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August 26, 1997

The Honorable Thomas R. Phillips
Chief Justice, Supreme Court
Supreme Court Bldg.
P.O. Box 12248
Capitol Station
Austin, Texas 78711

Re: Proposed Rule Changes to Rules 4, 21, 173 and New Rule 177b

Dear Justice Phillips:

The Court Rules Committee has recently approved the following proposed rule changes which I enclose for the court's consideration.

- a. Proposed change to Rule 21 to provide a minimum of five days notice, not including weekends and holidays, for hearings rather than the current three days notice, which does include weekends and holidays.
- b. Proposed change in Rule 4 to delete the three day rule reference in Rule 21 and make it consistent with the proposed Rule 21 change.
- c. Proposed change to Rule 173, which rewrites the Guardian Ad Litem Rule. The purpose of this change is to prevent unnecessary appointments of guardian ad litem and reduce the guardian ad litem fees. Then that affect should reduce litigation costs.
- d. New Rule 177b. This proposed change eliminates the necessity of serving a subpoena on a party for appearance at trial or a hearing and thereby eliminates the costs of issuance of the subpoena and costs of service. The notice to the party or the party's attorney accomplishes the same purpose as a subpoena.

The Honorable Thomas R. Phillips
August 26, 1997
Page 2


In connection with Rule 173, I am also enclosing herewith a letter from Judge Mike Wood, who was very helpful and instrumental in suggesting some of the changes to Rule 173.

By copy of this letter to Luke Soules, the Chairman of the Supreme Court Advisory Committee, I am forwarding copies of these proposed rule changes for that committee's consideration.

The Court Rules Committee would appreciate the Supreme Court giving consideration to these proposed rule changes.

Sincerely,

By:


O. C. Hamilton, Jr.

OCH:jf
Enclosures

cc: Mr. Luther H. Soules, III (w/encl.)
Soules & Wallace
Fifteenth Floor, Frost Bank Tower
100 W. Houston Street, Suite 1500
San Antonio, Texas 78205-1457

Ms. Laurie Baxter (w/encl.)
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STATE BAR OF TEXAS
COURT RULES COMMITTEE
REQUEST FOR NEW RULES OR CHANGE OF EXISTING RULE
TEXAS RULES OF CIVIL PROCEDURE

I. Exact wording existing Rule:

Rule 21. FILING AND SERVING PLEADINGS AND MOTIONS

Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefor, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties, and shall be noted on the docket.

An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall be served upon all other parties not less than three days before the time specified for the hearing unless otherwise provided by these rules or shortened by the court.

If there is more than one other party represented by different attorneys, one copy of such pleading shall be delivered or mailed to each attorney in charge.

The party or attorney of record, shall certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion or application.

After one copy is served on a party that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.

II. Proposed Rule:

Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefor, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties, and shall be noted on the docket.

An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall be served upon all other parties not less than three five days, not including the date of service, Saturdays, Sundays, and legal holidays, before the time date specified for the hearing unless otherwise provided by these rules or shortened by the court for good cause.

If there is more than one other party represented by different attorneys, one copy of such pleading shall be delivered or mailed to each attorney in charge.

The party or attorney of record, shall certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion or application.

After one copy is served on a party that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.

III. Purpose of proposed change:

The purpose of this rule is to avoid motions filed on Friday and set for Monday as authorized by Rule 4 and to increase the time for hearing a motion, unless good cause is shown for a shorter period.