

April 9, 2003

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 Rule 76a

Dear Justice Phillips:

Enclosed are proposed rule changes to Rule 76a, which have been approved for submission to the Supreme Court by the Court Rules Committee.

By copy of this letter, I am forwarding copies of this proposed rule change to Charles Babcock, Chairman of the Supreme Court Advisory Committee.

Sincerely,

By:
O. C. Hamilton, Jr.

OCH/sr
Enclosures

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cc: The Honorable Nathan Hecht (w/encl.)
Justice, Supreme Court of Texas
Supreme Court Building
201 West 14th Street, Room 104
Austin, Texas 78701

Ms. Vicki Wilhelm (w/encl.)
STATE BAR OF TEXAS COMMITTEES
P.O. Box 12487
Austin, Texas 78711

STATE BAR OF TEXAS
COURT RULES COMMITTEE
REQUEST FOR NEW RULE OR CHANGE OF EXISTING RULE
TEXAS RULES OF CIVIL PROCEDURE

I. Exact wording of existing Rule:

TRCP 76a. SEALING COURT RECORDS

1. Standard for Sealing Court records. Court records may not be removed from court files except as permitted by statute or rule. No court order or opinion issued in the adjudication of a case may be sealed. Other court records, as defined in this rule, are presumed to be open to the general public and may be sealed only upon a showing of all of the following:

(a) a specific, serious and substantial interest which clearly outweighs:

(1) this presumption of openness;

(2) any probable adverse effect that sealing will have upon the general public health or safety;

(b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.

2. Unchanged

3. Unchanged

4. Unchanged

5. Unchanged

6. Unchanged

7. Unchanged

8. Unchanged

9. Unchanged

II. Proposed Rule:

TRCP 76a. SEALING COURT RECORDS

1. Standard for Sealing Court records. Court records may not be removed from court files except as permitted by statute or rule. No court order or opinion issued in the adjudication of a case may be sealed except when necessary to preserve bona fide trade secrets or other intangible property rights. Other court records, as defined in this rule, are presumed to be open to the general public and may be sealed only upon a showing of all of the following:

- (a) a specific, serious and substantial interest which clearly outweighs:
 - (1) this presumption of openness;
 - 2) any probable adverse effect that sealing will have upon the general public health or safety;
- (b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.

III. Brief statement of reasons for requested change and advantages to be served by the proposed new rule:

The Court Rules Committee was contacted some time ago by a lawyer who pointed out a problem that existed in trade secret litigation. If a party obtained a temporary restraining order, temporary injunction or permanent injunction in trade secret litigation, Rule 683 required the order to be specific in terms and to describe in detail the acts sought to be enjoined. Frequently, those recitals revealed trade secrets, the disclosure of which is being enjoined. Rule 76a also provided that no court order could be sealed. This then permitted the disclosure of the very trade secrets that the parties were trying to protect because the order could not be sealed. The purpose of the change in Rule 76a is to provide that in trade secret litigation the order can be sealed, and thus protect the trade secrets that may be referred to in the temporary restraining order, temporary injunction or permanent injunction. There may be other intangible property rights that need similar protection.