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January 11, 2008

#### VIA REGULAR MAIL

The Honorable Nathan Hecht Justice, Supreme Court of Texas 201 W. 14<sup>th</sup> Street Austin, Texas 78701

Re:

State Bar of Texas Court Rules Committee

CPRC § 171,098; TRAP 52.3

Dear Justice Hecht:

The State Bar of Texas Court Rules Committee submits the enclosed recommendation concerning Texas Rule of Appellate Procedure 52.3, dealing with petitions for a writ of mandamus. The proposed revision would modify the existing verification requirement with respect to such petitions.

We also wish to advise the court that the Rules Committee intends to request the Legislature to amend Section 171.098 of the Texas Civil Practice & Remedies Code to eliminate the requirement that, under certain circumstances, simultaneous appellate and mandamus actions be commenced to obtain interlocutory review of orders denying arbitration. While ordinarily the Rules Committee would seek input from the court on a procedural matter such as this before recommending legislation, we believe the supreme court clearly stated its position on this issue in *Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992), wherein the court stated as follows:

[W]e urge the legislature to consider amending the Texas Act to permit interlocutory appeals of orders issued pursuant to the Federal Act.

The Honorable Nathan Hecht January 11, 2008 Page 2

The Rules Committee has located no subsequent supreme court opinion expressing a different view.

Very truly yours,

Hamilton Rial

HR:sj Encl.

cc: Chief Justice Wallace Jefferson

Justice Dale Wainwright (SBOT Liaison Justice)

Jody Hughes

## STATE BAR OF TEXAS

#### COMMITTEE ON COURT RULES

## REQUEST FOR NEW RULE OR CHANGE OF EXISTING RULE

#### TEXAS RULES OF APPELLATE PROCEDURE

I. Exact wording of existing Rule:

#### RULE 52.3 FORM AND CONTENTS OF PETITION.

All factual statements in the petition must be verified by affidavit made on personal knowledge by an affiant competent to testify to the matters stated. The petition must, under appropriate headings and in the order here indicated, contain the following:

- (g) Statement of facts. The petition must state concisely and without argument the facts pertinent to the issues or points presented. The statement must be supported by references to the appendix or record.
  - (j) Appendix [lists required and optional contents of appendix]
- II. Proposed New Rule:

#### RULE 52.3 FORM AND CONTENTS OF PETITION.

All factual statements in the petition must be verified by affidavit made on personal knowledge by an affiant competent to testify to the matters stated. The petition must, under appropriate headings and in the order here indicated, contain the following:

(g) Statement of facts. The petition must state concisely and without argument the facts pertinent to the issues or points presented. The statement must be supported by references to the appendix or record. Every statement of fact in the petition must be supported by citation to competent evidence included in the appendix or record.

\* \* \*

(j) Appendix <u>Verification</u>. The petitioner or attorney of record filing the petition must verify that he or she has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

## (k) Appendix [same as former § (j)]

## III. Committee Note:

The Committee sees no useful purpose in requiring appellate counsel to do more than verify that each factual statement asserted in a mandamus petition is supported by competent evidence included in the appendix or record. The problems associated with the existing verification requirement set forth in TRAP 52.3 are well explained in an article appearing in Would you swear to that? Problems with verifying a petition for writ of mandamus, Brandi M. Wingate and Tina S. Koch, The Appellate Advocate, Summer 2007, Vol. 19 No. 4. The court may wish to consider amending TRAP 52.6 to state that verification will not count towards the page length.