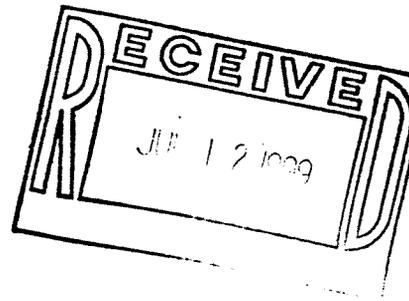


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July 8, 1999

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 320

Dear Justice Phillips:

Enclosed are proposed rule changes to Rule 320, 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 these proposed rules to Luke Soules, Chairman of the Supreme Court Advisory Committee.

Sincerely,

By: 
O. C. Hamilton, Jr.

OCH/erc
Enclosures

JUL 13 1999

The Honorable Thomas R. Phillips
July 8, 1999
Page 2

cc: Mr. Luther H. Soules, III (w/encl.)
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Ms. Vicki Wilhelm (w/encl.)
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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:

RULE 320. MOTION AND ACTION OF COURT THEREON

New trials may be granted and judgment set aside for good cause, on motion or on the court's own motion on such terms as the court shall direct. New trials may be granted when the damages are manifestly too small or too large. When it appears to the court that a new trial should be granted on a point or points that affect only a part of the matters in controversy and that such part is clearly separate without unfairness to the parties, the court may grant a new trial as to that part only, provided that a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested. Each motion for new trial shall be in writing and signed by a party or his attorney.

- II. Proposed Rule:

RULE 320. MOTION AND ACTION OF COURT THEREON

- (a) New trials may be granted and judgment set aside for good cause, on motion or on the court's own motion on such terms as the court shall redirect. ~~New trials may be granted when the damages are manifestly too small or too large.~~ When it appears to the court that a new trial should be granted on a point or points that affect only a part of the matters in controversy and that such part is clearly separable without unfairness to the parties, the court may grant a new trial as to that part only, provided that a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested. Each motion for new trial shall be in writing and signed by the party or his attorney.
- (b) The trial court shall state specific findings for the good cause basis of the granting of a new trial. An order granting a new trial is reviewable by a petition for mandamus because an inadequate remedy at law is presumed.

- (c) A petition for mandamus to review the granting of a motion for new trial must be filed within 30 days from the date the order is signed granting the new trial. The trial court may not commence a new trial sooner than 30 days after the signing of the order granting the new trial, and if a petition for mandamus is filed, the trial court may not commence a new trial until a final appellate decision on the petition for mandamus.

III. Brief Statements of Reasons for Requested Changes and Advantages to be Served by Them.

The statement that new trials may be granted when damages are manifestly too large or small is redundant to "good cause," and is deemed to be surplusage.

Because many trials involve enormous expense for legal fees and experts, the trial court should not have unreviewable discretionary power to grant new trials for reasons, such as "in the interest of justice," and without any specific reason or basis for such action. The trial court should be required to articulate the basis for granting the new trial, and such decision should be reviewable by mandamus proceeding. If the trial court abused its discretion in granting a new trial, the aggrieved party should have a right to have that decision overturned by a writ of mandamus, so that the party does not have to incur the expense of a second trial.