courts, the rule can be further simplified by changing references to the "court in which the action is pending" to "district judge."

9. **Amendments to the Texas Rules of Judicial Administration**. The Legislature has empowered the business court to serve as a pretrial court for multidistrict proceedings transferred by the MDL Panel. HB 40, § 67. This change necessitates several amendments to the Rules of Judicial Proceedings to incorporate the business court and business court judges into the MDL process.

Other considerations—jury fee in business court.

In connection with the work we have done on the business court rules, we have identified another change that we believe would be beneficial, although it is beyond the scope of our assignment. We offer the following suggestion regarding the business court's authority to set a jury fee for the Court and other subcommittees to consider.

The Legislature included a rider in the 2025-2026 budget bill (SB1) budget that states its intention to clarify the authority of the business court and clerk to collect a jury fee and disburse

the collected fees, as appropriate, to the county or other governmental entity that incurs the expenses for jury trials.

The current fee schedule (Misc-Docket-24-9047-fees-sc-coas-civil-mdl-business-court.pdf) includes the following footnote 5:

> The business court will set the jury fee in an order. The fee will include a $300 fee for staff time in summonsing jurors and the use of a jury summons system; a fee for any needed security; a fee for juror pay pursuant to Gov't Code §§ 61.001, 61.002, and 61.0015; and a fee for actual processing costs related to summonsing jurors, including postage, printing costs, and copy costs. The jurisdiction providing the jury services must submit an invoice so that the business court will have the information necessary to issue the jury fee order. The business court will allocate these fees between the parties, and the fees will be paid directly to the jurisdiction providing the services.

The Court may want to consider changes to this footnote in light of the 2025 rider. This subcommittee would be happy to analyze and recommend changes to implement the rider if the Court requests it.

EXHIBIT A

Proposed Rules Changes to Accommodate HB 40, 89Th Texas Legislature

Texas Supreme Court Advisory Committee Business Court Subcommittee

Proposed Amendments to Texas Rules of Civil Procedure

RULE 18a. RECUSAL AND DISQUALIFICATION OF JUDGES

Notes and Comments

Comment 2025: Additional procedures for business court judges who determine on their own motion that they should not hear a particular case are in § 25A.0129(c) & (d) of the Government Code. *See* H.B. 40, § 51, 89th Legislative Session.

RULE 354. ACTION ORIGINALLY FILED IN THE BUSINESS COURT

(a) *Pleading Requirements*. For an action originally filed in the business court, an original pleading that sets forth a claim for relief—whether an original petition, counterclaim, cross-claim, or third party claim—must, in addition to the pleading requirements specified in Part II of these rules, plead facts to establish the business court's authority to hear the action. An original petition must also plead facts to establish venue in a county in an operating division of the business court.

(b) *Clerk Duties*. The business court clerk must assign the action to a division of the business court. If the division has more than one judge, then the clerk must randomly assign the action to a specific judge within that division.

~~(c) *Challenges*.~~

~~(1) To Venue. A motion challenging venue must comply with Rules 86 and 87.~~

~~(2) To Authority. A motion challenging the business court's authority to hear an action must be filed within 30 days of the movant's appearance.~~

~~(d) *Transfer or Dismissal*.~~

~~(1) Venue Transfer. If the business court determines, on a party's motion, that the division's geographic territory does not include a county of proper venue for the action, the business court must:~~

~~(A) if an operating division of the business court includes a county of proper venue, transfer the action to that division; or~~

~~(B) if there is not an operating division of the business court that includes a county of proper venue, at the request of the party filing the action, transfer the action to a district court or county court at law in a county of proper venue.~~

~~(2) Authority. If the business court determines, on a party's motion or its own initiative, that it does not have the authority to hear the action, the business court must:~~

~~(A) if the determination was made on its own initiative, provide at least 10 days' notice of the intent to transfer or dismiss and an opportunity to be heard on any objection; and~~

~~(B) at the request of the party filing the action:~~

~~(i) transfer the action to a district court or county court at law in a county of proper venue; or~~

~~(ii) dismiss the action without prejudice to the parties' claims.~~

Notes and Comments

Comment to 2025 change: Removed Venue and Authority provisions of this rule and moved to new Rule 361.

RULE 355. ACTION REMOVED TO THE BUSINESS COURT

(a) *Notice of Removal Required*. A party to an action originally filed in a district court or county court at law may remove the action to the business court by filing a notice of removal with:

(1) the court from which removal is sought; and

(2) the business court.

(b) *Notice Contents*. The notice must:

(1) state whether all parties agree to the removal;

(2) plead facts to establish:

(A) the business court's authority to hear the action; and

(B) venue in a county in an operating division of the business court; and

(3) contain a copy of the district court's or county court at law's docket sheet and all process, pleadings, and orders in the action.

(c) *Notice Deadline*.

(1) When Agreed. A party may file a notice of removal reflecting the agreement of all parties at any time during the pendency of the action.

(2) When Not Agreed. If all parties have not agreed to remove the action~~the notice of removal must be filed~~:

(A) ~~within 30 days after the date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the business court's authority to hear the action; or~~The notice of removal must be filed not later than the 30th day of the later of:

1. The date the party requesting removal of the action was served with process in accordance with these rules; or

2. The date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the business court's authority to hear the action or

(B) if an application for temporary injunction is pending on the date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the business court's authority to hear the action, within 30 days after the date the application is granted, denied, or denied by operation of law.

(d) *Effect of Notice*. A notice of removal to the business court is not subject to due order of pleading rules. Filing a notice of removal does not waive a defect in venue or constitute an appearance waiving a challenge to personal jurisdiction.

(e) *Clerk Duties*. On receipt of a notice of removal, the clerk of the court from which removal is sought must immediately transfer the action to the business court. The business court clerk must assign the action to the appropriate operating division of the business court. If the division has more than one judge, then the clerk must randomly assign the action to a specific judge within that division.

~~(f) *Remand*.~~

~~(1) When Required. If the business court determines, on motion or its own initiative, that removal was improper, the business court must remand the action to the court from which the action was removed.~~

~~(2) Motion to Remand.~~

~~(A) A party may file a motion to remand the action in the business court based on improper removal. Except as provided in (B), the motion must be filed within 30 days after the notice of removal is filed.~~

~~(B) If a party is served with process after the notice of removal is filed, the party seeking remand must file a motion to remand within 30 days after the party enters an appearance.~~

~~(3) On Business Court's Own Initiative. The business court must provide the parties 10 days' notice of its intent to remand on its own initiative and an opportunity to be heard on any objection.~~

Notes and Comments

Comments to 2025 change: The added provision is to comply with H.B. 40, § 47(f)(1), 89th Legislative Session. Removed Venue and Authority provisions of this rule and moved to new Rule 361.

RULE 356. ACTION TRANSFERRED TO THE BUSINESS COURT

(a) *Transfer Request*. On its own initiative, a court may request the presiding judge for the administrative judicial region in which the court is located to transfer an action pending in the court to the business court if the business court has the authority to hear the action. In this rule, the "regional presiding judge" means the presiding judge for the administrative judicial region in which the court is located.

(b) *Notice and Hearing*. The court must notify all parties of the transfer request and, if any party objects, must set a hearing on the transfer request in consultation with the regional presiding judge. The regional presiding judge must self-assign to the court, conduct a hearing on the request, and rule on the request.

(c) *Transfer*. The regional presiding judge may transfer the action to the business court if the regional presiding judge finds the transfer will facilitate the fair and efficient administration of justice. A party may challenge the regional presiding judge's denial of a motion to transfer by filing a petition for writ of mandamus in the court of appeals district for the requesting court's county.

(d) ~~*Remand*. A party may seek remand from the business court under Rule 355 within 30 days after transfer of the case.~~

~~(c)~~ *Clerk Duties*. The business court clerk must assign the action to the appropriate operating division of the business court. If the division has more than one judge, then the clerk must randomly assign the action to a specific judge within that division.

Notes and Comments

Comment to 2025 change: Removed Venue provision of this rule and moved to new Rule 361.

RULE 360. WRITTEN OPINIONS IN BUSINESS COURT ACTIONS

(a) *When Required*. A business court judge must issue a written opinion:

(1) in connection with a dispositive ruling, on the request of a party; ~~and~~

(2) on an issue important to the jurisprudence of the state, regardless of request; and

(3) as necessary to provide guidance on the evolving usage of and practice before the business court, including precedent from the Fifteenth Court of Appeals and the Supreme Court of Texas, regardless of request.

(b) *When Permitted*. A business court judge may issue a written opinion in connection with any order.

Notes and Comments

Comment to 2025 change: To incorporate H.B. 40, § 46(a)(4), 89th Legislative Session.

New Rules:

RULE 361. RULES RELATED TO AUTHORITY AND VENUE DETERMINATIONS BY THE BUSINESS COURT

(a) Challenges to Authority.

1. A motion challenging the business court's subject-matter jurisdiction should be filed within 30 days of the later of (a) the initial pleading invoking the business court's jurisdiction or (b) date the party challenging removal was served with process in accordance with these rules if the movant is served with process after a notice of removal is filed.

2. A motion challenging other aspects of the business court's authority must be filed within 30 days of the later of (a) the initial pleading invoking the business court's jurisdiction or (b) date the party challenging removal was served with process in accordance with these rules if the movant is served with process after a notice of removal is filed.

3. The business court may allow limited discovery on the question of its authority.

4. If the business court determines, on a party's motion or its own initiative, that it does not have the authority to hear the action, the business court must:

    a. if the determination was made on its own initiative, provide at least 10 days' notice of the intent to transfer, remand, or dismiss and afford the parties an opportunity to be heard; or

    b. at the request of the party filing the action:

        1. transfer the action to a district court or county court at law in a county of proper venue;

        2. remand a case that was improperly removed; or

        3. dismiss the action without prejudice to the parties' claims.

c. Challenges relating to the business court's authority will be resolved on the pleadings or by summary proceedings. A party challenging the business court's authority has the burden of proof.

5. The business court shall make a prompt determination of its authority over the matter and may consider:

   a. Issues of fundamental fairness or the preservation of constitutionally or statutorily protected rights of the parties;

   b. Any applicable rules, precedent, and authorities pertaining to the operation of district courts in this state; and

   c. Any applicable authority from business and commercial courts operating in other states.

6. Interlocutory Appeal.

   a. A party that did not prevail on a challenge to the business court's authority may pursue an interlocutory appeal to the Fifteenth Court of Appeals. ***OR***

   a. The party that did not prevail on a challenge to the business court's authority the jurisdiction motion may file a petition with Fifteenth Court of Appeals within 15 days after the order is signed in accordance with Texas Rule of Appellate Procedure 28.3.

   b. Appeals under this rule will be accelerated.

(b) Challenges to Venue of Actions Commenced or Removed to the Business Court.

1. A motion challenging venue must comply with Rules 86 and 87.

2. If the business court determines that the division's geographic territory does not include a county of proper venue for the action, the business court must:

a. if an operating division of the business court includes a county of proper venue, transfer the action to that division; or

b. If there is not an operating division of the business court that includes a county of proper venue, at the request of the party filing the action, transfer the action to a district court or county court at law in a county of proper venue.

Notes and Comments

Comment to 2025 change: To incorporate Section 46 of HB 40, 89th Legislative Session. Special appearances are governed by Texas Rule of Civil Procedure 120a.

RULE 362. INACCESSIBILITY OF BUSINESS COURT JUDGE

(a) A business court judge may grant a writ returnable to another business court judge if that judge cannot be reached by the ordinary and available means of travel and communication in sufficient time to implement the purpose sought for the writ.

(b) In seeking a writ under this subsection, the applicant or attorney for the applicant shall attach to the application an affidavit that fully states the facts of the inaccessibility and the efforts made to reach and communicate with the other business court judge.

(c) The business court judge to whom the application is made shall refuse to hear the application unless the judge determines the applicant made fair and reasonable efforts to reach and communicate with the other business court judge.

(d) The injunction may be dissolved on a showing the applicant did not first make reasonable efforts to procure a hearing on the application before the other business court judge.

Notes and Comments

Comment to 2025 change: To incorporate Section 16 of H.B. 40, 89th Legislative Session.

RULE 363. TRANSFER OF CASES PENDING BEFORE SEPTEMBER 1, 2024, TO BUSINESS COURT.

(a) *Agreed motion.* On agreed motion of the parties, the presiding judge for the administrative judicial region in which a case is pending may order transfer of

a suit filed before September 1, 2024, that is within the business court's jurisdiction to the business court.

(i) The motion should be filed with the court in which the case is pending and

(ii) The judge should sign and file with the clerk an order indicating whether the judge agrees to transfer to the business and referring the motion to the regional presiding judge.

(b) *Notice and Hearing*. The regional presiding judge must notify all parties of the transfer request and set a hearing on the transfer request, and a record should be made of the hearing.

(c) *Transfer decision.*

(i) The regional presiding judge should consult with the presiding judge of the business court as to its capacity to accept the transfer of the action without impairing its efficiency and effectiveness.

(ii) Both the judge in which the case is pending and the regional presiding judge should consider:

(a) whether the case involves complex civil issues, has been pending for some length of time without resolution, or involves issues that have proven difficult for a district court to resolve because of the other demands on the district court's caseload; or

(b) whether the transfer will ensure the facilitation of the fair and efficient administration of justice.

(d) *Clerk Duties*. The business court clerk must assign the action to the appropriate operating division of the business court. If the division has more than one judge, then the clerk must randomly assign the action to a specific judge within that division.

Notes and Comments

Comment to 2025 change: To incorporate Section 56 of H.B. 40, 89th Legislative Session. For cases pending in Montgomery County, the agreed motion should be referred to the Eleventh Administrative Judicial Region. The authorization for this transfer option expires September 1, 2035.

Proposed Amendments to Texas Rules of Judicial Administration

Rule 11. Pretrial Proceedings in Certain Cases.

* * *

11.2 Definitions.

(a) *Presiding judge* means the presiding judge of an administrative judicial region in which a case is pending;

(b) *Regular judge* means the regular judge of a court in which a case is pending.

(c) *Pretrial judge* means a judge assigned under this rule, including a business court judge.

(d) *Related* means that cases involve common material issues of fact and law.

Notes and Comments

Comments to 2025 change: The added provision is to comply with H.B. 40, § 67, 89th Legislative Session.

Rule 13. Multidistrict Litigation

13.1 Authority and Applicability.

(a) *Authority*. This rule is promulgated under sections 74.161-74.164 of the Texas Government Code and chapter 90 of the Texas Civil Practices and Remedies Code.

(b) *Applicability*. This rule applies to:

(1) civil actions that involve one or more common questions of fact and that were filed in a constitutional county court, county court at law, probate court, ~~or~~ district court, or the business court on or after September 1, 2003;

(2) civil actions filed before September 1, 2003, that involve claims for asbestos- or silica-related injuries, to the extent permitted by chapter 90 of the Texas Civil Practice and remedies Code.

(c) *Other Cases*. Cases to which this rule does not apply are governed by Rule 11 of these rules.

13.2 Definitions. As used in this rule:

(a) *MDL Panel* means the judicial panel on multidistrict litigation designated pursuant to section 74.161 of the Texas Government Code, including any temporary members designated by the Chief Justice of the Supreme Court of Texas in his or her discretion when regular members are unable to sit for any reason.

(b) *Chair* means the chair of the MDL Panel, who is designated by the Chief Justice of the Supreme Court of Texas.

(c) *MDL Panel Clerk* means the Clerk of the Supreme Court of Texas.

(d) *Trial court* means the court in which a case is filed.

(e) *Pretrial court* means the district court or the business court to which related cases are transferred for consolidated or coordinated pretrial proceedings under this rule.

(f) *Related* means that cases involve one or more common questions of fact.

(g) *Tag-along case* means a case related to cases in an MDL transfer order but not itself the subject of an initial MDL motion or order.

13.3 Procedure for Requesting Transfer.

* * *

(l) *Decision*. The MDL Panel may order transfer if three members concur in a written order finding that related cases involve one or more common questions of fact, and that transfer to a specified ~~district~~ pretrial court will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of the related cases.

* * *

13.6 Proceedings in Pretrial Court.

(a) *Judges Who May Preside*. The MDL Panel may assign as judge of the pretrial court any active district or businTheess court judge, or any former or retired district, business court, or appellate judge who is approved by the Chief Justice of the Supreme Court of Texas. An assignment under this rule is not subject to objection under chapter 74 of the Government Code. The judge assigned as judge of the pretrial court has exclusive jurisdiction over each related case transferred pursuant to this rule unless a case is retransferred by the MDL Panel or is finally resolved or remanded to the trial court for trial.

* * *

Notes and Comments

Comments to 2025 changes: The additions are to comply with H.B. 40 §§ 53, 67, 89th Legislative Session.

Tab III- Bail Appeals

MEMORANDUM

TO: Supreme Court Advisory Committee

FROM: SB9 Subcommittee

DATE: June 20, 2025

RE: Appeals of Orders Granting Bail in Amounts Considered Insufficient by the State

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I. SENATE BILL 9

Senate Bill 9 contains a variety of bail reform provisions. This memo focuses on the new procedures for the state to request a district court to increase a defendant's bail amount and for the state to appeal an order granting bail. Section 20 of SB9 directs the Texas Supreme Court to adopt rules to implement the new appeal procedure by October 1, 2025.

The subcommittee's proposed draft rules are attached as **Exhibit 1**. The enrolled version of SB9 is attached as **Exhibit 2**. It is also helpful to refer to Code of Criminal Procedure Article 17 (bail) and Article 44 (appeals), which are not reproduced in these materials.

Background and Context. A defendant must be magistrated immediately upon arrest.[1] This process happens in front of a magistrate who may be a justice of the peace or one of a variety of categories of magistrates created by statute, and only rarely a district judge.[2] There is typically no prosecutor present, no defense counsel present, and no record. The magistrate, in a summary proceeding, accesses the Public Safety Report System electronically and reviews the defendant's criminal history, then sets a bail amount as well as bond conditions.

In most counties, the case is not assigned to a district court until it is indicted, which may be months after the defendant's magistration. A defendant can request that a district court *reduce* the bail amount by filing a writ of habeas corpus, which is a new civil case that would be assigned to a district court. However, before SB9, the state did not have any ability to request that a district court *increase* the bail amount—until the case was indicted, the state could only go back to the original magistrate that set the bail.[3]

New District Court Bail Review Process. Section 6 of SB9 provides a new process for a magistrate's bail decision to be reviewed by a district court. If the defendant is charged with a felony, and the bail was originally set by a magistrate who would not be able to try the case (i.e. a magistrate who is not a district judge), then a district judge may modify the magistrate's bail

[1] *See* TEX. CODE CRIM. P. art. 17.028.

[2] *See id*. art. 17.023(b).

[3] *See id*. art. 17.09.

decision. A prosecutor can make a request to the district clerk for the bail decision to be reviewed. The local administrative district judge must establish a procedure for the district clerk to notify the district judges. A district judge must review the bail decision by the next business day after the request.

New Bail Appeal Process. Section 15 of SB9 creates a new right for the state to appeal a bail order. If the defendant is charged with specific felonies, and the prosecuting attorney considers the bail amount to be insufficient, the state can appeal the bail order. The court of appeals must conduct a de novo review of all issues presented and issue an order within 20 days. The court of appeals can affirm or modify the bail amount, or it can reject the bail amount and remand, with or without guidance, for the trial court to modify the bail amount. If the defendant is in custody, he will be held during the pendency of the appeal.

II. PROPOSED RULES

Objectives. Given the extremely expedited appeal deadline, as well as the fact that the defendant can be held in custody during the appeal, the new rule prioritizes upfront preparation of a comprehensive record, efficient briefing, and limited procedural delay.

Record. Because magistrates who initially set bail are often not courts of record, the initial bail determination would not generate an adequate appellate record for de novo review. SB9 creates a process for a district court to review the magistrate's bail and then allows the state to appeal an order granting bail. The proposed rule clarifies that the district judge's review results in a written bail order (the "order grant[ing] bail" under SB9 Section 15) that the state can now appeal. Once the district court holds a bail review hearing, the state will then be able to assemble an appellate record from the evidence presented to the district judge. The proposed rule also includes expedited timelines for the preparation of the reporter's record, with enforcement by the trial court. Although the state is required to prepare a complete record, the defendant also has the opportunity to supplement the appellate record with anything the state failed to provide.

Defense Counsel. There was a concern that it would not be feasible or possible to appoint separate appellate counsel in each bail appeal, given the limited supply of criminal appellate attorneys. The subcommittee determined that the new process should be straightforward enough for the defendant's trial counsel to handle the bail appeal.[4] The proposed rule requires the state to provide a copy of the rule to the defense counsel upon its appeal. The rule also simplifies briefing requirements so that the defendant's trial counsel need not be familiar with the technical requirements of all the appellate rules. The subcommittee wanted the rule to be comprehensive and self-contained. We are also considering creating a form for

[4] Counties' fair defense plans for felony cases likely do not reflect compensation for SB9 bail appeal work, especially flat-fee plans. The subcommittee communicated with the Texas Indigent Defense Commission, and it plans to release updated guidance for counties as well as sample language for local indigent defense plan revisions.

defense counsel to use in preparing a response to the state's appeal. Although the law requires counsel to be appointed within 1-3 working days of the court receiving the defendant's request for counsel,[5] in practice, those timelines may often not be met. The proposed rule clarifies that when the state requests that the district court review bail under the new procedure, an indigent defendant's trial counsel should be appointed before the bail review hearing and appeal.

Appellate Process. The state will submit the appellate record together with its notice of appeal. The state then has five days to submit its brief, and the defense has five days to respond. Briefing requirements are very streamlined to focus on the issue SB9 allows the state to appeal—the reasons the state considers the bail amount insufficient and what it requests as a sufficient bail amount. The subcommittee concluded that an extremely short word limit would accomplish the priorities of focusing the appeal, completing appellate review on the expedited statutory deadline, and allowing defendant's trial counsel to handle the appeal. Extensions of time or word limits would detract from the feasibility of the appeal process. Further, because the appeal must be resolved within 20 days, and because the defendant can be held in custody during the appeal, the subcommittee determined that rehearing and en banc reconsideration would unduly delay resolution and frustrate the statute's expedited mandate. The rule does not expressly include any provision for review by the Court of Criminal Appeals because the subcommittee determined they would be able to stay the mandate and conduct any review they deemed appropriate.

[5] *See* TEX. CODE CRIM. P. art. 1.051(c).

EXHIBIT 1

31.8 Expedited Appeal by the State of an Order Granting Bail

(a) Application. Appeals by the state of an order granting bail pursuant to Code of Criminal Procedure article 44.01(a)(7) are governed by this rule.

(b) Prerequisite for Appeal. If the state contends that bail has been set in an amount considered insufficient by the prosecuting attorney, the district court must set the matter for a review hearing and enter a written bail order. The state may appeal the district court's order as provided in this rule.

(c) State's Notice of Appeal. The notice must comply with Code of Criminal Procedure article 44.01, expressly state it is an expedited appeal under article 44.01(a)(7), be filed with the district clerk, and be contemporaneously filed with the court of appeals, within 20 days after the day the district court enters the bail order under section (b). The state must serve a copy of this rule on the defendant upon noticing its appeal.

(d) Appellate Record. The state must file in the appellate court, with its notice of appeal, a bookmarked appendix containing a certified or sworn copy of every document that was filed with or presented to the district court in its review of the bail decision, including as applicable:

1. Charging documents, such as the complaint, indictment, information, and probable cause affidavit;
2. Public Safety Report and Criminal History, which must be filed under seal in accordance with Rule 9.10(g);
3. Risk assessment;
4. Reporter's record relating to the bail review hearing and any exhibits;
5. Arraignment forms;
6. Bond findings;
7. Bond conditions and supervision orders;
8. Bail motions and orders;
9. Financial affidavit;
10. Magistrate's orders for emergency protection or other protective orders in effect; and
11. Pretrial supervision documents, including violations.

The defendant has the right to supplement, with its brief, the state's record with a certified or sworn copy of any additional material filed with or presented to the district court that the state failed to provide.

(e) Reporter's Record. The district court must ensure that the reporter's record from the bail review hearing is prepared within 5 days of the state's requesting the record and arranging for payment.

(f) Further Bail Decisions. While the appeal is pending, the state must immediately notify the appellate court and supplement the record if any subsequent action has been taken on the bail order.

(g) Briefing on Appeal. Briefs do not have to comply with Rule 38 and may be in the form of a motion or letter. The briefs are limited to 3,000 words. No extensions of time or word limits will be granted.

The state's brief must include the identity of parties and counsel, specify the reasons it considers the bail amount insufficient, and be supported by citations to authorities and to the record. The state's brief must also include the state's requested relief on appeal, including the bail amount the prosecuting attorney considers sufficient. The state's brief is due 5 days after filing the notice of appeal.

The defendant's brief, if any, should respond to the state's brief. The defendant's brief is due 5 days after the state's.

(h) Representation at the Hearing and on Appeal. If the defendant is unrepresented and indigent, the trial court must appoint counsel upon the defendant's request before the hearing described by (b). The defendant's trial counsel is authorized to respond to the state's appeal.

(i) Decision by the Court of Appeals Pursuant to Code of Criminal Procedure Article 44.01. The appellate court must conduct a de novo review of all issues presented, expedite the appeal, and issue an order not later than the 20th day after the date the appeal is filed. The appellate court may (1) affirm or modify the bail amount set by the district court; or (2) reject the bail amount set by the district court and remand the case to the district court, with or without guidance, for modification of the bail amount. The appellate court may hand down an opinion but is not required to do so. No rehearing or en banc reconsideration will be permitted, and the appellate court will issue its mandate together with its order and judgment.

(j) Implementation of modified bail amount. If the appellate court modifies the bail amount, the district court must update any reporting systems and submit any required forms by the relevant deadlines.

EXHIBIT 2

AN ACT

relating to the confinement or release of defendants before trial or sentencing, including regulating charitable bail organizations, and the conditions of and procedures for setting bail and reviewing bail decisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.

Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.24 to read as follows:

Art. 16.24. REPORTING OF CONDITIONS OF PRETRIAL INTERVENTION PROGRAM.

As soon as practicable but not later than the 10th business day after the date a defendant enters a pretrial intervention program, the attorney representing the state, or the attorney's designee who is responsible for monitoring the defendant's compliance with the conditions of the program, shall enter information relating to the conditions of the program into the appropriate database of the statewide law enforcement information system maintained by the Department of Public Safety or modify or remove information, as appropriate.

SECTION 2.

Article 17.021, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsections (c-1), (h), (h-1), and (i) to read as follows:

(b) The public safety report system must:

(1) state the requirements for setting bail under Article 17.15 and list each factor provided by Article 17.15(a);

(2) provide the defendant's name and date of birth or, if impracticable, other identifying information, the cause number of the case, if available, and the offense for which the defendant was arrested;

(3) provide information on the eligibility of the defendant for a personal bond;

(4) provide information regarding the applicability of any required or discretionary bond conditions;

(5) provide, in summary form, the criminal history of the defendant, including information regarding [~~any~~]:

(A) previous misdemeanor or felony convictions;

(B) pending charges;

(C) any previous sentences imposing a term of confinement;

(D) any previous convictions or pending charges for:

(i) offenses that are offenses involving violence as defined by Article 17.03; or

(ii) offenses involving violence directed against a peace officer; [~~and~~]

(E) previous failures of the defendant to appear in court following release on bail;

(F) whether the defendant is currently on community supervision, parole, or mandatory supervision for an offense;

(G) whether the defendant is currently released on bail or participating in a pretrial intervention program and any conditions of that release or participation;

(H) outstanding warrants for the defendant's arrest that have been entered into the National Crime Information Center database or the Texas Crime Information System established under Section 411.0541, Government Code, including a warrant issued under Article 42A.751 of this code or Section 508.251, Government Code; and

(I) any current protective orders, as defined by Section 72.151, Government Code, for which the defendant is the subject; and

(6) be designed to collect and maintain the information provided on a bail form submitted under Section 72.038, Government Code.

(c-1) On request by an attorney representing the state, the office shall provide to the attorney access to the public safety report system for the purpose of allowing the attorney to access a bail form submitted to the office under Section 72.038, Government Code.

(h) The public safety report system must be configured to allow a county or municipality to integrate the jail records management system and case management systems used by the county with the public safety report system.

(h-1) The office may provide grants to reimburse counties and municipalities for costs related to integrating the systems described by Subsection (h). The office is not required to provide a grant under this subsection unless the office is appropriated money for that purpose. This subsection expires August 31, 2027.

(i) The office may modify the public safety report system to incorporate technological advances to the system's features regarding notices and to any other processes the office determines will enhance the system's availability to protect the public.

SECTION 3.

Article 17.022, Code of Criminal Procedure, is amended by adding Subsection (g) to read as follows:

(g) In the manner described by this article, a magistrate may order, prepare, or consider a public safety report in setting bail for a defendant who is not in custody at the time the report is ordered, prepared, or considered.

SECTION 4.

The heading to Article 17.027, Code of Criminal Procedure, is amended to read as follows:

Art. 17.027. RELEASE ON BAIL OF DEFENDANT CHARGED WITH FELONY OFFENSE [~~COMMITTED WHILE ON BAIL~~].

SECTION 5.

Article 17.027, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), (c), and (d) to read as follows:

(a) Notwithstanding any other law:

(1) if a defendant is taken before a magistrate for [~~charged with~~] committing an offense punishable as a felony while released on bail [~~in a pending case~~] for another offense punishable as a felony and the subsequent offense was committed in the same county as the previous offense, the defendant may be released on bail only by:

(A) the court before whom the case for the previous offense is pending; or

(B) another court designated in writing by the court described by Paragraph (A); and

(2) if a defendant is taken before a magistrate for [~~charged with~~] committing an offense punishable as a felony while released on bail for another [~~pending~~] offense punishable as a felony and the subsequent offense was committed in a different county than the previous offense, electronic notice of the charge must be [~~promptly~~] given to the individual designated to receive electronic notices for the county in which the previous offense was committed, not later than the next business day after the date the defendant is taken before the magistrate, for purposes of the court specified by Subdivision (1) [~~for purposes of reevaluating the bail decision,~~] determining whether any bail conditions were violated[~~,~~] or taking any other applicable action such as an action described by Subsection (a-1).

(a-1) If a defendant is taken before a magistrate for committing an offense punishable as a felony while released on bail for another offense punishable as a felony, the court before which the case for the previous offense is pending shall consider whether to revoke or modify the terms of the previous bond or to otherwise reevaluate the previous bail decision.

(a-2) A magistrate appointed under Chapter 54, Government Code, may not release on bail a defendant who:

(1) is charged with committing an offense punishable as a felony if the defendant:

(A) was released on bail, parole, or community supervision for an offense punishable as a felony at the time of the instant offense;

(B) has previously been finally convicted of two or more offenses punishable as a felony and for which the defendant was imprisoned in the Texas Department of Criminal Justice; or

(C) is subject to an immigration detainer issued by United States Immigration and Customs Enforcement; or

(2) is charged with committing an offense under the following provisions of the Penal Code:

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);

(C) Section 20.04 (aggravated kidnapping); or

(D) Section 22.021 (aggravated sexual assault).

(a-3) An order granting bail signed by a magistrate appointed under Chapter 54, Government Code, must include the names of each individual who appointed the magistrate and state that the magistrate was appointed by those individuals.

(c) The local administrative district judge for each county shall designate an individual to receive electronic notices under Subsection (a)(2). The county shall ensure that the name and contact information of the individual designated to receive notices under this subsection are included in the public safety report system developed under Article 17.021.

(d) An individual designated under Subsection (c) who receives an electronic notice under Subsection (a) shall promptly provide the notice to the court specified by Subsection (a)(1), to the district clerk, and to the attorney representing the state and the defendant's attorney, if known, in the pending case for the offense for which the defendant was initially released on bail. A notice provided under this subsection does not constitute an ex parte communication.

SECTION 6.

Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.029 to read as follows:

Art. 17.029. REVIEW OF BAIL DECISION.

(a) This article applies only to a bail decision:

(1) regarding a defendant charged with or arrested for an offense punishable as a felony; and

(2) that was made under Article 17.028 by the magistrate of a court that does not have jurisdiction to try the offense with which the defendant is charged.

(b) Notwithstanding any other law, a district judge in any county in which the offense for which the person was arrested will be tried or in any county in which the charge for that offense will be filed has jurisdiction to modify a bail decision to which this article applies, regardless of whether the defendant has been previously indicted or an

information has been previously filed for the offense for which the defendant was arrested.

(c) The local administrative judge for each county shall establish a procedure for the district clerk to notify each district judge in the county that the district clerk received a request to review a bail decision under this article.

(d) A district judge must review a bail decision as soon as practicable but not later than the next business day after the date a request to review the bail decision is filed with the district clerk by an attorney representing the state.

(e) A district judge reviewing a bail decision under this article shall comply with Article 17.09 and shall consider the facts presented and the rules established by Article 17.15(a) in setting the defendant's bail.

(f) If a district judge modifies a bail decision under this article to increase the amount of bail or to require additional conditions of bail for a defendant who is not in custody, the judge shall:

(1) issue a summons for the defendant to appear before the judge; and

(2) give the defendant a reasonable opportunity to appear before issuing a warrant for the defendant's arrest.

SECTION 7.

Articles 17.03(a) and (b-2), Code of Criminal Procedure, are amended to read as follows:

(a) Except as otherwise provided by this chapter [~~Subsection (b) or (b-1)~~], a magistrate may, in the magistrate's discretion, release the defendant on personal bond without sureties or other security.

(b-2) Except as provided by Articles 15.21, 17.032, 17.033, and 17.151, a defendant may not be released on personal bond if the defendant:

(1) is charged with:

(A) an offense involving violence; or

(B) an offense under:

(i) Section 19.02(b)(4), Penal Code (murder as a result of manufacture or delivery of a controlled substance in Penalty Group 1-B);
(ii) Section 22.07, Penal Code (terroristic threat), if the offense is punishable as a Class A misdemeanor or any higher category of offense;
(iii) Section 25.07, Penal Code (violation of certain court orders or conditions of bond in a family violence, child abuse or neglect, sexual assault or abuse, indecent assault, stalking, or trafficking case); or
(iv) Section 46.04(a), Penal Code (unlawful possession of firearm); or

(2) while released on bail, parole, or community supervision for an offense involving violence, is charged with committing:

(A) any offense punishable as a felony; or

(B) an offense under the following provisions of the Penal Code:

(i) Section 22.01(a)(1) (assault);
(ii) Section 22.05 (deadly conduct); or
(iii) [~~Section 22.07 (terroristic threat); or~~
[~~(iv)~~] Section 42.01(a)(7) or (8) (disorderly conduct involving firearm).

SECTION 8.

Articles 17.071(a), (f), (h), and (k), Code of Criminal Procedure, are amended to read as follows:

(a) In this article:

(1) "Charitable[~~, "charitable~~] bail organization" means a person who accepts and uses donations from the public to deposit money with a court in the amount of a defendant's bail bond. The term does not include:

(A) [~~(1)~~] a person accepting donations with respect to a defendant who is a member of the person's family, as determined under Section 71.003, Family Code; or

(B) [~~(2)~~] a nonprofit corporation organized for a religious purpose.

(2) "Office" means the Office of Court Administration of the Texas Judicial System.

(f) Not later than the 10th day of each month, a charitable bail organization shall submit to the office and[~~,~~] to the sheriff of each county in which the organization files an affidavit under Subsection (e), a report that includes the following information for each defendant for whom the organization paid a bail bond in the preceding calendar month:

(1) the name of the defendant;

(2) the cause number of the case;

(3) each charge for which the bond was paid;

(4) the category of offense for each charge for which the bond was paid;

(5) the amount of the bond paid;

(6) the county in which the applicable charge is pending, if different from the county in which the bond was paid;

(7) [~~and~~

[~~(4)~~] any dates on which the defendant has failed to appear in court as required for the charge for which the bond was paid; and

(8) whether a bond forfeiture has occurred in connection with the charge for which the bond was paid.

(h) If the office has reason to believe that a charitable bail organization may have paid one or more bonds in violation of this article, the office shall report that information to the sheriff of the county in which the suspected violation occurred. The sheriff of that [~~a~~] county may suspend a charitable bail organization from paying bail bonds in the county for a period not to exceed one year if the sheriff determines the organization has paid one or more bonds in violation of this article and the organization has received a warning from the sheriff in the preceding 12-month period for another payment of bond made in violation of this article. The sheriff shall report the suspension to the office [~~Office of Court Administration of the Texas Judicial System~~].

(k) Not later than December 1 of each year, the office [~~Office of Court Administration of the Texas Judicial System~~] shall prepare and submit, to the governor, lieutenant governor, speaker of the house of representatives, and presiding officers of the standing committees of each house of the legislature with primary jurisdiction over the judiciary, a report regarding the information submitted to the office under Subsections (f) [~~(f-1)~~] and (h) for the preceding state fiscal year.

SECTION 9.

Section 3, Article 17.09, Code of Criminal Procedure, is amended to read as follows:

Sec. 3. Provided that whenever, during the course of the action, and regardless of whether the defendant has been previously released under Article 17.151, the judge or magistrate in whose court such action is pending finds that the bond is defective, excessive or insufficient in amount, or that the sureties, if any, are not acceptable, or for any other good and sufficient cause, such judge or magistrate may, either in term-time or in vacation, order the accused to be rearrested, and require the accused to give another bond in such amount as the judge or magistrate may deem proper. When such bond is so given and approved, the defendant shall be released from custody.

SECTION 10.

Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.092 to read as follows:

Art. 17.092. REDUCTION IN AMOUNT OR CONDITIONS OF BOND PROHIBITED IN CERTAIN CIRCUMSTANCES.

A magistrate described by Articles 2A.151(5)-(14) may not reduce the amount or conditions of bond set by the judge of a district court, including the judge of a district court in another county.

SECTION 11.

Article 17.21, Code of Criminal Procedure, is amended to read as follows:

Art. 17.21. BAIL IN FELONY.

(a) In cases of felony, when the accused is in custody of the sheriff or other officer, and the court before which the prosecution is pending is in session in the county where the accused is in custody, the court shall fix the amount of bail, if it is a bailable case and determine if the accused is eligible for a personal bond; and the sheriff or other peace officer, unless it be the police of a city, or a jailer licensed under Chapter 1701, Occupations Code, is authorized to take a bail bond of the accused in the amount as fixed by the court, to be approved by such officer taking the same, and will thereupon discharge the accused from custody. The defendant and the defendant's sureties are not required to appear in court.

(b) Notwithstanding Subsection (a), before releasing on bail a defendant charged with an offense punishable as a felony, a magistrate shall ensure that:

(1) the defendant has appeared before the magistrate; and

(2) the magistrate has considered the public safety report prepared under Article 17.022 for the defendant.

SECTION 12.

Chapter 27, Code of Criminal Procedure, is amended by adding Article 27.20 to read as follows:

Art. 27.20. CONFINEMENT BEFORE SENTENCING ON PLEA OF GUILTY OR NOLO CONTENDERE FOR CERTAIN OFFENSES.

If a defendant is adjudged guilty after entering a plea of guilty or nolo contendere for an offense listed in Article 42A.054(a) punishable as a felony of the second degree or any higher category of offense and for which the defendant is not eligible for community supervision under Article 42A.055 as provided by Article 42A.056, the court shall order that the defendant be taken into custody and confined until the defendant is sentenced.

SECTION 13.

Article 42.01, Code of Criminal Procedure, is amended by adding Section 17 to read as follows:

Sec. 17. In addition to the information described by Section 1, the judgment must reflect affirmative findings entered pursuant to Article 42.0195.

SECTION 14.

Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0195 to read as follows:

Art. 42.0195. FINDING REGARDING FAILURE TO APPEAR. In the disposition of a criminal case involving any offense punishable as a Class B misdemeanor or any higher category of offense, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment or dismissal

order in the case if the judge determines that the defendant wilfully failed to appear after the defendant was released from custody for the offense. The affirmative finding must include the number of times the defendant failed to appear for the offense.

SECTION 15.

Article 44.01, Code of Criminal Procedure, is amended by amending Subsections (a) and (g) and adding Subsections (f-1) and (f-2) to read as follows:

(a) The state is entitled to appeal an order of a court in a criminal case if the order:

(1) dismisses an indictment, information, or complaint or any portion of an indictment, information, or complaint;

(2) arrests or modifies a judgment;

(3) grants a new trial;

(4) sustains a claim of former jeopardy;

(5) grants a motion to suppress evidence, a confession, or an admission, if jeopardy has not attached in the case and if the prosecuting attorney certifies to the trial court that the appeal is not taken for the purpose of delay and that the evidence, confession, or admission is of substantial importance in the case; [~~or~~]

(6) is issued under Chapter 64; or

(7) grants bail, in an amount considered insufficient by the prosecuting attorney, to a defendant who:

(A) is charged with an offense under any of the following sections of the Penal Code:

(i) Section 19.02 (murder);
(ii) Section 19.03 (capital murder);
(iii) Section 22.02 (aggravated assault) if:
(a) the offense was committed under Subsection (a)(1); or
(b) the defendant used a firearm, club, knife, or explosive weapon, as those terms are defined by Section 46.01, Penal Code, during the commission of the assault;
(iv) Section 20.04 (aggravated kidnapping);
(v) Section 29.03 (aggravated robbery);
(vi) Section 22.021 (aggravated sexual assault);
(vii) Section 21.11 (indecency with a child);
(viii) Section 20A.02 (trafficking of persons); or
(ix) Section 20A.03 (continuous trafficking of persons); or

(B) is charged with an offense punishable as a felony and was released on bail for an offense punishable as a felony at the time the instant offense was committed.

(f-1) In an appeal filed under Subsection (a)(7), a court of appeals shall:

(1) conduct a de novo review of all issues presented;

(2) expedite the appeal; and

(3) issue an order not later than the 20th day after the date the appeal is filed.

(f-2) In an appeal filed under Subsection (a)(7), a court of appeals may:

(1) affirm or modify the bail amount set by the court; or

(2) reject the bail amount set by the court and remand the case to the court, with or without guidance, for modification of the bail amount.

(g) If the state appeals pursuant to this article and the defendant is on bail, the defendant [~~he~~] shall be permitted to remain at large on the existing bail. If the defendant is in custody, the defendant [~~he~~] is entitled to reasonable bail, as provided by law, unless the appeal is from an order which would:

(1) terminate the prosecution, in which event the defendant is entitled to release on personal bond; or

(2) grant bail in an amount considered insufficient by the prosecuting attorney, in which event the defendant shall be held in custody during the pendency of the appeal.

SECTION 16.

Article 56A.051(a), Code of Criminal Procedure, is amended to read as follows:

(a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1) the right to receive from a law enforcement agency adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the magistrate consider the safety of the victim or the victim's family in setting the amount of bail for the defendant;

(3) if requested, the right to be informed in the manner provided by Article 56A.0525:

(A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled before the event; and

(B) by an appellate court of the court's decisions, after the decisions are entered but before the decisions are made public;

(4) when requested, the right to be informed in the manner provided by Article 56A.0525:

(A) by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations; and

(B) by the office of the attorney representing the state concerning:

(i) the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process; and

(ii) whether the defendant has fully complied with any conditions of the defendant's bail;

(5) the right to provide pertinent information to a community supervision and corrections department conducting a presentencing investigation concerning the impact of the offense on the victim and the victim's family by testimony, written statement, or any other manner before any sentencing of the defendant;

(6) the right to receive information, in the manner provided by Article 56A.0525:

(A) regarding compensation to victims of crime as provided by Chapter 56B, including information related to the costs that may be compensated under that chapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that chapter;

(B) for a victim of a sexual assault, regarding the payment under Subchapter G for a forensic medical examination; and

(C) when requested, providing a referral to available social service agencies that may offer additional assistance;

(7) the right to:

(A) be informed, on request, and in the manner provided by Article 56A.0525, of parole procedures;

(B) participate in the parole process;

(C) provide to the board for inclusion in the defendant's file information to be considered by the board before the parole of any defendant convicted of any offense subject to this chapter; and

(D) be notified in the manner provided by Article 56A.0525, if requested, of parole proceedings concerning a defendant in the victim's case and of the defendant's release;

(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the defendant and relatives of the defendant, before testifying in any proceeding concerning the defendant; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the defendant and the defendant's relatives and witnesses, before and during court proceedings;

(9) the right to the prompt return of any of the victim's property that is held by a law enforcement agency or the attorney representing the state as evidence when the property is no longer required for that purpose;

(10) the right to have the attorney representing the state notify the victim's employer, if requested, that the victim's cooperation and testimony is necessary in a proceeding that may require the victim to be absent from work for good cause;

(11) the right to request victim-offender mediation coordinated by the victim services division of the department;

(12) the right to be informed, in the manner provided by Article 56A.0525, of the uses of a victim impact statement and the statement's purpose in the criminal justice system as described by Subchapter D, to complete the victim impact statement, and to have the victim impact statement considered:

(A) by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and

(B) by the board before a defendant is released on parole;

(13) for a victim of an assault or sexual assault who is younger than 17 years of age or whose case involves family violence, as defined by Section 71.004, Family Code, the right to have the court consider the impact on the victim of a continuance requested by the defendant; if requested by the attorney representing the state or by the defendant's attorney, the court shall state on the record the reason for granting or denying the continuance; and

(14) if the offense is a capital felony, the right to:

(A) receive by mail from the court a written explanation of defense-initiated victim outreach if the court has authorized expenditures for a defense-initiated victim outreach specialist;

(B) not be contacted by the victim outreach specialist unless the victim, guardian, or relative has consented to the contact by providing a written notice to the court; and

(C) designate a victim service provider to receive all communications from a victim outreach specialist acting on behalf of any person.

SECTION 17.

Section 72.038, Government Code, is amended by adding Subsections (b-1) and (c-1) and amending Subsection (c) to read as follows:

(b-1) A person who, under the authority of a standing order related to bail, releases on bail a defendant who is charged with an offense punishable as a Class B misdemeanor or

any higher category of offense shall complete the form required under this section.

(c) The person setting bail, an employee of the court that set the defendant's bail, or an employee of the county in which the defendant's bail was set must, on completion of the form required under this section, promptly but not later than 48 [~~72~~] hours after the time the defendant's bail is set provide the form electronically to the office through the public safety report system.

(c-1) The office shall provide to the elected district attorney in each county an electronic copy of the form submitted to the office under Subsection (c) for each defendant whose bail is set in the county for an offense involving violence, as defined by Article 17.03, Code of Criminal Procedure. An elected district attorney shall provide an e-mail address to the office for the purpose of receiving a form as provided by this subsection.

SECTION 18.

Section 51A.003(b), Human Resources Code, is amended to read as follows:

(b) The notice adopted under this section must include the following in both English and Spanish:

(1) a statement that it is a criminal offense for any person, including a member of the family or former member of the family, to cause physical injury or harm to a victim or to engage in conduct constituting stalking, harassment, or terroristic threat toward a victim;

(2) a list of agencies and social organizations that the victim may contact for assistance with safety planning, shelter, or protection;

(3) contact information for:

(A) the National Domestic Violence Hotline;

(B) victim support services at the Department of Public Safety; and

(C) the commission's family violence program; and

(4) information regarding the legal rights of a victim, including information regarding:

(A) the filing of criminal charges and obtaining a protective order or a magistrate's order for emergency protection; [~~and~~]

(B) the ability of a tenant who is a victim of family violence to vacate a dwelling and terminate a residential lease; and

(C) the ability of the victim to provide information to the local prosecutor that will be helpful to a magistrate setting bail if the person committing the offense is arrested.

SECTION 19.

Article 17.071(f-1), Code of Criminal Procedure, is repealed.

SECTION 20.

As soon as practicable but not later than October 1, 2025, the Texas Supreme Court shall adopt rules necessary to implement Article 44.01(f-1), Code of Criminal Procedure, as added by this Act.

SECTION 21.

The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 22.

(a) Except as otherwise provided by this section, this Act takes effect September 1, 2025.

(b) The following provisions, as added by this Act, take effect January 1, 2026:

(1) Article 16.24, Code of Criminal Procedure;

(2) Articles 17.021(c-1), (h), and (h-1), Code of Criminal Procedure;

(3) Articles 17.027(c) and (d), Code of Criminal Procedure; and

(4) Section 72.038(c-1), Government Code.

(c) The following provisions take effect April 1, 2026:

(1) Article 17.021(b), Code of Criminal Procedure, as amended by this Act;

(2) Article 17.027(a), Code of Criminal Procedure, as amended by this Act; and

(3) Article 17.027(a-1), Code of Criminal Procedure, as added by this Act.

Tab IV- Texas Rule of Evidence 412

Texas Supreme Court Advisory Committee

Memo

To: Texas Supreme Court Advisory Committee (SCAC)

From: TRE Subcommittee

Date: June 19, 2025

Re: TRE 412

Senate Bill 535 disapproves of Texas Rule of Evidence 412. The Supreme Court charged the Evidence Subcommittee with studying "whether the Court should adopt an alternative rule based on the language in SB 535 and draft an alternative rule."

I. Brief Summary of Subcommittee's Recommendation

Existing Rule 412, the state's rape shield law, limits the admissibility of evidence of a victim's past sexual behavior in prosecutions for sexual assault, aggravated sexual assault, or an attempt to commit either crime. SB 535 was intended to expressly extend the evidentiary protections in Rule 412 to cover victims of human trafficking and child-specific sexual offenses. It also makes a procedural change, explicitly requiring the defendant to make a motion to offer evidence of previous sexual conduct in criminal cases. This procedure was implicit in the former rule.

The Evidence Subcommittee unanimously recommends that the Court insert a comment that, as a result of the new statute, Rule 412 applies only to criminal prosecutions commenced before September 1, 2025 and that for prosecutions commenced on or after that date, Rule 412 is abrogated. Criminal prosecutions to which the statute applies are now governed by new Article 38.372 of the Code of Criminal Procedure.

We further recommend that in the summer of 2026 the Court repeal TRE 412 but leave a comment about SB 535. The repeal language could track the language used in former TRCP 132.

II. History

The legislature "has the power to mandate the rules of evidence." *Wright v. State*, 212 S.W.3d 768, 773 (Tex. App.—Austin 2006, pet. ref'd) (citing *Williams v. State,* 707 S.W.2d 40, 45 (Tex.Crim.App.1986); *Jackson v. State,* 861 S.W.2d 259, 261 (Tex.App—Dallas 1993, no

pet.)). "Pursuant to article V, section 31(c) of the Texas Constitution, the legislature has partially delegated its evidentiary rule making authority to the judiciary. Article V, section 31 of the Constitution and section 22.109 expressly reserve the legislature's right to disapprove of rules promulgated by the judiciary." *Id*.

"Tex. Const. art. V, § 31 grants the Legislature the power to delegate rule-making power to the courts, which it did through Tex. Gov't Code § 22.109. That code provision grants the Court of Criminal Appeals full power to promulgate rules of evidence in criminal cases." *Enlow v. State*, 46 S.W.3d 340, 346–47 (Tex. App.—Texarkana 2001, pet. ref'd). But those rules "are effective only if not disapproved by the Legislature." *Tennison v. State*, 969 S.W.2d 578, 582 (Tex. App.—Texarkana 1998, no pet.) (citing Tex. Gov't Code § 22.109); *see also Lawrence v. State*, No. 01-02-00579-CR, 2003 WL 1848659, at *2 (Tex. App.—Houston [1st Dist.] Apr. 10, 2003, no pet.) ("Although still present in the rules of evidence, rule 412(e) was disapproved by the legislature in 1993. As such, it is no longer effective.") (citations omitted)).

Section 31 states:

> (a) The Supreme Court is responsible for the efficient administration of the judicial branch and shall promulgate rules of administration not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.
>
> (b) The Supreme Court shall promulgate rules of civil procedure for all courts not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.
>
> (c) The legislature may delegate to the Supreme Court or Court of Criminal Appeals the power to promulgate such other rules as may be prescribed by law or this Constitution, subject to such limitations and procedures as may be provided by law.

Thus, the Constitution "empowers the Supreme Court to adopt rules of administration and procedure, and authorizes the Legislature to delegate to the Court and to the Court of Criminal Appeals other rulemaking power." Nathan L. Hecht & E. Lee Parsley, *Procedural Reform: Whence and Whither* (Sept. 1997), *updated by* Robert H. Pemberton (Nov. 1998) available at https://www.txcourts.gov/rules-forms/rules-standards/texas-court-rules-history-process/ (last accessed June 20, 2025).

Section 22.109 of the Government Code governs the rules of evidence in criminal cases. It provides:

> (a) The court of criminal appeals has the full rulemaking power in the promulgation of rules of evidence in the trials of criminal cases, except that its rules may not abridge, enlarge, or modify the substantive rights of a litigant.
>
> (b) The court of criminal appeals may promulgate a comprehensive body of rules of evidence in the trials of criminal cases and from time to time may promulgate a specific

> rule or rules of evidence or an amendment or amendments to a specific rule or rules. Rules and amendments adopted under this subsection are effective at the time the court of criminal appeals considers expedient in the interest of a proper administration of justice. *The rules and amendments to rules remain in effect unless and until disapproved by the legislature*.

Tex. Gov't Code Ann. § 22.109. Since 1989, "the Legislature has enacted several statutes prescribing procedure in civil cases and prohibiting the Court from changing them through its power under the Rules of Practice Act." Hecht & Parsley, *Procedural Reform: Whence and Whither.* SB 535 contains no such provision.

Texas Rules of Evidence 101(d) provides, "Despite these rules, a court must admit or exclude evidence if required to do so by the United States or Texas Constitution, a federal or Texas statute, or a rule prescribed by the United States or Texas Supreme Court or the Texas Court of Criminal Appeals. If possible, a court should resolve by reasonable construction any inconsistency between these rules and applicable constitutional or statutory provisions or other rules. TEX R EVID 101(d). "An evidentiary rule cannot allow a proponent of evidence to bypass the requirements of a statute." 1 Tex. Prac. Guide Evid. § 1:8. "An evidentiary statute trumps a rule of evidence adopted by the courts." *Lozano v. State*, 706 S.W.3d 429, 441 (Tex. App.—Austin 2024, no pet.) (quoting *Hitt v. State*, 53 S.W.3d 697, 704 (Tex. App.—Austin 2001, pet. ref'd)). See generally *Smith v. State*, 899 S.W.2d 31, 34 (Tex. App.—Austin 1995, pet. ref'd) ("the Code of Criminal Procedure takes precedence over the rules" of evidence).

The legislature has previously disapproved a section of Rule 412 and the rule was then revised. Former rule of criminal evidence 412(e) provided in part that "[t]his rule does not limit the right of the accused to produce evidence of promiscuous sexual conduct of a child 14 years old or older as a defense to sexual assault, aggravated sexual assault, [or] *indecency with a child. ...*" Tex.R.Crim. Evid. 412(e) (disapproved by Act of May 29, 1993, 73rd Leg. R.S., ch. 900, § 1.17, 1993 Tex. Gen. Laws 3705 ("Under the terms of Section 22.109(b), Government Code, Rule 412(e), Texas Rules of Criminal Evidence, is disapproved.")). The rule was then revised to remove indecency with a child in its text. *Franklin v. State*, No. 12-08-00391-CR, 2010 WL 337334, at *3 (Tex. App.—Tyler Jan. 29, 2010, no pet.).

III. Current Rule 412

Evidence of Previous Sexual Conduct in Criminal Cases

(a) In General. The following evidence is not admissible in a prosecution for sexual assault, aggravated sexual assault, or attempt to commit sexual assault or aggravated sexual assault:

(1) reputation or opinion evidence of a victim's past sexual behavior; or
(2) specific instances of a victim's past sexual behavior.

(b) Exceptions for Specific Instances. Evidence of specific instances of a victim's past sexual behavior is admissible if:

(1) the court admits the evidence in accordance with subdivisions (c) and (d);

(2) the evidence:

(A) is necessary to rebut or explain scientific or medical evidence offered by the prosecutor;

(B) concerns past sexual behavior with the defendant and is offered by the defendant to prove consent;

(C) relates to the victim's motive or bias;

(D) is admissible under Rule 609; or

(E) is constitutionally required to be admitted; and

(3) the probative value of the evidence outweighs the danger of unfair prejudice.

(c) Procedure for Offering Evidence. Before offering any evidence of the victim's past sexual behavior, the defendant must inform the court outside the jury's presence. The court must then conduct an in camera hearing, recorded by a court reporter, and determine whether the proposed evidence is admissible. The defendant may not refer to any evidence ruled inadmissible without first requesting and gaining the court's approval outside the jury's presence.

(d) Record Sealed. The court must preserve the record of the in camera hearing, under seal, as part of the record.

(e) Definition of "Victim." In this rule, "victim" includes an alleged victim.

IV. SB 535'S Text

A BILL TO BE ENTITLED

AN ACT

relating to the admissibility of evidence regarding a victim's past sexual behavior in prosecutions of certain trafficking, sexual, or assaultive offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.372 to read as follows:

Art. 38.372. EVIDENCE OF VICTIM'S PAST SEXUAL BEHAVIOR. (a) In this article, "victim" includes the victim of an extraneous offense or act with respect to which evidence is introduced during the prosecution of an offense described by Subsection (b).

(b) This article applies to a proceeding in the prosecution of a defendant for an offense, or for an attempt or conspiracy to

commit an offense, under any of the following provisions of the Penal Code:

(1) Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of Persons);

(2) Section 20A.03 (Continuous Trafficking of Persons), if the offense is based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8);

(3) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);

(4) Section 21.11 (Indecency with a Child);

(5) Section 22.011 (Sexual Assault); or

(6) Section 22.021 (Aggravated Sexual Assault).

(c) Except as provided by Subsection (d), in the prosecution of an offense described by Subsection (b), reputation or opinion evidence of a victim's past sexual behavior or specific instances of a victim's past sexual behavior is not admissible.

(d) A defendant may not offer reputation or opinion evidence of a victim's past sexual behavior or specific instances of a victim's past sexual behavior unless the court:

(1) on a motion by the defendant made outside the presence of the jury, conducts an in camera examination of the evidence in the presence of the court reporter; and

(2) determines that the probative value of the evidence outweighs the danger of unfair prejudice to the victim and that the evidence:

(A) is necessary to rebut or explain scientific or medical evidence offered by the attorney representing the state;

(B) concerns past sexual behavior with the defendant and is offered by the defendant to prove consent;

(C) relates to the victim's motive or bias;

(D) is admissible under Rule 609, Texas Rules of Evidence; or

(E) is constitutionally required to be admitted.

(e) The court shall seal the record of the in camera examination conducted under Subsection (d)(1) and preserve the examination record as part of the record in the case.

SECTION 2. Under the terms of Section 22.109(b), Government Code, Rule 412, Texas Rules of Evidence, is disapproved.

SECTION 3. The change in law made by this Act applies to the admissibility of evidence in a criminal proceeding that commences on or after the effective date of this Act. The admissibility of evidence in a criminal proceeding that commences before the effective date of this Act is governed by the law in effect on the date the proceeding commenced, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2025.

Tab V- Summary Judgment

To: Supreme Court Advisory Committee
Subject: Changes to Rule 166a, Summary Judgments
Date: June 20, 2025
From: Subcommittee on Rule 15-165a

Justice Bland's June 5, 2025 referral letter to the SCAC includes this task:

> Summary Judgment. SB 293 adds Section 23.303 to the Government Code to impose deadlines on trial courts for considering and ruling on motions for summary judgment. The Committee should draft recommended amendments to Texas Rule of Civil Procedure 166a.

The Legislative Mandates Subcommittee chaired by Pete Schenkkan and the Rules 16-166a Subcommittee chaired by Richard Orsinger collaborated on drafting proposed rule changes.

1. Here are the parts of SB 293 that relate to Gov't Code Section 23.303--

> SECTION 2. Subchapter D , Chapter 23 , Government Code, is amended by adding Section 23.303 to read as follows:
>
> Sec. 23.303. PROCEDURES RELATED TO MOTIONS FOR SUMMARY JUDGMENT; ANNUAL REPORT.
>
> (a) The business court, a district court, or a statutory county court shall, with respect to a motion for summary judgment:
>
> (1) hear oral argument on the motion or consider the motion without oral argument not later than the 45th day after the date the response to the motion was filed; and
>
> (2) file with the clerk of the court and provide to the parties a written ruling on the motion not later than the 90th day after the date the motion was argued or considered.
>
> (b) If a motion for summary judgment is considered by a court described by Subsection (a) without oral argument, the court shall record in the docket the date the motion was considered without argument.
>
> (c) A clerk of a court described by Subsection (a) shall report the court 's compliance with the times prescribed by this section to the Office of Court Administration of the Texas Judicial System not less than once per quarter using the procedure the office prescribes for the submission of reports under this subsection.
>
> (d) The Office of Court Administration of the Texas Judicial System shall prepare an annual report regarding compliance of courts and clerks with the requirements of this section during the preceding state fiscal year. Not later than December 31 of each year, the office shall submit the report prepared under this section to the governor, lieutenant

governor, and speaker of the house of representatives and make the report publicly available.

(e) Notwithstanding Section 22.004 , Subsection (a) or (b) may not be modified or repealed by supreme court rule.

* * *

SECTION 27. Section 23.303, Government Code, as added by this Act, applies only to a motion for summary judgment filed on or after the effective date of this Act. A motion for summary judgment filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and that law is continued in effect for that purpose.

SECTION 28. Not later than March 1, 2026, the Texas Supreme Court and the Texas Court of Criminal Appeals shall adopt rules necessary to implement Section 22.302 (a), Government Code, as amended by this Act, and Section 23.303, Government Code, as added by this Act.

2. Here is the language of current TRCP 166a–

RULE 166a. SUMMARY JUDGMENT

(a) **For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the adverse party has appeared or answered, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.

(b) **For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) **Motion and Proceedings Thereon.** The motion for summary judgment shall state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response. No oral testimony shall be received at the hearing. The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages,

there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(d) **Appendices, References and Other Use of Discovery Not Otherwise on File.** Discovery products not on file with the clerk may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary judgment proofs: (i) at least twenty-one days before the hearing if such proofs are to be used to support the summary judgment; or (ii) at least seven days before the hearing if such proofs are to be used to oppose the summary judgment.

(e) **Case Not Fully Adjudicated on Motion.** If summary judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the judge may at the hearing examine the pleadings and the evidence on file, interrogate counsel, ascertain what material fact issues exist and make an order specifying the facts that are established as a matter of law, and directing such further proceedings in the action as are just.

(f) **Form of Affidavits; Further Testimony.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. Defects in the form of affidavits or attachments will not be grounds for reversal unless specifically pointed out by objection by an opposing party with opportunity, but refusal, to amend.

(g) **When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(h) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the

affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(i) **No-Evidence Motion.** After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

Notes and Comments

Comment to 1990 change: This amendment provides a mechanism for using previously non-filed discovery in summary judgment practice. Such proofs must all be filed in advance of the hearing in accordance with Rule 166a. Paragraphs (d) through (g) are renumbered (e) through (h).

Comment to 1997 change: This comment is intended to inform the construction and application of the rule. Paragraph (i) authorizes a motion for summary judgment based on the assertion that, after adequate opportunity for discovery, there is no evidence to support one or more specified elements of an adverse party's claim or defense. A discovery period set by pretrial order should be adequate opportunity for discovery unless there is a showing to the contrary, and ordinarily a motion under paragraph (i) would be permitted after the period but not before. The motion must be specific in challenging the evidentiary support for an element of a claim or defense; paragraph (i) does not authorize conclusory motions or general no-evidence challenges to an opponent's case. Paragraph (i) does not apply to ordinary motions for summary judgment under paragraphs (a) or (b), in which the movant must prove it is entitled to judgment by establishing each element of its own claim or defense as a matter of law or by negating an element of the respondent's claim or defense as a matter of law. To defeat a motion made under paragraph (i), the respondent is not required to marshal its proof; its response need only point out evidence that raises a fact issue on the challenged elements. The existing rules continue to govern the general requirements of summary judgment practice. A motion under paragraph (i) is subject to sanctions provided by existing law (Tex Civ. Prac. & Rem. Code §§ 9.001-10.006) and rule (Tex R. Civ. P. 13). The denial of a motion under paragraph (i) is no more reviewable by appeal or mandamus than the denial of a motion under paragraph (c).

3. Here are internal comments from Subcommittee Members [edited for continuity]–

   (1) Is there a question about the Legislature's ability to put deadlines like this on courts without [at least in 23.303 itself] authorizing the court either on agreement of the parties or for good cause shown by a party allowing more time?

   If there is such a question, is it one the Court would want SCAC to discuss and advise

on?

Or should we put verbatim from 23.303 into procedure rule 166a the things the lawyers need to know.

Does 23.303(c) belong in the procedure rules? Or is it too more properly a judicial admin matter?

(2) [The] bill says that a hearing must take place no later than the 45th day after a response is filed. But there is no need to file a response unless there is a hearing date so that makes it complicated. So – a litigant calls the court and the court says its 6 months before our next available hearing date and that can meet the rule. [And as we know, litigants sometimes file MSJs and don't really want a hearing – its just sometimes a bargaining tool.]

So we might need to revamp the entire MSJ structure to make the response always due 14 days after movant files. Then the movant can say to the court-I need a hearing within 45 days of that date.

The problem is that not all movants want a hearing to be set at all, regardless of whether the clock starts on the day the motion is filed or the day that the response is filed. Sometimes parties (I do this) file a traditional MSJ so that it is pending unresolved at the time of mediation, because that uncertainty helps cases to settle. Sometimes a no-evidence MSJ is filed in order to make the non-movant show their hand (produce evidence to support a claim or defense), but no hearing is expected. If we switch to a clock running from the date of filing, we could force settings on MSJs that no one wants. We would need to allow the parties to stop or alter a clock that starts running on the date the MSJ is filed.

I'm not sure whether the Legislature wants the parties to be able to suspend the timetable or alter the deadlines by agreement. Clearly SB 293 by its silence does not preclude the parties from agreeing to extend the response deadline. However, once a response is filed, it appears that SB 293 does not allow the parties to suspend or alter the submission deadline, and it appears that SB 293 does not allow the parties to suspend or alter the deadline for ruling after submission. To preserve the parties' control over when the MSJ must be submitted, the deadline either should run from the date a response is filed, or if it runs from the date the MSJ is filed then the parties should be allowed to suspend or alter the deadline for filing a response and for getting a setting on the MSJ.

(3) Stepping back, I assume from the Bill text that the Legislature is trying to do two things: (i) require that contested MSJs that are ready for submission are set for submission within a deadline (45 days of the filing of a response), and then ruled upon within 90 days after submission. Having a clock that runs from the date a response is

filed avoids forcing parties to have hearings that no one wants. So the key is how to maintain the litigant's control over setting a MSJ for hearing while implementing the Legislature's timetable to getting a setting and getting a ruling.

(4) It seems we have 2 paths:

1. Implement changes that simply limit how far out a hearing can be reset. This would keep the practice mostly the same for lawyers and courts. It would also keep MSJ practice consistent with Special Appearance practice (TRCP 120a(3)), a practice (TRCP 91a.4), as well as most discovery motions, where a response date is triggered by a hearing date rather than the date of the motion.

2. Alternatively, we can require a response date. I am not opposed to that. This model would be more similar to an appellate brief or MSJ under the local rules of N.D. Tex. If we go that route, I suggest that 14 days is too quick, and counsel agreement for additional time makes me nervous as an area for gamesmanship. I suggest 21 days for a response, minimum (as in the Local Rules for N.D. Tex., for example). I believe the reality of current practice is that we have much more than 14 days to respond to MSJ because courts usually do not have time to hear an MSJ within 21 days. If we expand the 14 days to 21, we could also propose a change to the advance notice of hearing, to require 30 days' notice for a hearing. In that scenario, a quick MSJ practice would have the motion filed, hearing set and notice given on “Day 1,” response filed on Day 21, and hearing on Day 30.

(5) We need to add a requirement that the parties immediately bring the MSJ & response to the trial court’s attention and ask for a setting.

Plenty of times, people file MSJs and then the first the Court hears of it is at trial. We don’t want trial courts to appear to be missing these deadlines when the parties haven’t brought it up to the court.

We also can’t have the parties waiting to notify the court until the 42nd day after the response is filed, and then demanding that the court has to cram in a hearing or consider/rule on the motion within 3 days.

(6) I completely agree. A court has no way of knowing when a MSJ is filed. Many litigants file the MSJ and just let it sit there without any intent of ever setting it for a hearing.

(7) I suggest that notice of the filing of the MSJ is unnecessary and undesirable, unless we start the ruling timetable upon filing of the motion (or better service of the motion on the non-movant), which is contrary to the timetable in the statute and I think is unwise anyway.

I have concerns about a deadline of the court ruling sua sponte by a deadline date based on filing of the MSJ. First, there is the issue of the response deadline starting with the filing of the motion, which may not be the date of service on the non-moving party. Service by email may bounce. If service is by certified mail, do we add three days to the 45-day ruling deadline? How would the court know that?

Second, the statutory language says that the hearing deadline is 45 days after the response is filed. The Bill itself says that "Subsection (a) or (b) may not be modified or repealed by supreme court rule." We do not want to recommend to the Supreme Court that they disregard this statutory directive not alter the 45-day deadline. It seems to me that we are stuck with the 45 days following the filing the response, but that we are free to provide a timetable for the response to be filed, which could count forward from the date of service of the MSJ, or counting backwards from the date of the hearing. So we change the part of the rule about when the response is due, and avoid a direct conflict with the Legislature.

Regarding the court extending the response deadline, we need to do something to protect the non-movant in a no-evidence motion for an MSJ that is filed before an adequate time for discovery. Either the court should be able to delay the hearing (which under the current rule extends the response deadline) to allow an adequate time for discovery, or under the new rule delay the response deadline, or we need to provide that the court can strike the no-evidence MSJ if an adequate time for discovery has not passed. We can't allow someone to file a no-evidence MSJ the day after Defendant's Original Answer is filed and force the court to have it heard in 45 days, or even 45 days with an extension of 45 additional days.

(8) This new law is interesting to me because it requires a hearing within 45 days after an MSJ response is filed. Under current practice, the response date is dictated by the hearing date-and in my experience parties generally will not file a response until 7 days before the hearing or submission date. TRCP 166a(c). So I wonder how impactful this first part of the law (requiring a hearing within 45 days after a response is filed) will be. I can see it being triggered if a filing party receives the response to MSJ and decides to continue the hearing. Then, the Court would need to be limited in how far out it could set/hear the MSJ.

I agree that we can't have parties wait until day 42 after a response to set a hearing. The rules on expedited actions suggest some language to limit the parties' ability to continue the hearing to 45 days from the response date.

(9) The main challenges center on how to make this legislative mandate work for lawyers and judges in a wide array of summary judgment scenarios.

(10) I think the missing element is a setting date for the respondent to file their response to

the MSJ, similar to filing an original answer, 21 days after service of citation. Given the party filing the MSJ is also required to show proof of service, would a deadline for responding to the MSJ be appropriate?

(11) Here are some questions to address:

1. Should the deadline for a setting run from:

   a. the date of filing of the MSJ
   b. the date of service of the MSJ
   c. the date a hearing is requested
   d. the date the Response is filed
   e. some other date?

2. Should the parties be able to agree to a setting or a reset date that is beyond the 45-day deadline? If so, should there be a limit on the delay?

3. Should there be a limit on the court's ability to grant a continuance of the setting over the objection of the movant, and if so, what should that limit be?

4. For a no-evidence MSJ, should the court have discretion to extend the response time and set or reset the hearing beyond 45 days where the court finds that an adequate time for discovery has not passed?

(12) As to the start of the timetable for a setting a MSJ for hearing or submission, the statute states that the hearing has to be within 45 days of the response being [filed]. Therefore, the solution appears that we need to add a new rule to state when a response to the MSJ is due. A hearing date should not be requested until the response date has passed or the party has actually filed a response, whichever occurs first. After that, a party has to notify the court that they are seeking a hearing either by oral argument or submission. This is imperative, as the court has no way of knowing when a MSJ has been filed.

The parties should not be able to agree to an extension. OCA will be calculating how many continuances and how long it takes for MSJs to be ruled upon to publish to the public. As this statute was passed to hold the judges accountable, the parties should not be able to extend the deadlines. Whether the party can file another MSJ would be another issue.

The Court should not be able to extend the 45-day deadline, but perhaps can extend the response date of the MSJ, which could potentially extend the hearing date.

Regarding a no-evidence MSJ, the Court should not be able to extend the 45-day deadline for a hearing or submission, but perhaps can extend the response date of the

MSJ, which could potentially extend the hearing date.

I concur that the Court could set the response due date at 21 days after an MSJ has been served. Then have the moving party request a hearing date after the response has been filed.

(13) The trial court does not need to know when an MSJ is filed. Cases often settle when a good MSJ is filed, before the court has to set it for hearing. It would be better for the court to receive notice after a response is [filed or] due. At that point, we could suggest putting something in the rule that states that the judge shall consider the MSJ sua sponte on the 45th day after a response is filed, if no one requests a hearing.

(14) I think the earliest hearing date must now be thirty days. Otherwise, you will have the response and hearing presumed to occur on the same day.

I agree with leaving "except on leave of court" in the Rule to allow the parties to agree, or the court to permit, a response to be filed after a deadline that is fixed by the date the MSJ is served. I agree that neither the court nor the parties can delay the deadline for the court to rule within 45 days of when the response is filed. However, there is nothing in the statute that says that the response must be filed in any certain timeline, which continues to permit courts and parties flexibility to extend the deadline to file a response.

I agree that the 45-day timeline begins to run, regardless of whether a hearing is set. I am against having an exception for a no-evidence MSJ. I don't think the court has flexibility to extend the 45-day deadline once the response is filed, regardless of the state of discovery or if the MSJ is traditional or no-evidence.

(15) I see 2 parts to the legislation--not just the ruling but obtaining a hearing.

Unfortunately there are courts that will not give the MSJ movant a hearing date for 6 or more months to start the response deadline. A litigant is not free to just set the motion for hearing without the court's approval.

Certainly when I was a trial judge and my oral hearings got backed up (I only liked to set a certain number for my Monday hearings) I would course correct to give litigants more hearing slots. But some judges are not doing it and will not do it.

I had a submission docket that had no setting limits but submission dockets are not required under our rules and some courts will only do an oral hearing for an MSJ.

[END]

RULE 166a. SUMMARY JUDGMENT

Proposed Revision #1

Rule 166a(c) Motion and Proceedings Thereon. The motion for summary judgment shall state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing.[1] Except on leave of court or by agreement of the parties,[2] the adverse party, not later than ~~seven days prior to the day of hearing~~ twenty-one days after the motion is served**,** may file and serve opposing affidavits or other written response. No oral testimony shall be received at the hearing. The court shall hear oral argument on the motion or consider the motion without oral argument not later than the 45th day after the date the response to the motion was filed.[3] If a motion for summary judgment is considered by a court without oral argument, the court shall record in the docket the date the motion was considered without argument. The court ~~judgment sought shall be rendered forthwith~~ shall file with the clerk of the court and provide to the parties a written ruling on the motion not later than the 90th day after the date the motion was argued or considered. The motion for summary judgment shall be granted[4] if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(i) No-Evidence Motion. After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse

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[1] Instead of "time specified for hearing" should we say "date of the hearing"?

[2] Does "except upon leave of court" permit the court or parties to set a deadline for responding beyond the 21-day deadline? If so, should we take away this discretion to make the deadline inflexible?

[3] SB 293 says: "hear oral argument on the motion or consider the motion without oral argument not later than the 45th day after the date the response to the motion was filed ...."

[4] Current Rule 166a says "[T]he judgment sought shall be rendered forthwith ...."

party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact. The time deadlines in Subsection (c) shall apply except that, when a motion is filed and a setting is requested before adequate time for discovery, the court may set the motion for hearing or submission on a date that is after adequate time for discovery.

Proposed Revision #2

(c) Motion and Proceedings Thereon. The motion for summary judgment shall state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response. No oral testimony shall be received at the hearing. The court shall hear oral argument on the motion, or consider the motion without oral argument, not later than the 45th day after the date the response to the motion was filed.[5] If a motion for summary judgment is considered by a court without oral argument, the court shall record in the docket the date the motion was considered without argument. The court ~~judgment sought shall be rendered forthwith~~ shall file with the clerk of the court and provide to the parties a written ruling on the motion not later than the 90th day after the date the motion was argued or considered. The motion for summary judgment shall be granted[6] if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

* * *

(i) No-Evidence Motion. After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact. The time deadlines in Subsection (c) shall apply.

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1. SB 293 says: "hear oral argument on the motion or consider the motion without oral argument not later than the 45th day after the date the response to the motion was filed ...."

2. Current Rule 166a says "[T]he judgment sought shall be rendered forthwith ...."

Memorandum

To: Richard Orsinger & Pete Schenkkan, SCAC Sub-Committee Chairs

From: Giana Ortiz

Re: SB 293 and Proposed Amendments to Texas Rule of Civil Procedure 166a

Date: June 19, 2025, supplemented June 20, 2025

Gentlemen,

Thank you for your work in leading the subcommittee to propose amendments to Texas Rule of Civil Procedure 166a in light of the 89th Legislature's SB 293. I am supportive of (and have contributed to) the subcommittee's work but submit this memo to express an alternative to the subcommittee's proposed addition of a response deadline in the proposed Rule. I believe the Legislative intent, and text of the statute, can be implemented into the Rule without altering current summary judgment practice for lawyers. Because the summary judgment response deadline is calculated based on the summary judgment hearing (or submission) setting, there is no need to change the rule to impose a different response deadline.

I begin by stating that Richard's diligence in collecting the House Research Organization Digest information on this Bill is most helpful. In it, the HRO summarizes that the aim of the change is judicial reform and improving accountability and transparency (emphasis added):

> **Background**
>
> Some have suggested that making statutory reforms to the judiciary, judicial compensation, and the State Commission on Judicial Conduct would help support the judiciary while *improving accountability and transparency*.
>
> * * *
>
> **Summary judgment procedures.** The bill would impose timelines for the business court, a district court, or a statutory county court t*o consider and rule on a motion for summary judgment*. A court would have to hold a hearing or consider the motion without oral argument within *45 days of a response to the motion being filed*. The court would then have to rule on the motion within 90 days after it was argued or considered. If a motion were considered without oral argument, the court would have to record the date of that consideration.
>
> The court clerk would be required to report compliance with the timelines to OCA. OCA would have to prepare and submit an annual report regarding

> compliance with the timelines by December 31. These provisions could not be modified or repealed by Texas Supreme Court rule.

I understand, anecdotally and from experience, that some courts will hold a ripe summary judgment without ruling for an inordinate time, if not indefinitely. In the 2023 edition of Judge David Hittner et al.'s seminal summary judgment article, the authors describe the problem:

> After the hearing or submission, the next step is for the court to rule on the motion. The court may act as soon as the date of submission or *as late as never.* There is some precedent for granting mandamus relief to compel a trial court to rule on a pending motion for summary judgment. However, there is also authority stating that "*there is generally no procedure by which litigants can compel the trial court to rule on a pending motion for summary judgment*" and "even though the delay in ruling on the motion causes expense and inconvenience to the litigants, mandamus is not available to compel the trial judge to rule on the pending motion for summary judgment."

J. David Hittner & Lynne Liberato et al., *Motions for Summary Judgment in Texas: State and Federal Practice*, 62 S. Tex. Law Review 99, 146 (2023) (emphasis added and internal footnotes omitted).

The inconvenience and expense to parties, as well as the lack of accountability for courts, is undoubtedly a problem. I believe that *this* is the problem meant to be addressed by SB 293, whereby the Legislature aimed to cure the parties' lack a process by which to compel a trial court to rule on a pending motion for summary judgment. I have not read or heard that the Legislature intended to change the lawyer's "side" of summary judgment practice (i.e., response timelines), only that it desires to improve judicial accountability and efficiency.

Thus, it then becomes a question as to whether the Supreme Court, through rule amendment, should not only make the changes to improve judicial accountability and efficiency by imposing the deadlines to hear and rule on a ripe summary judgment (which, of course, it must), but whether to change summary judgment practice for lawyers by adding in a default response "deadline." I suggest that the current response date system in place in the Rules is functioning and not in need of reform. I respectfully submit that the Supreme Court should not change summary judgment practice for lawyers by adding a response deadline to Rule 166a.

Under current practice, the response date is dictated by the hearing date—and parties generally will not file a response until seven days before the hearing or submission date. (TRCP 166a(c).) The reform created by SB 293 is nonetheless triggered when a party moves to continue a hearing or when a court continues a hearing for its own reasons. Under SB 293, the Rule must be amended to provide that a Court is limited in how far out it could reset a summary judgment motion for hearing or submission, and thereafter, when it must rule after a hearing or submission date.

I believe the reform can be achieved by amending the Rule as instructed by the Legislature, which would limit the parties' (or a court's) ability to continue the hearing to at most 45 days from the response date—similar to the Expedited Actions Rule. *See, e.g.*, Tex. R. Civ. P. 169(d)(2) ("The court may continue the case twice, not to exceed a total of 60 days."). This would keep practice mostly the same for lawyers and courts. It would also keep summary judgment practice consistent with special appearance practice (TRCP 120a(3)), 91a practice (TRCP 91a.4), as well as most discovery motions, where a response date is triggered by a hearing date rather than the date of the motion.

I believe practicing attorneys would support a solution which would both address the lack of accountability currently at play (causing delinquent rulings), while maintaining a system that does appear to be currently working (motion and response practice). To that end, I have included an alternate proposed revision to the subcommittee's proposed 166a to effectuate that goal (footnotes in original subcommittee draft):

Proposed Revised Text (noted in <u>underline</u> font):

RULE 166a. SUMMARY JUDGMENT

(c) **Motion and Proceedings Thereon.** The motion for summary judgment shall state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response. No oral testimony shall be received at the hearing. <u>The court shall hear oral argument on the motion, or consider the motion without oral argument, not later than the 45th day after the date the response to the motion was filed.[1] If a motion for summary judgment is considered by a court without oral argument, the court shall record in the docket the date the motion was considered without argument.</u> The <u>court</u> ~~judgment sought shall be rendered forthwith~~ <u>shall file with the clerk of the court and provide to the parties a written ruling on the motion not later than the 90th day after the date the motion was argued or considered. The motion for summary judgment shall be granted[2]</u> if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. Issues not expressly

[1] SB 293 says: "hear oral argument on the motion or consider the motion without oral argument not later than the 45th day after the date the response to the motion was filed …."
[2] Current Rule 166a says "[T]he judgment sought shall be rendered forthwith …."

presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

* * *

(d) **No-Evidence Motion.** After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact. The time deadlines in Subsection (c) shall apply.

Supplement June 20, 2025:

A concern has been raised that the statute may have been passed to address not only the problem with delinquent rulings, but also that judges may refuse to schedule a hearing for a long time—six or more months. This has not been my experience, and no lawyer that I have informally polled (which, admittedly, is limited based on the quick timeline to get this memo to you) has experienced this throughout the counties in this State. I also note that this issue is not addressed in the summary judgment article cited, *supra*, suggesting that it may not be a pervasive or common issue. I have reviewed the bill analysis for the house companion, HB 1761, and it is similar to the analysis we see for SB 293 (to improve judicial transparency, accountability, transparency), but I am thus far unable to find testimony or public comment that shed additional light on which specific problem(s) is (or are) meant to be addressed by the summary judgment change. I will continue researching this before the June SCAC meeting.

Nonetheless, in the meantime, I respectfully submit that if the Legislature intended to address a problem that parties are unable, upon request, to get a hearing or submission date from a court, it might have enacted a different version of this statute. For example, the Legislature could have said that a court must "(1) hear oral argument on the motion or consider the motion without oral argument not later than the 45th day after the date *a party makes a written request for hearing or submission date*." But as written, the statute continues to provide deference to the courts and parties on setting a hearing (or submission), but thereafter sets deadlines for a hearing after "the response to the motion was filed."

Thus, I continue to humbly suggest that the Court implement a rule amendment to comport with the statute but without adding a default response deadline for a motion for summary judgment.

From: Richard Orsinger
To: Tracy Christopher; Jaclyn Daumerie; Pete Schenkkan
Subject: Subcommittee memorandum on possible change to Texas Rules of Judicial Administration regarding deadlines for summary judgment motions
Date: Friday, June 20, 2025 2:50:34 PM

Dear Chief Justice Christopher:

Below is a proposed change to the Rules of Judicial Administration pertaining to deadlines for setting and ruling on motions for summary judgment. The proposal comes from the Subcommittee on Rules 16-165a and Legislative Mandates Subcommittee.

> Rule 7.2. District, Statutory County, and Business Courts. A district, statutory county, or business court judge must: (a) diligently discharge the administrative responsibilities of the office; (b) rule on a case within three months after the case is taken under advisement; (c) with respect to a motion for summary judgment, hear oral argument, or consider and enter the date it considered, rule, and file a written ruling on the motion as required under Tex. Gov't Code Section 23.303 (a) and (b).

The thought behind this suggestion is that:

(1) the Code of Judicial Administration is where duties of judges (as opposed to parties and counsel) belong;
(2) notice that the Texas Supreme Court has amended the rules of judicial administration to reflect these new duties will increase the likelihood that district judges will learn of these new MSJ time limits;
(3) the Texas Supreme Court putting the new rule here will be a mark of respect toward the legislative branch; and
(4) proposing this will help next Friday insure that the trial judge members of SCAC will speak up on the problems that the Subcommittee have been

addressing, on how to make this work.

Thanks.

Richard Orsinger
Chair, Subcommittee on Rule 16-165a

Tab VI- Prohibiting the Central Docket

MEMORANDUM

TO: Supreme Court Advisory Committee ("Committee")

FROM: Rules of Judicial Administration Subcommittee ("Subcommittee")

DATE: June 20, 2025

RE: Proposed Amendments to Rules of Judicial Administration 7.2 and 8

In the attached referral letter dated February 7, 2025 (Exhibit 1), the Supreme Court of Texas ("Court") asked the Committee to (1) "study the replacement of the central-docketing system used by some counties with a statewide requirement that each case be assigned to a particular judge[]" and (2) "propose draft rule amendments accomplishing this objective." The Subcommittee prepared a memo dated February 28, 2025 addressing part (1) of this assignment, and the Committee engaged in extensive discussion about part (1) during its meeting on March 7, 2025. This memo addresses part (2) of the assignment.

In response to the Court's request, the Subcommittee drafted proposed amendments to Rules 7.2 and 8 of the Texas Rules of Judicial Administration. These proposed amendments are attached as Exhibit 2. They are intended to comply with the Court's request within the confines of applicable constitutional and statutory provisions, which are addressed in the prior memo dated February 28, 2025.

EXHIBIT 1

February 7, 2025

Chief Justice Tracy E. Christopher
Chair, Supreme Court Advisory Committee
14th Court of Appeals
301 Fannin, Room 245
Houston, Texas 77002

Re: Referral of Rules Issues

Dear Chief Justice Christopher:

Thank you for your willingness to serve as chair of the Advisory Committee. The Supreme Court asks the Committee to study and make recommendations on the following matters.

Eliminating Pre-Grant Merits Briefing. The Court requests that the Committee study the elimination of the Court's current practice of requesting merits briefing before granting a petition for review. The Court further requests that the Committee propose draft rule amendments accomplishing this objective.

Prohibiting the Central Docket. The Court requests that the Committee study the replacement of the central-docketing system used by some counties with a statewide requirement that each case be assigned to a particular judge. The Court further requests that the Committee propose draft rule amendments accomplishing this objective.

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

Sincerely,

James D. Blacklock
Chief Justice

EXHIBIT 2

Subcommittee Draft of Proposed Amendments to Texas Rules of Judicial Administration[1]

Rule 7.2. District, Statutory County, and Business Courts.

A district, statutory county, or business court judge must:

(a) diligently discharge the administrative responsibilities of the office;

(b) rule on a case within three months after the case is taken under advisement;

(c) maintain full responsibility for each case that is assigned to the judge directly after the case is filed, including under the circumstances set forth in Rule 8a, except as follows:
(i) when the exchange of benches or transfer or assignment of cases is authorized under Rule 8b;
(ii) if an election contest or a suit for the removal of a local official is filed in the judge's court, the judge must request the presiding judge to assign another judge who is not a resident of the county to dispose of the suit;
~~(d)~~ (iii) on motion by either party in a disciplinary action against an attorney, the judge must request the presiding judge to assign another judge who is not a resident of the administrative region where the action is pending to dispose of the case; or
~~(e)~~ (iv) the judge must request the presiding judge to assign another judge of the administrative region to hear a motion relating to the recusal or disqualification of the judge from a case pending in his court; and

~~(f)~~ (d) to the extent consistent with due process, consider using methods to expedite the disposition of cases on the docket of the court, including:
(1) adherence to firm trial dates with strict continuance policies;
(2) the use of teleconferencing, videoconferencing, or other available means in lieu of personal appearance for motion hearings, pretrial conferences, scheduling, and other appropriate court proceedings;
(3) pretrial conferences to encourage settlements and to narrow trial issues;
(4) taxation of costs and imposition of other sanctions authorized by the Rules of Civil Procedure against attorneys or parties filing frivolous motions or pleadings or abusing discovery procedures; and
(5) local rules, consistently applied, to regulate docketing procedures and timely pleadings, discovery, and motions.

[1] This draft was prepared in response to Chief Justice Blacklock's referral letter dated February 7, 2025, which directs the Supreme Court Advisory Committee (SCAC) to propose draft rule amendments to accomplish the following objective: "study the replacement of the central-docketing system used by some counties with a statewide requirement that each case be assigned to a particular judge." These proposed amendments follow an initial memorandum from the SCAC Judicial Administration Subcommittee, which is dated February 28, 2025 and was presented and discussed during the SCAC meeting on March 7, 2025. There are multiple views as to whether the central-docketing system should be replaced with a statewide requirement that each case be assigned to a particular judge. Nevertheless, the proposed amendments are provided as directed by the Court in its February 7, 2025 referral letter.

Rule 8. Assignment of Judges.

a.[2] In any county in which there are two or more district or county courts, a [civil] case must be assigned randomly to a particular judge—authorized to preside over the case—when the case is filed.

b. Notwithstanding the assignments required under subparagraph a of this Rule:

(1) judges may exchange benches and transfer cases to the extent allowed by law;

(2) judges ~~Judges~~ may be assigned in the manner provided by Chapter 74 of the Texas Government Code to hold court when:
~~(1)~~ (i) the regular judge of the court is absent or is disabled, recuses himself, or is recused under the provisions of Rule 18a, T.R.C.P., or is disqualified for any cause;
~~(2)~~ (ii) the regular judge of the court is present and is trying cases as authorized by the constitution and laws of this State; or
~~(3)~~ (iii) the office of the judge is vacant because of death, resignation, or other cause~~.~~; and

~~**b.** A~~ (3) a Presiding Judge from time to time shall assign the judges of the administrative region, including qualified retired appellate judges, to hold special or regular terms of court in any county of the administrative region to try cases and dispose of accumulated business.

c. The Presiding Judge of one administrative region may request the Presiding Judge of another administrative region to furnish judges to aid in the disposition of litigation pending in a court in the administrative region of the Presiding Judge who makes the request.

d. In addition to the assignment of judges by the Presiding Judges as authorized by Chapter 74 of the Texas Government Code, the Chief Justice may assign judges of one or more administrative regions for service in other administrative regions when he considers the assignment necessary to the prompt and efficient administration of justice. A judge assigned by the Chief Justice shall perform the same duties and functions that the judge would perform if he were assigned by the Presiding Judge.

[2] This formatting differs from the formatting of Rule 7.2. Formatting is carried over from the Court's published rules.

Tab VII- Eliminating Pre-Grant Merits Briefing

Memorandum

To: Supreme Court Advisory Committee

From: Appellate Rules Subcommittee

Date: June 20, 2025

Re: February 7, 2025 Referral Regarding Petition for Review Practice

I. Matter referred to Subcommittee

> **Eliminating Pre-Grant Merits Briefing.** The Court requests that the Committee study the elimination of the Court's current practice of requesting merits briefing before granting a petition for review. The Court further requests that the Committee propose draft rule amendments accomplishing this objective.

II. Subcommittee recommendation

After discussion at the Committee meeting on March 7, 2025, the Court requested that the Committee draft proposed rules amendments to change the Court's practice of requesting merits briefing before granting a petition for review.

Texas Rule of Appellate Procedure 55.1 already provides that "with or without granting the petition for review, the Court may request the parties to file briefs on the merits." Accordingly, a change in the Court's practice would likely primarily involve changes to the Court's internal procedures.

After studying the rules governing petition for review (and merits briefing) practice, the Subcommittee identified a handful of proposed edits to the rules, which are discussed in this memo. Other possible changes that the Subcommittee considered and rejected are also identified for the full Committee's consideration.

III. Discussion

A. TRAP 55.1

TRAP 55.1 already expressly states the Court may request merits briefs either before or after granting a petition for review. TEX. R. APP. P. 55.1. Thus, without change to the rules, the Court can grant review before requesting merits briefing. As discussed at the March 7, 2025, Committee meeting, the Court has already done so in a few cases.

Thus, most of the changes necessary to alter the Court's standard practice of requesting merits briefs before granting review would be changes to the Court's internal operating procedures. Similarly, many of the concerns discussed at the March 7, 2025, Committee meeting about timing of between an order granting review (and requesting merits briefs) and the oral argument would need to be addressed by the Court in how it decides to fill its oral argument calendar. As discussed at the March 7, 2025, Committee meeting, the transition period may require some sort of hybrid approach to requesting merits briefing before or after granting review.

B. Considered and Rejected Revisions

The Subcommittee considered and rejected the following potential changes to the Rules:

- Deadline: The Subcommittee does not recommend changing the deadline for a petition from review. The Subcommittee considers the current 45-day period (following the court of appeals' judgment or disposition of timely filed motions for rehearing) sufficient, especially in light of the Court's current practice of liberally granting first extensions for review.

- Order of Contents of the Petition for Review: The Subcommittee considered suggestions about moving the statement of Issues Presented or the Introduction to appear earlier in the petition for review. But given that different justices have publicly expressed preferences for which sections of petitions they read first and the ease of navigating a properly bookmarked PDF, the Subcommittee does not recommend any changes to the order of the contents of the petition.

- Appendix: The Subcommittee does not recommend any changes to the required contents of the appendix to the petition for review.

- Response to Petition for Review: The Subcommittee considered changes to the rules about responses to petitions for review, including an early deadline to

express an intent to file a response or allowing a response only when the Court requests it. But the Subcommittee does not recommend changes to these rules.

- Statement of Issues: The Subcommittee considered whether to require the Statement of Issues in the merits brief to be identical to the Statement of Issues in the petition for review. But the Subcommittee recommends retaining the current rule, which permits the petitioner to restate the issues in the merits brief, but not to add any new issues.

- Unbriefed Issues: The Subcommittee also considered whether the rules should continue to allow petitioners to save briefing on some issues for their merits brief. The Subcommittee does not recommend changing the rule because some issues may not be relevant to the decision to grant review, but should still be addressed if the Court grants review.

C. Proposed Revisions

The Subcommittee recommends the following rule changes if the Court decides to change its general practice of requesting merits briefs before granting review.

TRAP 9.4(i)(2)

The Subcommittee recommends that the Court extend the length of a petition for review. The word-limit on a petition for a writ of certiorari in the United States Supreme Court is 9,000 words, which is double the current limit on petitions for review. While the Subcommittee does not recommend a 9,000-word limit, it does believe that 4,500 words may not be enough if the Court is going to make the decision to grant or deny review based solely on the petition, response, and reply. The Subcommittee recommends that the Court extend the limit to 6,500 words for the petition and response and 3,500 words for the reply. Implementing this change would require adding two subsections to the length limitations in Rule 9.4(i)(2) and revising two other subsections:

> (2) Maximum Length. The documents listed below must not exceed the following limits:
>
> (A) A brief and response in a direct appeal to the Court of Criminal Appeals in a case in which the death penalty has been assessed, and subsequent application for a writ of habeas corpus filed pursuant to Article 11.071, Code of Criminal Procedure: 37,500 words if computer-generated, and 125 pages if not.

(B) A brief and response in an appellate court (other than a brief under subparagraph (A)) and a petition and response in an original proceeding in the court of appeals: 15,000 words if computer- generated, and 50 pages if not. In a civil case in the court of appeals, the aggregate of all briefs filed by a party must not exceed 27,000 words if computer-generated, and 90 pages if not.

(C) A reply brief in an appellate court and a reply to a response to a petition in an original proceeding in the court of appeals: 7,500 words if computer-generated, and 25 pages if not.

(D) A petition and response in an original proceeding in the Supreme Court and a petition for review and response in the Supreme Court: 6,500 words if computer-generated, and 20 pages if not.

(~~D~~E) A petition and response in an original proceeding in ~~the Supreme Court and~~ the Court of Criminal Appeals, except for petitions and responses in an original proceeding in a case in which the death penalty has been assessed, ~~a petition for review and response in the Supreme Court,~~ a petition for discretionary review in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.

(F) A reply to a response to a petition in an original proceeding in the Supreme Court and a reply to a response to a petition for review in the Supreme Court: 3,250 words if computer-generated and 10 pages if not.

(~~E~~G) A ~~reply to a response to a petition for review in the Supreme Court, a~~ reply to a response to a petition in an original proceeding in ~~the Supreme Court and~~ the Court of Criminal Appeals, except a reply to a response in an original proceeding in a case in which the death penalty has been assessed, and a reply to a petition for discretionary review in the Court of Criminal Appeals: 2,400 words if computer-generated, and 8 pages if not.

(~~F~~H) A petition and response in an original proceeding in the Court of Criminal Appeals in a case in which the death penalty has been assessed: 9,000 words if computer-generated, and 30 pages if not.

(~~G~~I) A reply to a response to a petition in an original proceeding in the Court of Criminal Appeals in a case in which the death penalty has been assessed: 4,800 words if computer-generated, and 16 pages if not.

Contents of the Merits Brief

If the Court grants review before requesting merits briefs, the Court will have already determined that it has jurisdiction before the merits briefs are filed. Thus, there does not appear to be a reason to require petitioners to include a Statement of Jurisdiction in their merits briefs.[1] Implementing this change would simply require deleting TRAP 55.2(e) and renumbering the remaining subparts of TRAP 55.2.

Briefing Deadlines

The Subcommittee recommends that the Court amend the standard deadlines for merits briefs in two respects. First, the deadline for the respondent's merits brief should give the respondent the same amount of time as the petitioner: 30 days (rather than the current rule's 20 days). Second, the deadline for the reply brief on the merits should be 20 days (rather than the current rule's 15 days). These changes give the respondent the same of amount of time for its principal brief as the petitioner. They also make the briefing deadlines in the Supreme Court consistent with the deadlines in the court of appeals. The current shorter deadlines present a trap for the unwary. Implementing this change would require these changes to TRAP 55.7:

> Briefs must be filed with the Supreme Court clerk in accordance with the schedule stated in the clerk's notice that the Court has requested briefs on the merits. If no schedule is stated in the notice, petitioner must file a brief on the merits within 30 days after the date of the notice, respondent must file a brief in response within ~~20~~30 days after receiving petitioner's brief, and petitioner must file any reply brief within ~~15~~20 days after receiving

[1] The Subcommittee also notes that in 2017, Government Code section 22.001 (which governs the Court's jurisdiction) was amended to give the Court jurisdiction over any appealable order or judgment "if the court determines that the appeal presents a question of law that is important to the jurisprudence of the state." TEX. GOV'T CODE § 22.001(a). In light of this revision, a Statement of Jurisdiction may no longer be necessary in a petition for review, either.

> respondent's brief. On motion complying with Rule 10.5(b) either before or after the brief is due, the Supreme Court may extend the time to file a brief.

The Record

Current TRAP 54 refers to the costs of "mailing or shipping" the record to the Supreme Court. Because most records are now electronic, this rule is out-of-date. Because there may occasionally be a situation where tangible items are in the record, the Subcommittee recommends retaining a provision about the cost of getting the record to the Court, but changing the language to "transmitting." This change would require the following amendment to TRAP 54.3:

> The petitioner must pay to the court of appeals clerk a sum sufficient to pay the cost of ~~mailing or shipping~~ transmitting the record to and from the Supreme Court clerk.

Tab VIII-Court Attorneys and Pro Bono

MEMORANDUM

TO: Supreme Court Advisory Committee

FROM: Judicial Administration Subcommittee

DATE: June 20, 2025

RE: Court Attorneys and Pro Bono

The Texas Supreme Court has asked the Advisory Committee to address whether court attorneys should be permitted to perform pro bono work and to draft any recommended rule amendments or comments. Per the Court: "The Committee should consider, among other things, the justice gap, the type of pro bono work (e.g., one-time clinics versus in-court proceedings), whether the client is a party or person whose interests have come or are likely to come before the court at which the court attorney is employed, and the important of diligently completing court work."

Canon 3(C)(2) of the Code of Judicial Conduct requires court staff to observe the standards applicable to the judges with whom they work. Canon 4(G) forecloses judges from practicing law except as permitted by statue or the Code. In Ethics Opinion 283, the Texas Ethics Commission interpreted these provisions to foreclose any work by an attorney employed by a Texas intermediate court of appeals on a federal appeal involving no Texas law-related issues, or on an appeal in another state. The Commission reasoned that pro bono work is the practice of law regardless of the court or the legal issues involved, and that there is no exception to the prohibition against practicing law allowing court attorneys to engage in pro bono representation.

Here are questions for consideration.

- Is there any exception under the Texas Code of Judicial Conduct that would allow pro bono representations by court-employed attorneys?

- Should court attorneys be foreclosed from participating in pro bono representation just because judges cannot do so?

- What are the pros and cons of potentially allowing court attorneys to participate in pro bono representation while they are working at a court?
    - Can a court attorney simultaneously serve as both a neutral evaluator for parties who are before the court, and as an advocate on behalf of a client in another forum?
    - Would the pro bono representation have to be disclosed? To whom: judge, court, litigants and counsel appearing in the court?
    - Would pro bono representation give rise to recusal requests? Who would be asked to recuse: the court attorney, or the judge too? How would recusal requests be handled?
    - If pro bono work by court attorneys is allowed, what types would be permissible: litigation advocacy; one-time activity such as a will-writing clinic?
    - Is pro bono representation something that court attorneys are collectively wishing to pursue?
    - Is pro bono representation by court attorneys something that judges would support?
    - What would the impact of allowing pro bono representation be on court productivity and timeliness of dispositions? How would this be tracked?
    - Would limits need to be placed on the time and scope of this activity?
    - Are court attorneys a potentially significant source of assistance for unrepresented parties?

The subcommittee's discussions focused on specific areas of concern, and on reservations regarding problems that likely would arise if court attorneys act as advocates in specific court cases for specific clients on an ongoing basis.

One concern is the need to ascertain how widespread the desire is for court attorneys to be able to engage in pro bono work. Another concern is the need to

ascertain how the judges feel about this subject. Allowing pro bono work raises potentially difficult disclosure and recusal questions for the court attorneys and the judges with whom they work.

The subcommittee perceived that fewer issues of this nature would be likely to arise if a court attorney is participating in a one-time activity—such as a legal clinic for creating a will or applying for benefits that would be a one-time encounter. One suggested approach for consideration is to define more clearly whether and when the practice of law encompasses working in a setting such as a one-time clinic event—as opposed to advocating on behalf of a specific client in a specific court case on an ongoing basis. Recent discussions about the scope of permissible activities by paraprofessionals may provide a starting point for a discussion about defining the practice of law in this context.

Tab IX- Texas Rules of Evidence

Texas Supreme Court Advisory Committee

Memo

To: Texas Supreme Court Advisory Committee (SCAC)

From: TRE Subcommittee

Date: June 20, 2025

Re: FRE amendments effective December 1, 2024

The Evidence Subcommittee was asked to review the Federal Rules of Evidence new rules and amendments adopted on December 1, 2024. **The blue lines below show the changes in the federal rule. The red font with italics and highlighting shows our changes to the federal rule or tweaks to the corresponding TRE.**

This memo summarizes each rule, quotes the new rule or amendments, quotes portions evidence committee's official comments, and makes a recommendation for each rule.

Rule 107. Illustrative Aids [New Rule]

FRE 107 creates a new rule for demonstrative evidence now to be called "illustrative aids"; defines "illustrative aids" and allows their use in jury deliberations only with consent of parties or judicial finding of "good cause." Nonetheless, illustrative aids are not evidence.

> **(a) Permitted Uses.** The court may allow a party to present an illustrative aid to help the trier of fact understand the evidence or argument if the aid's utility in assisting comprehension is not substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time.
>
> **(b) Use in Jury Deliberations.** An illustrative aid is not evidence and must not be provided to the jury during deliberations unless:
>
> > **(1)** all parties consent; or
> > **(2)** the court, for good cause, orders otherwise.
>
> **(c) Record.** When practicable, an illustrative aid used at trial ~~must~~ *may upon the request of any party* be entered into the record.

(d) Summaries of Voluminous Materials Admitted as Evidence. A summary, chart, or calculation admitted as evidence to prove the content of voluminous admissible evidence is governed by Rule 1006.

The committee notes explain:

- The term "illustrative aid" is used instead of the term "demonstrative evidence," as that latter term has been subject to differing interpretation in the courts. An illustrative aid is any presentation offered not as evidence but rather to assist the trier of fact in understanding evidence or argument. "Demonstrative evidence" is a term better applied to substantive evidence offered to prove, by demonstration, a disputed fact.

- Examples of illustrative aids include "depictions, charts, graphs, and computer simulations." These kinds of presentations, referred to in this rule as "illustrative aids," have also been described as "pedagogical devices" and sometimes (and less helpfully) "demonstrative presentations"—that latter term being unhelpful because the purpose for presenting the information is not to "demonstrate" how an event occurred but rather to help the trier of fact understand evidence or argument that is being or has been presented.

- It is possible that the illustrative aid may be prepared to distort or oversimplify the evidence presented or stoke unfair prejudice. This rule requires the court to assess the value of the illustrative aid in assisting the trier of fact to understand the evidence or argument.

- If the court does allow the aid to be presented at a jury trial, the adverse party may ask to have the jury instructed about the limited purpose for which the illustrative aid may be used.

- The amendment therefore leaves it to trial judges to decide whether, when, and how to require advance notice of an illustrative aid.

The Committee on Rules of Practice and Procedure explained that Rule 107 provides that illustrative aids can be used unless the negative factors "substantially" outweigh the educative value of the aid, made clear that illustrative aids are not evidence, and referred to Rule 1006 for summaries of voluminous evidence.

Comments: This rule appears unnecessary but not harmful.

Recommendation: The committee recommends the adoption of this rule.

The committee discussed whether to make this Rule 108 or renumber current Rule 107 as Rule 108. Renumbering so TRE and FRE have the same rule numbers when possible is helpful pedagogically for students learning the federal and state rules in an evidence class and for conducting legal research using federal authorities to support arguments in state court. On the other hand, it may create confusion when looking at prior Texas authorities. On balance, the committee recommends using the federal rule number; the federal rules and state rules have the same numbers except the end of Article VI—FRE 614 does not have a counterpart in the Texas rules, FRE 615 is TRE 614 and Texas has a particular rule on producing a witness's statement in criminal cases (TRE Rule 615).

Rule 613. Witness's Prior Statement

FRE 613(b) [prior inconsistent statements] provides that prior inconsistent statements are inadmissible until the witness is allowed to first explain or deny the statement. However, a court may order otherwise. The "flexibility" is added to address situations where witness becomes unavailable, or the witness openly admits the inconsistency.

It provides:

2 * * * * *

(b) Extrinsic Evidence of a Prior Inconsistent Statement. Unless the court orders otherwise, ~~Extrinsic~~ extrinsic evidence of a witness's prior inconsistent statement ~~is admissible only if~~ may not be admitted until after the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it~~, or if justice so requires~~. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

The committee notes explain:

- Rule 613(b) has been amended to require that a witness receive an opportunity to explain or deny a prior inconsistent statement *before* the introduction of extrinsic evidence of the statement.

- The amendment preserves the trial court's discretion to delay an opportunity to explain or deny until after the introduction of extrinsic evidence in appropriate cases, or to dispense with the requirement altogether. A trial judge may decide to delay or even forgo a witness's opportunity to explain or deny a prior inconsistent statement in certain circumstances, such as when the failure to afford the prior opportunity was inadvertent and the witness may be afforded a subsequent opportunity, or when a prior opportunity was impossible because the witness's statement was not discovered until after the witness testified.

Comments: Texas Rule 613 already requires a party to give a witness an opportunity to explain or deny a prior inconsistent statement before the introduction of evidence of the statement.

Recommendation: The committee recommends *against* the adoption of this rule because Texas Rule 613 adequately covers this.

But we do recommend tweaking TRE 613 to adopt the concept from the new federal rule that a court should have discretion to allow a party to use a prior inconsistent statement in some limited circumstances. FRE 613 does this through the phrase, "Unless the court orders otherwise." We could add the same phrase at the beginning of TRE 613(a)(4). If so, it would read as follows:

Unless the court orders otherwise, [e]xtrinsic evidence of a witness's prior inconsistent statement is not admissible unless the witness is first examined about the statement and fails to unequivocally admit making the statement.:

We also recommend adding a comment that quotes the FRE committee comment quoted above. It would state as follows:

> The trial court *has* discretion to delay an opportunity to explain or deny until after the introduction of extrinsic evidence in appropriate cases, or to dispense with the requirement altogether. A trial judge may decide to delay or even forgo a witness's opportunity to explain or deny a prior inconsistent statement in certain circumstances, such as when the failure to afford the prior opportunity was inadvertent and the witness may be afforded a subsequent opportunity, or when a prior opportunity was impossible because the witness's statement was not discovered until after the witness testified.

These changes address a problem when the extrinsic evidence of a prior inconsistent statement is not discovered until after the witness has been excused so there is no opportunity to allow the witness to review it. This change gives the trial court discretion to address that issue.

Rule 801. Definitions That Apply to Hearsay Article; Exclusions from Hearsay

FRE 801(d)(2)(E)'s amendment provides that if a party's claim or defense is directly derived from the declarant or the declarant's principal and the statement would be admissible against the declarant or the declarant's principal as an "opposing party's" statement, then it will be admissible against the opposing party. It is somewhat convoluted, but the idea is that if the opposing party's claim or defense is "directly derivative" of a declarant, then the statements by that declarant or by the declarant's agents within the scope of their agency may not be hearsay.

Note: The section numbers differ between the Federal and Texas Rule. Texas adds subsection (c) defining "matter asserted." Therefore FRE 801(d)—entitled "statements that are not hearsay"—is TRE 801(e).

* * * * *

(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

* * * * *

(2) ***An Opposing Party's Statement.*** The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;
(B) is one the party manifested that it adopted or believed to be true;
(C) was made by a person whom the party authorized to make a statement on the subject;
(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

If a party's claim, defense, or potential liability is directly derived from a declarant or the declarant's principal, a statement that would be admissible against the declarant or the principal under this rule is also admissible against the party.

The committee notes explain:

- The rule has been amended to provide that when a party stands in the shoes of a declarant or the declarant's principal, hearsay statements made by the declarant or principal are admissible against the party. For example, if an estate is bringing a claim for damages suffered by the decedent, any hearsay statement that would have been admitted against the decedent as a party-opponent under this rule is equally admissible against the estate.

- The rule is justified because if the party is standing in the shoes of the declarant or the principal, the party should not be placed in a better position as to the admissibility of hearsay than the declarant or the principal would have been. A party that derives its interest from a declarant or principal is ordinarily subject to all the substantive limitations applicable to them, so it follows that the party should be bound by the same evidence rules as well.

The Committee on Rules of Practice and Procedure explained that the amendment to Rule 801(d)(2) "would resolve the dispute in the courts about the admissibility of statements by the predecessor-in-interest of a party-opponent, providing that such a hearsay statement would be admissible against the declarant's successor-in-interest."

Comments: No additional comments.

Recommendation: We recommend making this amendment to the rule, although it will be located in TRE 802(e).

Also note that TRE 801(e)(2) does not have FRE 801(d)(2)(E)'s provision that the statement alone does not prove the declarant's authority or agency for a principal. Roger Hughes suggests adopting the federal rule's provision that the statement itself does not establish the declarant's authority or the scope of the relationship. He would suggest amended TRE 801(e)(2) to provide:

> The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Roger Hughes' concern is the hardship to the party against whom the out-of-court statement is offered. His example is a realty case over construction of a deed concerning a possibly ambiguous provision; Plaintiff's claims come from the deed. Defendant wants to offer an out-of-court statement by Smith, grantor's alleged employee. The grantor is dead or otherwise unavailable to give testimony. Plaintiff wants to prove the grantor did not employ Smith, did not authorize the statement, or otherwise denies Smith's scope of agency/employment. If the statement alone is proof of agency/employment/scope, Plaintiff has a hardship to disprove them because the grantor is dead or unavailable.

Professor Goode has no problems with that suggestion and thinks it is consistent with the few Texas cases he has reviewed on the subject.

**Rule 804. Exceptions to the Rule Against Hearsay—
When the Declarant Is Unavailable as a Witness**

FRE 804(3) [declarant unavailable] is amended to modify the statement against interest exception for criminal cases. Should this be referred to the CCA? Regardless, the Texas exception for statements against interest is in TRE 803(b)(24) and therefore does not require the witness to be unavailable.

* * * *

(b) The Exceptions. * * *

(3) ***Statement Against Interest.*** A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) if offered in a criminal case as one that tends to expose the declarant to criminal liability, is supported by corroborating circumstances that clearly indicate its trustworthiness ~~if offered in a criminal case as one that tends to expose the declarant to criminal liability,~~ after considering the totality of circumstances under which it was made and any evidence that supports or undermines it.

* * * * *

The committee notes explain:

- Rule 804(b)(3)(B) has been amended to require that in assessing whether a statement is supported by "corroborating circumstances that clearly indicate its trustworthiness," the court must consider not only the totality of the circumstances under which the statement was made, but also any evidence supporting or undermining it.

The Committee on Rules of Practice and Procedure explained that Rule 804(b)(3) provides a hearsay exception for declarations against interest. In a criminal case in which a declaration against penal interest is offered, the rule requires that the proponent provide "corroborating circumstances that clearly indicate the trustworthiness" of the statement. There is a dispute in the courts about the meaning of the "corroborating circumstances" requirement. The proposed amendments to Rule 804(b)(3) would require that, in assessing whether a statement is supported by corroborating circumstances, the court must consider not only the totality of the circumstances under which the statement was made, but also any evidence supporting or undermining it.

Comments: Professor Goode notes that the language highlighted above is in the federal rule but not the state rule. He has not seen it in any case but thinks it might be helpful but is not necessary.

Recommendation: None of us has expertise in criminal matters but we agreed the change seems reasonable. The CCA should be consulted before making any change in this rule.

Rule 1006. Summaries to Prove Content

FRE 1006 on summaries of voluminous evidence is amended. FRE 1006(a) provides that underlying documents must be admissible, but not necessarily offered in evidence. New FRE 1006(c) provides that summaries, charts, or calculations that act only as "illustrative aids" are controlled by FRE 107.

> **(a) Summaries of Voluminous Materials Admissible as Evidence.** The ~~proponent~~ court may admit as evidence ~~use~~ a summary, chart, or calculation offered to prove the content of voluminous admissible writings, recordings, or photographs that cannot be conveniently examined in court, whether or not they have been introduced into evidence.
>
> **(b) Procedures.** The proponent must make the underlying originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.
>
> **(c) Illustrative Aids Not Covered.** A summary, chart, or calculation that functions only as an illustrative aid is governed by Rule 107.

The committee notes explain:

- Rule 1006 has been amended to correct misperceptions about the operation of the rule by some courts. Some courts have mistakenly held that a Rule 1006 summary is "not evidence" and that it must be accompanied by limiting instructions cautioning against its substantive use. But the purpose of Rule 1006 is to permit alternative proof of the content of writings, recordings, or photographs too voluminous to be conveniently examined in court. To serve their intended purpose, therefore, Rule 1006 summaries must be admitted as substantive evidence and the rule has been amended to clarify that a party may offer a Rule 1006 summary "as evidence." The court may not instruct the jury that a summary admitted under this rule is not to be considered as evidence.

- Rule 1006 has also been amended to clarify that a properly supported summary may be admitted into evidence whether or not the underlying voluminous materials reflected in the summary have been admitted.

- A summary admissible under Rule 1006 must also pass the balancing test of Rule 403. For example, if the summary does not accurately reflect the underlying voluminous evidence, or if it is argumentative, its probative value may be substantially outweighed by the risk of unfair prejudice or confusion.

Comments: This is a good clarification.

Recommendation: We recommend adopting this rule and including the third bullet point quotation in a comment on the rule.