



Misc. Docket No. 11-9118

FINAL APPROVAL OF AMENDMENTS TO THE TEXAS RULES OF APPELLATE PROCEDURE AND TEMPLATES FOR LOCAL RULES GOVERNING ELECTRONIC COPIES AND ELECTRONIC FILINGS IN THE COURTS OF APPEALS

ORDERED that:

1. Pursuant to Section 22.004 of the Texas Government Code, the Supreme Court of Texas amends Rules 9.2 and 9.3 of the Texas Rules of Appellate Procedure, as follows.

9.2. Filing

....

(c) *Electronic Filing.* Documents may be permitted or required to be filed, signed, or verified by electronic means by order of the Supreme Court or the Court of Criminal Appeals, or by local rule of a court of appeals. A technical failure that precludes a party's compliance with electronic-filing procedures cannot be a basis for disposing of any case.

9.3. Number of Copies; Electronic Copies

(a) *Courts of Appeals.*

- (1) Paper Copies in General. A party must file:
 - (A) the original and three copies of all documents in an original proceeding;
 - (B) the original and two copies of all motions in an appellate proceeding; and
 - (C) the original and five copies of all other documents.
- (2) Local Rules. A court of appeals may by local rule require:
 - (A) the filing of more or fewer paper copies of any document other than a petition for discretionary review; and
 - (B) an electronic copy of a document filed in paper form.

(b) *Supreme Court and Court of Criminal Appeals.*

- (1) Paper Copies of Document Filed in Paper Form. A party must file the original and 11 copies of any document addressed to either the Supreme Court or the Court of Criminal Appeals, except that in the Supreme Court, only an original and one copy must be filed of any motion, response to the motion, and reply in support of the motion, and in the Court of Criminal Appeals, only the original must be filed of a motion for extension of time or a response to the motion, or a pleading under Code of Criminal Procedure article 11.07.
- (2) Electronic Copies of Document Filed in Paper Form. An electronic copy of a document filed in paper form may be required by order of the Supreme Court or the Court of Criminal Appeals.
- (3) Paper Copies of Electronically Filed Document. Copies of each document that is electronically filed

with the Supreme Court or the Court of Criminal Appeals must be mailed or hand-delivered to the Supreme Court or the Court of Criminal Appeals, as appropriate, within one business day after the document is electronically filed. The number of paper copies required shall be determined, respectively, by order of the Supreme Court or the Court of Criminal Appeals.

(c) *Exception for Record.* Only the original record need be filed in any proceeding.

2. The Supreme Court also promulgates the attached templates for local rules governing electronic copies and electronic filings in the courts of appeals.
 - a. A court of appeals' local rule requiring electronic copies of documents must be in the form of Appendix A with modifications only as permitted by the Supreme Court. The local rule must be approved by Order of the Supreme Court.
 - b. A court of appeals' local rule permitting the electronic filing of documents must be in the form of Appendix B with modifications only as permitted by the Supreme Court. The local rule must be approved by Order of the Supreme Court.
 - c. The procedures prescribed by the local rules apply in lieu of those prescribed by the Texas Rules of Appellate Procedure to the extent there are differences between the procedures; otherwise, the Rules of Appellate Procedure continue to apply with full force and effect.
3. By Order dated February 28, 2011, in Misc. Docket No. 11-9032, the Court proposed amendments to Rules 9.2 and 9.3 of the Texas Rules of Appellate Procedure and invited public comment. This Order contains the final version of amended Rules 9.2 and 9.3 of the Texas Rules of Appellate Procedure that take effect June 30, 2011.
4. The Clerk of the Supreme Court is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of the Order for publication in the *Texas Register*.

Dated: June 27, 2011.

Wallace B. Jefferson, Chief Justice
Nathan L. Hecht, Justice
Dale Wainwright, Justice
David M. Medina, Justice
Paul W. Green, Justice
Phil Johnson, Justice
Don R. Willett, Justice
Eva M. Guzman, Justice
Debra H. Lehrmann, Justice

APPENDIX A

Local Rule _____. Electronic Copies of Documents Filed in Paper Form.

- (a) **Electronic copies of documents required.** For the convenience of the court, attorneys, parties, and the public, an attorney for a party must email to the court an electronic copy of every document filed with the court, except a document under seal or subject to a motion to seal. A party who is not represented by an attorney is encouraged to email to the court an electronic copy of every document filed with the court, except a document under seal or subject to a motion to seal. [Courts may add exceptions for attorneys and unrepresented parties.]
- (b) **Filing required.** An electronic copy does not constitute a filing. Documents must continue to be filed as provided by the Texas Rules of Appellate Procedure[, except that only the original and [insert number] copies must be filed of any document other than a petition for discretionary review. A party must file the original and 11 copies of a petition for discretionary review].
- (c) **Time to email electronic copy.** The electronic copy must be emailed to the court at [insert applicable email address] on the same day the original document is filed. Also on that day, the electronic copy must be emailed to each other party's lead counsel for whom the filing attorney has an email address.
- (d) **Identification of document.** The email subject line must identify the document by case number and by name. The electronic copy must be named as follows: [insert court's desired naming conventions here].
- (e) **Redaction of electronic copies.** An electronic copy must be substantively identical to the original document filed with the court, except it must not contain a social security number; a birth date; a home address; the name of any person who was a minor when the underlying suit was filed; a driver's license number, passport number, tax identification number, or similar government-issued personal identification number; or a bank account number, credit card number, or other financial account number. The attorney emailing the electronic copy must redact all such information in accordance with the redaction guidelines posted by the Supreme Court's Clerk on the Supreme Court's website; however, the electronic copy may contain a reference to this information as long as the reference does not include any part of the actual information (e.g., "passport number"). For good cause, the court may order redaction of additional information.
- (f) **Certification of counsel.** The submission of an electronic copy constitutes a certification by all attorneys of record for the party filing the document that the electronic copy complies with paragraph (e).
- (g) **Posting of electronic copies.** The clerk may post electronic copies of documents in a case on the court's website. By letter to the clerk, a party to the case may request that electronic copies posted on the court's website be redacted further or removed altogether. The request must identify with particularity the document(s) to be removed or the information to be redacted and state specific reasons for the request. If the request is for further redaction, the party must email a copy of the requested version of the document.
- (h) **Format of electronic copies.** An electronic copy must be formatted as follows:
- (1) An electronic copy must be in text-searchable portable document format (PDF) compatible with the latest version of Adobe Reader.
 - (2) Except as otherwise provided by this rule, an electronic copy of a document created by a word processing program must not be a scan of the original but must instead be converted from the original directly into a PDF file using Adobe Acrobat, a word processing program's PDF conversion utility, or another software program.
 - (3) Records filed in original proceedings and appendix materials may be scanned if necessary, but scanning creates larger file sizes with images of lesser quality and should be avoided when possible. An appendix must be combined into one computer file with the document it is associated with, unless the resulting computer file would exceed the size limits in paragraph (i). If a record filed in an original proceeding or an appendix contains more than one item, it should include a table of contents and either bookmarks to assist in locating each item or separator pages with the title of the item immediately following and any number or letter associated with the item in the table of contents.
 - (4) A scanned document must be made searchable using optical-character-recognition software, such as Adobe Acrobat, and have a resolution of 300 dots per inch (dpi).
 - (5) An electronic copy may contain hyperlinks to another part of the same document, an external source cited in the document, an appendix item associated with the document, an embedded case, or a record cite. Hyperlinks within an appendix item are also permitted.
 - (6) An electronic copy must not contain a virus or malware. The submission of an electronic copy constitutes a certification by all attorneys of record for the party filing the document that the electronic copy has been checked for viruses and malware.
 - (7) An electronic copy need not be signed.
- (i) **Size of electronic copies.** A electronic copy must not exceed 20 megabytes. Electronic copies larger than 20 megabytes must be divided into smaller files.
- (j) **Communications with the clerk.** An attorney who emails an electronic copy of a document must supply the clerk with an email address to which the clerk may send notices or other communications about the case in lieu of mailing paper documents. If the attorney's email address changes, the attorney must provide the clerk with the new email



address within one business day of the change. Lead counsel must register for Casemail and follow the instructions for receiving notices for cases in which they represent a party.

APPENDIX B

Local Rule ____. Electronic Filings of Documents.

- (a) **Electronic filing permitted.** A party may electronically file (e-file) any document that may be filed with the court in paper form, except a document under seal or subject to a motion to seal.
- (b) **E-filing mechanism.** E-filing must be done through Texas.gov, the portal established by the Texas Legislature. Directions for its use may be found on its website. This is a summary. A person must first register with an Electronic Filing Service Provider (EFSP). A list of approved EFSPs is on the Texas.gov website. The EFSP will provide the registrant with a confidential, secure username and password to use when e-filing a document. This username and password will also function as a signature on each e-filed document, and will authorize payment of all filing fees and service fees. A document to be e-filed must be transmitted to the EFSP, which will send the document to Texas.gov, which in turn will send the document to the clerk. The e-filer will receive by email an immediate acknowledgment of the e-filing, a confirmation of the clerk's acceptance of the filing, and a file-stamped copy of the document. Fees charged by Texas.gov for the e-filing of a document are in addition to any filing fees and are costs of court.
- (c) **Electronic service.** A party who has registered to e-file documents through an EFSP may electronically serve (e-serve) documents through that EFSP on any other party who has consented to e-service by registering for the e-service option with an EFSP or by setting up a complimentary account with Texas.gov. Directions may be found on the Texas.gov website.
- (1) Service through an EFSP is complete on transmission to the e-served person's EFSP or complimentary Texas.gov account. The e-filer's EFSP will send proof of service to the e-filer. Fees that an EFSP charges for e-service are not costs of court.
 - (2) If an e-filer must serve a copy of a document on a party who has not consented to e-service, the e-filer must comply with the service requirements in Texas Rule of Appellate Procedure 9.5 and, on the same day the document is e-filed, must send the document to:
 - (A) the party's lead counsel by email if the e-filer has an email address for the lead counsel; or
 - (B) if the party is not represented by counsel, to the party by email if the e-filer has the party's email address.
- (d) **Redaction of information in e-filed document.**
- (1) Unless the court orders otherwise, an e-filed document must not contain a social security number; a birth date; a home address; the name of any person who was a minor when the underlying suit was filed; a driver's license number, passport number, tax identification number, or similar government-issued personal identification number; or a bank account number, credit card number, or other financial account number. The e-filer must redact all of this information in accordance with the redaction guidelines posted by the Supreme Court's Clerk on the Supreme Court's website; however, the e-filed document may contain a reference to this information as long as the reference does not include any part of the actual information (e.g., "passport number"). For good cause, the court may order redaction of additional information.
 - (2) The e-filing of a document constitutes a certification by all attorneys of record for the party filing the document that the document complies with paragraph (1) of this rule.
 - (3) If an e-filer believes any information described in paragraph (1) of this rule is essential to an e-filed document or that the e-filed document would be confusing without the information, the e-filer may submit the information to the court in a reference list that is in paper form and under seal. The reference list must specify an appropriate identifier that corresponds uniquely to each item listed. Any reference in the e-filed document to a listed identifier will be construed to refer to the corresponding item of information. If the e-filer provides a reference list pursuant to this rule, the front page of the e-filed document must indicate that the reference list has been, or will be, provided.
 - (4) On its own initiative, the court may order a sealed reference list in any case. The court may also order that a document be filed under seal in paper form, without redaction. The court may later unseal the document or order the filer to provide a redacted version of the document for the public record.
- (e) **Format of e-filed document.** An e-filed document must be formatted as follows:
- (1) An e-filed document must be formatted in accordance with Texas Rule of Appellate Procedure 9.4(b)-(e). The "paper" requirements in Rule 9.4(b)-(c) apply equally to a "page" of the e-filed document.
 - (2) An e-filed document must be in text-searchable portable document format (PDF) compatible with the latest version of Adobe Reader. An EFSP will convert each e-filed document from its original form into a PDF file that complies with this rule.
 - (3) Records filed in original proceedings and appendix materials may be scanned if necessary, but scanning creates larger file sizes with images of lesser quality and should be avoided when possible. An appendix must be combined into one computer file with the document it is associated with, unless the resulting computer file would

exceed Texas.gov's size limits for the document. If a record filed in an original proceeding or an appendix contains more than one item, it should include a table of contents and either bookmarks to assist in locating each item or separator pages with the title of the item immediately following and any number or letter associated with the item in the table of contents.

- (4) A scanned document must be made searchable using optical-character-recognition software, such as Adobe Acrobat, and have a resolution of 300 dots per inch (dpi).
 - (5) An e-filed document may contain hyperlinks to another part of the same document, an external source cited in the document, an appendix item associated with the document, an embedded case, or a record cite. Hyperlinks within an appendix item are also permitted.
 - (6) An e-filed document must not contain a virus or malware. The e-filing of a document constitutes a certification by the e-filer that the document has been checked for viruses and malware.
 - (7) The court may strike an e-filed document for nonconformance with this rule.
- (f) Signatures on e-filed documents.**
- (1) Except as otherwise provided by this rule, the confidential, secure username and password that the e-filer must use to e-file a document constitute the e-filer's signature on the document, in compliance with signature requirements in the Texas Rules of Appellate Procedure. When a signature is provided in this manner, the e-filer must also include either an "/s/" and the e-filer's name typed in the space where the e-filer's signature would otherwise appear or an electronic image of the e-filer's signature, which may take the form of a public key-based digital signature or a scanned image of the e-filer's signature. The e-filer must not allow the e-filer's username or password to be used by anyone other than an agent who is authorized by the e-filer.
 - (2) If a document must be notarized, sworn to, or made under oath, the e-filer must e-file the document as a scanned image containing the necessary signature(s).
 - (3) If a document requires the signature of an opposing party, the e-filer must e-file the document as a scanned image containing the opposing party's signature.
 - (4) When an e-filer e-files a scanned image of a document pursuant to paragraph (2) or (3) of this rule, the e-filer must retain the original document from which the scanned image was made until the case in which the document was filed is resolved. If the original document is in another party's possession, that party must retain the original document until the case in which the document was filed is resolved.
 - (5) If an e-served document was also e-filed and the person who completes a certificate of service under Texas Rule of Appellate Procedure 9.5(e) is different from the per-

son who e-filed the document, the person who completes the certificate of service must sign the certificate by including either an "/s/" and his or her name typed in the space where his or her signature would otherwise appear or an electronic image of his or her signature.

- (g) Time of e-filing.** A document will be considered filed timely if it is e-filed at any time before midnight (in the court's time zone) on the date on which the document is due.
- (1) An e-filed document is deemed filed when the e-filer transmits the document to the e-filer's EFSP, unless the document is transmitted on a Saturday, Sunday, or legal holiday or requires a motion and an order allowing its filing.
 - (2) If a document is transmitted on a Saturday, Sunday, or legal holiday, it will be deemed filed on the next day that is not a Saturday, Sunday, or legal holiday.
 - (3) If a document requires a motion and an order allowing its filing, it will be deemed filed on the date the motion is granted.
 - (4) If an e-filed document is untimely due to a technical failure or a system outage, the e-filer may seek appropriate relief from the court.
- (h) Paper copies.**
- OPTION 1: An e-filer is not required to file any paper copies of an e-filed document, except that paper copies of a petition for discretionary review must still be filed in accordance with Rule 9 of the Texas Rules of Appellate Procedure within one business day after the petition is e-filed.
- OPTION 2: An e-filer must file 11 paper copies of an e-filed petition for discretionary review and [insert number] paper copies of any other e-filed document in accordance with Rule 9 of the Texas Rules of Appellate Procedure within one business day after the document is e-filed.
- (i) Email address requirements and communications with the clerk.** An e-filed document must include the e-filer's email address, in addition to any other information required by the Texas Rules of Appellate Procedure. If the e-filer's email address changes, the e-filer must provide the clerk and the e-filer's EFSP with the new email address within one business day of the change. If there is a change in the email address of a party who has consented to receive e-service, the party must provide Texas.gov or, if applicable, the party's EFSP with the new email address within one business day of the change. The clerk may send notices or other communications about a case to an attorney's email address in lieu of mailing paper documents.
- (j) Casemail registration.** Lead counsel must register for Casemail and follow the instructions for receiving notices for cases in which they represent a party.
- (k) Construction of rules.** This rule must be liberally construed so as to avoid undue prejudice to any person who makes a good-faith effort to comply with requirements in this rule. ❖



Misc. Docket No. 11-9126

FINAL APPROVAL OF AMENDMENTS TO RULES 18a AND 18b OF THE TEXAS RULES OF CIVIL PROCEDURE

ORDERED that:

1. Pursuant to Section 22.004 of the Texas Government Code, the Supreme Court of Texas amends Rules 18a and 18b of the Texas Rules of Civil Procedure as follows.
2. By Order dated April 11, 2011, in Misc. Docket No. 11-9064, the Court proposed amendments to Rules 18a and 18b of the Texas Rules of Civil Procedure and invited public comment. Following public comment, the Court made additional revisions to the rules. This Order contains the final version of amended Rules 18a and 18b that take effect August 1, 2011.
3. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of the Order for publication in the *Texas Register*.

Dated: July 5, 2011.

Wallace B. Jefferson, Chief Justice
Nathan L. Hecht, Justice
Dale Wainwright, Justice
David M. Medina, Justice
Paul W. Green, Justice
Phil Johnson, Justice
Don R. Willett, Justice
Eva M. Guzman, Justice
Debra H. Lehrmann, Justice

Rule 18a. Recusal and Disqualification of Judges

- (a) *Motion; Form and Contents.* A party in a case in any trial court other than a statutory probate court or justice court may seek to recuse or disqualify a judge who is sitting in the case by filing a motion with the clerk of the court in which the case is pending. The motion:
- (1) must be verified;
 - (2) must assert one or more of the grounds listed in Rule 18b;
 - (3) must not be based solely on the judge's rulings in the case; and
 - (4) must state with detail and particularity facts that:
 - (A) are within the affiant's personal knowledge, except that facts may be stated on information and belief if the basis for that belief is specifically stated;
 - (B) would be admissible in evidence; and
 - (C) if proven, would be sufficient to justify recusal or disqualification.
- (b) *Time for Filing Motion.*
- (1) *Motion to Recuse.* A motion to recuse:
 - (A) must be filed as soon as practicable after the movant knows of the ground stated in the motion; and
 - (B) must not be filed after the tenth day before the date set for trial or other hearing unless, before that day, the movant neither knew nor reasonably should have known:
 - (i) that the judge whose recusal is sought would preside at the trial or hearing; or
 - (ii) that the ground stated in the motion existed.
 - (2) *Motion to Disqualify.* A motion to disqualify should be filed as soon as practicable after the movant knows of the ground stated in the motion.
- (c) *Response to Motion.*
- (1) *By Another Party.* Any other party in the case may, but need not, file a response to the motion. Any response must be filed before the motion is heard.
 - (2) *By the Respondent Judge.* The judge whose recusal or disqualification is sought should not file a response to the motion.
- (d) *Service of Motion or Response.* A party who files a motion or response must serve a copy on every other party. The method of service must be the same as the method of filing, if possible.
- (e) *Duty of the Clerk.*
- (1) *Delivery of a Motion or Response.* When a motion or response is filed, the clerk of the court must immediately deliver a copy to the respondent judge and to the presiding judge of the administrative judicial region in which the court is located ("the regional presiding judge").
 - (2) *Delivery of Order of Recusal or Referral.* When a respondent judge signs and files an order of recusal or referral,

the clerk of the court must immediately deliver a copy to the regional presiding judge.

(f) *Duties of the Respondent Judge; Failure to Comply.*

- (1) Responding to the Motion. Regardless of whether the motion complies with this rule, the respondent judge, within three business days after the motion is filed, must either:
 - (A) sign and file with the clerk an order of recusal; or
 - (B) sign and file with the clerk an order referring the motion to the regional presiding judge.

(2) Restrictions on Further Action.

(A) Motion Filed Before Evidence Offered at Trial. If a motion is filed before evidence has been offered at trial, the respondent judge must take no further action in the case until the motion has been decided, except for good cause stated in writing or on the record.

(B) Motion Filed After Evidence Offered at Trial. If a motion is filed after evidence has been offered at trial, the respondent judge may proceed, subject to stay by the regional presiding judge.

- (3) Failure to Comply. If the respondent judge fails to comply with a duty imposed by this rule, the movant may notify the regional presiding judge.

(g) *Duties of Regional Presiding Judge.*

(1) Motion. The regional presiding judge must rule on a referred motion or assign a judge to rule. If a party files a motion to recuse or disqualify the regional presiding judge, the regional presiding judge may still assign a judge to rule on the original, referred motion. Alternatively, the regional presiding judge may sign and file with the clerk an order referring the second motion to the Chief Justice for consideration.

(2) Order. The ruling must be by written order.

(3) Summary Denial for Noncompliance.

(A) Motion to Recuse. A motion to recuse that does not comply with this rule may be denied without an oral hearing. The order must state the nature of the noncompliance. Even if the motion is amended to correct the stated noncompliance, the motion will count for purposes of determining whether a tertiary recusal motion has been filed under the Civil Practice and Remedies Code.

(B) Motion to Disqualify. A motion to disqualify may not be denied on the ground that it was not filed or served in compliance with this rule.

(4) Interim Orders. The regional presiding judge or judge assigned to decide the motion may issue interim or ancillary orders in the pending case as justice may require.

(5) Discovery. Except by order of the regional presiding judge or the judge assigned to decide the motion, a subpoena or discovery request may not issue to the respondent judge and may be disregarded unless accompanied by the order.

(6) Hearing.

(A) Time. The motion must be heard as soon as practicable and may be heard immediately after it is referred to the regional presiding judge or an assigned judge.

(B) Notice. Notice of the hearing must be given to all parties in the case.

(C) By Telephone. The hearing may be conducted by telephone on the record. Documents submitted by facsimile or email, otherwise admissible under the rules of evidence, may be considered.

(7) Reassignment of Case if Motion Granted. If the motion is granted, the regional presiding judge must transfer the case to another court or assign another judge to the case.

(h) *Sanctions.* After notice and hearing, the judge who hears the motion may order the party or attorney who filed the motion, or both, to pay the reasonable attorney fees and expenses incurred by other parties if the judge determines that the motion was:

(1) groundless and filed in bad faith or for the purpose of harassment, or

(2) clearly brought for unnecessary delay and without sufficient cause.

(i) *Chief Justice.* The Chief Justice of the Supreme Court of Texas may assign judges and issue any orders permitted by this rule or pursuant to statute.

(j) *Appellate Review.*

(1) Order on Motion to Recuse.

(A) Denying Motion. An order denying a motion to recuse may be reviewed only for abuse of discretion on appeal from the final judgment.

(B) Granting Motion. An order granting a motion to recuse is final and cannot be reviewed by appeal, mandamus, or otherwise.

(2) Order on Motion to Disqualify. An order granting or denying a motion to disqualify may be reviewed by mandamus and may be appealed in accordance with other law. Rule 18b.

Rule 18b. Grounds for Recusal and Disqualification of Judges.

(a) *Grounds for Disqualification.* A judge must disqualify in any proceeding in which:

(1) the judge has served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter;

(2) the judge knows that, individually or as a fiduciary, the judge has an interest in the subject matter in controversy; or

(3) either of the parties may be related to the judge by affinity or consanguinity within the third degree.

(b) *Grounds for Recusal.* A judge must recuse in any proceeding in which:



- (1) the judge's impartiality might reasonably be questioned;
 - (2) the judge has a personal bias or prejudice concerning the subject matter or a party;
 - (3) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;
 - (4) the judge or a lawyer with whom the judge previously practiced law has been a material witness concerning the proceeding;
 - (5) the judge participated as counsel, adviser, or material witness in the matter in controversy, or expressed an opinion concerning the merits of it, while acting as an attorney in government service;
 - (6) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
 - (7) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (A) is a party to the proceeding or an officer, director, or trustee of a party;
 - (B) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
 - (C) is to the judge's knowledge likely to be a material witness in the proceeding.
 - (8) the judge or the judge's spouse, or a person within the first degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.
- (c) *Financial Interests.* A judge should inform himself or herself about personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children residing in the household.
- (d) *Terminology and Standards.* In this rule:
- (1) "proceeding" includes pretrial, trial, or other stages of litigation;
 - (2) the degree of relationship is calculated according to the civil law system;
 - (3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
 - (4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
 - (A) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
 - (B) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
- (C) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
- (D) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;
- (E) an interest as a taxpayer or utility ratepayer, or any similar interest, is not a "financial interest" unless the outcome of the proceeding could substantially affect the liability of the judge or a person related to him within the third degree more than other judges.
- (e) *Waiving a Ground for Recusal.* The parties to a proceeding may waive any ground for recusal after it is fully disclosed on the record.
- (f) *Discovery and Divestiture.* If a judge does not discover that the judge is recused under subparagraphs (b)(6) or (b)(7)(B) until after the judge has devoted substantial time to the matter, the judge is not required to recuse himself or herself if the judge or the person related to the judge divests himself or herself of the interest that would otherwise require recusal.

Comment to 2011 Change: Rule 18a governs the procedure for recusing or disqualifying a judge sitting in any trial court other than a statutory probate court, justice court, or municipal court. Chapter 25 of the Government Code governs statutory probate courts, and Rule 528 governs justice courts. Under Rule 18a, a judge's rulings may not be the sole basis for a motion to recuse or disqualify the judge. But when one or more sufficient other bases are raised, the judge hearing the motion may consider evidence of rulings when considering whether to grant the motion. For purposes of this rule, the term "rulings" is not meant to encompass a judge's statements or remarks about a case.

The amendments to Rule 18b are not intended to be substantive. ✪

TECHNICAL CORRECTIONS TO AMENDMENTS TO RULES 18A AND 18B OF THE TEXAS RULES OF CIVIL PROCEDURE

ORDERED that:

1. The amendments to Rules 18a and 18b of the Texas Rules of Civil Procedure promulgated by Order in Misc. Docket No. 11-9126, dated July 5, 2011, are corrected as follows:
 - In Rule 18a(f)(1)(A), the phrase “order of recusal” is changed to “order of recusal or disqualification.”
 - In the Comment to the 2011 Change, the phrase “Chapter 25 of the Government Code governs statutory probate courts, and Rule 528 governs justice courts” is changed to “Chapter 25 of the Government Code governs statutory probate courts, Rule 528 governs justice courts, and Chapter 29 of the Government Code governs municipal courts.”

These changes are effective August 1, 2011.

2. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of the Order for publication in the *Texas Register*.

Dated: July 22, 2011.

Wallace B. Jefferson, Chief Justice
Nathan L. Hecht, Justice
Dale Wainwright, Justice
David M. Medina, Justice
Paul W. Green, Justice
Phil Johnson, Justice
Don R. Willett, Justice
Eva M. Guzman, Justice
Debra H. Lehrmann, Justice

Rule 18a. Recusal and Disqualification of Judges

(a) *Motion; Form and Contents.* A party in a case in any trial court other than a statutory probate court or justice court may seek to recuse or disqualify a judge who is sitting in the case by filing a motion with the clerk of the court in which the case is pending. The motion:

- (1) must be verified;
- (2) must assert one or more of the grounds listed in Rule 18b;
- (3) must not be based solely on the judge’s rulings in the case; and
- (4) must state with detail and particularity facts that:
 - (A) are within the affiant’s personal knowledge, except that facts may be stated on information and belief if the basis for that belief is specifically stated;
 - (B) would be admissible in evidence; and
 - (C) if proven, would be sufficient to justify recusal or disqualification,

(b) *Time for Filing Motion.*

- (1) Motion to Recuse. A motion to recuse:
 - (A) must be filed as soon as practicable after the movant knows of the ground stated in the motion; and
 - (B) must not be filed after the tenth day before the date set for trial or other hearing unless, before that day, the movant neither knew nor reasonably should have known:
 - (i) that the judge whose recusal is sought would preside at the trial or hearing; or
 - (ii) that the ground stated in the motion existed.

(2) Motion to Disqualify. A motion to disqualify should be filed as soon as practicable after the movant knows of the ground stated in the motion.

(c) *Response to Motion.*

- (1) By Another Party. Any other party in the case may, but need not, file a response to the motion. Any response must be filed before the motion is heard.
- (2) By the Respondent Judge. The judge whose recusal or disqualification is sought should not file a response to the motion.

(d) *Service of Motion or Response.* A party who files a motion or response must serve a copy on every other party. The method of service must be the same as the method of filing, if possible.

(e) *Duty of the Clerk.*

- (1) Delivery of a Motion or Response. When a motion or response is filed, the clerk of the court must immediately deliver a copy to the respondent judge and to the presiding judge of the administrative judicial region in which the court is located (“the regional presiding judge”).
- (2) Delivery of Order of Recusal or Referral. When a respondent judge signs and files an order of recusal or referral, the clerk of the court must immediately deliver a copy to the regional presiding judge.



(f) *Duties of the Respondent Judge; Failure to Comply.*

- (1) Responding to the Motion. Regardless of whether the motion complies with this rule, the respondent judge, within three business days after the motion is filed, must either:
 - (A) sign and file with the clerk an order of recusal or disqualification; or
 - (B) sign and file with the clerk an order referring the motion to the regional presiding judge.
- (2) Restrictions on Further Action.
 - (A) Motion Filed Before Evidence Offered at Trial. If a motion is filed before evidence has been offered at trial, the respondent judge must take no further action in the case until the motion has been decided, except for good cause stated in writing or on the record.
 - (B) Motion Filed After Evidence Offered at Trial. If a motion is filed after evidence has been offered at trial, the respondent judge may proceed, subject to stay by the regional presiding judge.
- (3) Failure to Comply. If the respondent judge fails to comply with a duty imposed by this rule, the movant may notify the regional presiding judge.

(g) *Duties of Regional Presiding Judge.*

- (1) Motion. The regional presiding judge must rule on a referred motion or assign a judge to rule. If a party files a motion to recuse or disqualify the regional presiding judge, the regional presiding judge may still assign a judge to rule on the original, referred motion. Alternatively, the regional presiding judge may sign and file with the clerk an order referring the second motion to the Chief Justice for consideration.
- (2) Order. The ruling must be by written order.
- (3) Summary Denial for Noncompliance.
 - (A) Motion to Recuse. A motion to recuse that does not comply with this rule may be denied without an oral hearing. The order must state the nature of the non-compliance. Even if the motion is amended to correct the stated noncompliance, the motion will count for purposes of determining whether a tertiary recusal motion has been filed under the Civil Practice and Remedies Code.
 - (B) Motion to Disqualify. A motion to disqualify may not be denied on the ground that it was not filed or served in compliance with this rule.
- (4) Interim Orders. The regional presiding judge or judge assigned to decide the motion may issue interim or ancillary orders in the pending case as justice may require.
- (5) Discovery. Except by order of the regional presiding judge or the judge assigned to decide the motion, a subpoena or discovery request may not issue to the respondent judge and may be disregarded unless accompanied by the order.

(6) Hearing.

- (A) Time. The motion must be heard as soon as practicable and may be heard immediately after it is referred to the regional presiding judge or an assigned judge.
 - (B) Notice. Notice of the hearing must be given to all parties in the case.
 - (C) By Telephone. The hearing may be conducted by telephone on the record. Documents submitted by facsimile or email, otherwise admissible under the rules of evidence, may be considered.
- (7) Reassignment of Case if Motion Granted. If the motion is granted, the regional presiding judge must transfer the case to another court or assign another judge to the case.
- (h) *Sanctions.* After notice and hearing, the judge who hears the motion may order the party or attorney who filed the motion, or both, to pay the reasonable attorney fees and expenses incurred by other parties if the judge determines that the motion was:
 - (1) groundless and filed in bad faith or for the purpose of harassment, or
 - (2) clearly brought for unnecessary delay and without sufficient cause.
- (i) *Chief Justice.* The Chief Justice of the Supreme Court of Texas may assign judges and issue any orders permitted by this rule or pursuant to statute.
- (j) *Appellate Review.*
 - (1) Order on Motion to Recuse.
 - (A) Denying Motion. An order denying a motion to recuse may be reviewed only for abuse of discretion on appeal from the final judgment.
 - (B) Granting Motion. An order granting a motion to recuse is final and cannot be reviewed by appeal, mandamus, or otherwise.
 - (2) Order on Motion to Disqualify. An order granting or denying a motion to disqualify may be reviewed by mandamus and may be appealed in accordance with other law.

Rule 18b. Grounds for Recusal and Disqualification of Judges.

- (a) *Grounds for Disqualification.* A judge must disqualify in any proceeding in which:
 - (1) the judge has served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter;
 - (2) the judge knows that, individually or as a fiduciary, the judge has an interest in the subject matter in controversy; or
 - (3) either of the parties may be related to the judge by affinity or consanguinity within the third degree.
- (b) *Grounds for Recusal.* A judge must recuse in any proceeding in which:

- (1) the judge's impartiality might reasonably be questioned;
 - (2) the judge has a personal bias or prejudice concerning the subject matter or a party;
 - (3) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;
 - (4) the judge or a lawyer with whom the judge previously practiced law has been a material witness concerning the proceeding;
 - (5) the judge participated as counsel, adviser, or material witness in the matter in controversy, or expressed an opinion concerning the merits of it, while acting as an attorney in government service;
 - (6) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
 - (7) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (A) is a party to the proceeding or an officer, director, or trustee of a party;
 - (B) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
 - (C) is to the judge's knowledge likely to be a material witness in the proceeding.
 - (8) the judge or the judge's spouse, or a person within the first degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.
- (c) *Financial Interests.* A judge should inform himself or herself about personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children residing in the household.
- (d) *Terminology and Standards.* In this rule:
- (1) "proceeding" includes pretrial, trial, or other stages of litigation;
 - (2) the degree of relationship is calculated according to the civil law system;
 - (3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
 - (4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
 - (A) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
 - (B) an office in an educational, religious, charitable, fra-

ternal, or civic organization is not a "financial interest" in securities held by the organization;

- (C) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
 - (D) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;
 - (E) an interest as a taxpayer or utility ratepayer, or any similar interest, is not a "financial interest" unless the outcome of the proceeding could substantially affect the liability of the judge or a person related to him within the third degree more than other judges.
- (e) *Waiving a Ground for Recusal.* The parties to a proceeding may waive any ground for recusal after it is fully disclosed on the record.
- (f) *Discovery and Divestiture.* If a judge does not discover that the judge is recused under subparagraphs (b)(6) or (b)(7)(B) until after the judge has devoted substantial time to the matter, the judge is not required to recuse himself or herself if the judge or the person related to the judge divests himself or herself of the interest that would otherwise require recusal.

Comment to 2011 Change: Rule 18a governs the procedure for recusing or disqualifying a judge sitting in any trial court other than a statutory probate court, justice court, or municipal court. Chapter 25 of the Government Code governs statutory probate courts, Rule 528 governs justice courts, and Chapter 29 of the Government Code governs municipal courts. Under Rule 18a, a judge's rulings may not be the sole basis for a motion to recuse or disqualify the judge. But when one or more sufficient other bases are raised, the judge hearing the motion may consider evidence of rulings when considering whether to grant the motion. For purposes of this rule, the term "rulings" is not meant to encompass a judge's statements or remarks about a case.

The amendments to Rule 18b are not intended to be substantive. ✪