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November 5, 1998

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 Rules 528, 647 and 742

Dear Justice Phillips:

Enclosed are proposed rule changes to Rules 528, 647 and 742, 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/jf
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

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 RULE COMMITTEE

REQUEST FOR NEW RULE OR CHANGE OF EXISTING RULE

TEXAS RULES OF CIVIL PROCEDURE

I. Exact Wording of Existing Rule:

RULE 528. VENUE CHANGED ON AFFIDAVIT

If any party to a suit before any justice shall make an affidavit supported by the affidavit of two other credible persons, citizens of the county, that they have good reason to believe, and do believe, that such party cannot have a fair and impartial trial before such justice or in such justice's precinct, the justice shall transfer such suit to the court of the nearest justice within the county not subject to the same or some other disqualification.

II. Proposed Rule:

RULE 528. VENUE CHANGED ON AFFIDAVIT

If any party to a suit before any justice shall make an affidavit supported by the affidavit of two other credible persons, citizens of the county, that they have good reason to believe, and do believe, that such party cannot have a fair and impartial trial before such justice or in such justice's precinct, the justice shall transfer such suit to the court of the nearest justice within the county not subject to the same or some other disqualification. A party is entitled to only one transfer pursuant to this rule.

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

This change is to prevent abuse of the automatic venue transfer provision that exists under the current rule by providing that a party has only one right to transfer venue of a proceeding in a justice court. In 1996, this Committee previously submitted a proposed change to this rule to the Supreme Court for consideration. That proposal allowed parties two venue transfers, but also required them to file their affidavit at least one full business day prior to the trial. The current version reduces the number of transfers from 2 to 1, but eliminates the 24 hour filing rule in the prior proposal so as not to reduce the already abbreviated notice period in these cases.