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January 14, 1997

BROWNSVILLE OFFICE: 2334 BOCA CHICA BLVD., SUITE 500 BROWNSVILLE, TEXAS 7852I-2268 (2)0) 542-1850

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

RE: Court Rules Committee - Rule 528

Dear Justice Phillips:

Enclosed herewith is a proposed rule change to Rule 528 which the Court Rules Committee has passed for approval to submission to the Supreme Court.

By copy of this letter, I am forwarding a copy of this rule to Luke Soules, Chairman of the Supreme Court Advisory Committee.

Sincerely,

By:

O. C. Hamilton, Jr.

OCH/sam

Enclosure

Correspondence January 14, 1997 Page Two

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.) State Bar of Texas Committees P.O. Box 12487 Austin, Texas 78711

STATE BAR OF TEXAS

COMMITTEE ON COURT RULES

REQUEST FOR NEW RULE OR CHANGE OF EXISTING RULE

TEXAS RULES OF CIVIL PROCEDURE

I. Exact Wording of Existing Rule: RULE 528. VENUE CHANGED ON AFFIDAVIT

If any party to a suit before any justice shall make an affidavit supported by the affidavit of two other credible persons, citizens of the county, that they have good reason to believe, and do believe, that such party cannot have a fair and impartial trial before such justice or in such justice's precinct, the justice shall transfer such suit to the court of the nearest justice within the county not subject to the same or some other disqualification.

II. Proposed Rule:

RULE 528. VENUE CHANGED ON AFFIDAVIT

If any party to a suit before any justice shall make an affidavit supported by the affidavit of two other credible persons, citizens of the county, that they have good reason to believe, and do believe, that such party cannot have a fair and impartial trial before such justice or in such justice's precinct, the justice shall transfer such suit to the court of the nearest justice within the county not subject to the same or some other disqualification. A case cannot be transferred more than twice under this rule. Any affidavit filed pursuant to this rule must be filed at least 24 hours prior to docket call, and if the case is set the day following a day the court is not open, then it must be filed one full day prior when it is open.

III. BRIEF STATEMENTS OF REASONS FOR REQUESTED CHANGES AND ADVANTAGES TO BE SERVED BY THEM

The Justices of the Peace and Constables Association is requesting that a limit of two transfers be placed on this rule because some defendants, in order to escape due process, are presenting these affidavits at trial time on repeat occasions. In all instances so far, the plaintiffs are simply giving up.

Respectfully submitted,

//SHELBY SHARPE

2400 Bank One Tower 500 Throckmorton Street

Fort Worth, Texas 76102

Dated: November 6, 1996