

MORRIS ATLAS  
ROBERT L. SCHWARZ  
GARY GURWITZ  
E.G. HALL  
CHARLES C. MURRAY  
J. KIRBY CAVIN  
MIKE MILLS  
MOLLY THORNBERRY  
CHARLES W. HURY  
FREDERICK J. BIEL  
REX N. LEACH  
LISA POWELL  
STEPHEN L. CRAIN  
O.C. HAMILTON, JR.  
VICKI M. SKAGGS  
RANDY CRANE  
STEPHEN C. HAYNES  
DAN K. WORTHINGTON  
VALORIE C. GLASS  
DANIEL G. GURWITZ  
DAVID E. GIRAULT  
HECTOR J. TORRES  
JOSE CANO

ATLAS & HALL, L.L.P.  
ATTORNEYS AT LAW  
McALLEN, TEXAS 78502-3725  
PROFESSIONAL ARTS BUILDING • 818 PECAN  
P.O. BOX 3725  
(210) 682-5501  
FAX (210) 686-6109

BROWNSVILLE OFFICE:  
2334 BOCA CHICA BLVD., SUITE 500  
BROWNSVILLE, TEXAS 78521-2268  
(210) 542-1850

December 12, 1996

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 121(a)(2)(B) and Appellate Rules 84 and 182(b)

Dear Justice Phillips:

The Court Rules Committee has approved suggested changes to Rules 121(a)(2)(B), Texas Rules of Civil Procedure and Appellate Rules 84 and 182(B), copies of which I am enclosing herewith for the Supreme Court's consideration.

Sincerely,

By:



O. C. Hamilton, Jr.

OCH/sam

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

Correspondence  
December 12, 1996  
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cc: Ms. Vicki Wilhelm (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 APPELLATE PROCEDURE

I. Exact Wording of Existing Rule:

**RULE 84. DAMAGES FOR DELAY IN CIVIL CASES**

In civil cases where the court of appeals shall determine that an appellant has taken an appeal for delay and without sufficient cause, then the court may, as part of its judgment, award each prevailing appellee an amount not to exceed ten percent of the amount of damages awarded to such appellee as damages against such appellant. If there is no amount awarded to the prevailing appellee as money damages, then the court may award, as part of its judgment, each prevailing appellee an amount no to exceed ten times the total taxable costs as damages against such appellant.

A request for damages pursuant to this rule, or an imposition of such damages without request, shall not authorize the court to consider allegations of error that have not been otherwise properly preserved or presented for appellate review.

II. New Rule:

**RULE 84. FRIVOLOUS APPEAL; REMEDIES**

(a) **Certification to Court.** The signing of a brief on behalf of an appellant or petitioner required by the Texas Rules of Appellate Procedure constitutes a certificate by the signatory that to the signatory's best knowledge after reviewing the record of the case and the applicable law that:

- (1) each point of error is warranted by existing law or by a logical argument for the extension, modification, or reversal of existing law or the establishment of new law; and
- (2) the signatory has filed or made a good faith effort to file the necessary record for the court to decide each point of error asserted.

(b) **Violation.** This rule is violated if the certification is untrue. The signatory who violates this rule may be required to pay damages and/or be subject to sanction.

(c) **Procedure.** Any appellee or respondent who believes subdivision (a) has been violated shall file a motion specifying each alleged violation and serve a copy on the signatory of the brief or petition believed to be in violation of the rule. The court on its own initiative may invoke this rule by giving written notice to the signatory of the brief or petition believed to violate subdivision (a) which shall specify each alleged violation of the rule. The signatory shall have fifteen days from receipt of the motion or notice to file a written

response. The court shall thereafter rule on the motion or notice after reviewing the brief or petition, the record, and any response of the signatory.

(d) **Order.** The court shall sign an appropriate order. If the court finds that this rule has been violated, the court's order shall specify the particular violation(s) found, findings to support the violation(s), state the amount of damages, if any, as may be appropriate to each injured party and/or assess any sanctions deemed appropriate. Any order of sanction shall specify to whom any sanction is to be paid.

(e) **Remedies.** When damages are awarded the court should consider reasonable and necessary attorneys fees and reasonable and necessary costs in addition to such other economic damage found by the court to have resulted from the violation. In making a determination for sanctions, the court shall take into account the severity of the violation, whether bad faith was involved, and whether or not the offending party has a history of previously violating the rule.

### III. Brief Statement of Reasons for New Rule:

Existing Rule 84, T.R.A.P., has several major deficiencies. Its title does not accurately describe the objective of the rule. The rule also fails to clearly define for the courts and counsel conduct which constitutes a frivolous appeal. It is very inadequate in providing for damages to fit the consequences of a frivolous appeal. And, finally, due process protections are totally absent.

The proposed new rule has a more descriptive title. Subdivisions (a) and (b) clearly set out what is required of those who would seek appellate court review. Subdivisions (c) and (d) provide due process protections for a signatory who becomes a subject of enforcement of the rule. Subdivision (d) also provides the court with the opportunity to have a sanction payable either to a party or the registry of the court because of economic harm to the judicial system or both. The order may be reviewable by the supreme court. Subdivision (e) is strictly for guidance in justly addressing a violation of the rule.

Respectfully submitted,

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J. SHELBY SHARPE  
2400 Bank One Tower  
500 Throckmorton Street  
Fort Worth, Texas 76102

Dated: October 22, 1996