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March 12, 2010

VIA REGULAR MAIL

Ms. Kennon L. Peterson
Rules Attorney
Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711

Re: State Bar of Texas, Committee on Court Rules, Request for New Rule

Dear Kennon:

Enclosed is a copy of a proposed new subsection to Rule 166a that I am forwarding to you on behalf of the Court Rules Committee. It suggests the adoption of a requirement that dual motions seeking summary judgment under Rules 166a(c) and (i) be distinctly separated from one another to assist the trial court in ruling on each motion and to clarify for the appellate court which type of motion the trial court granted in awarding summary judgment.

The enclosed proposal was reviewed by the Court Rules Committee when it convened in Austin on March 5, 2010, and was approved for submission to the Texas Supreme Court.

If you have any questions about this proposed rule, or need any other information, please let me know. Thanks for your help.

Sincerely,

/s/ Russ Meyer

Russ Meyer
Chair, Court Rules Committee

Enclosure

cc: Mr. Jody Hughes
Vice-Chair

STATE BAR OF TEXAS
COMMITTEE ON COURT RULES
REQUEST FOR NEW RULE
TEXAS RULES OF CIVIL PROCEDURE

I. Exact wording of existing Rule:

There is no existing Rule at this time.

II. Proposed Rule:

RULE 166a. SUMMARY JUDGMENT

- (j) **Dual Motions.** (1) If motions for summary judgment under subsections (c) and (i) are contained in one document, each motion shall be distinctly separated from the other with the motion under subsection (c) stating the specific ground therefor in its entirety followed by the motion under subsection (i) stating one or more essential elements of a claim or defense for which there is no evidence on which the adverse party would have the burden of proof at trial. The court may strike motions that do not comply with this subdivision. (2) Should the court grant summary judgment, the court shall state in the order each motion that is granted.

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

This proposed new subsection to Rule 166a has as one of its purposes a requirement that dual motions authorized by the Rule be distinctly separated from one another to assist the trial court as well as the appellate court in ruling on each motion. Since subsection (i) came into the Rule, it has resulted in the filing of dual motions, which have often been referred to often as "hybrid" motions. This amendment provides an opportunity to use more precise terminology, which has led to dual motions being lumped together instead of separated. The form of the judgment when a trial court has a dual motion before it, which if granted, will advise the appellate court whether its review is limited to one or both motions. This required modification of a summary judgment order still does not require the court to specify its reasons for granting a motion when there are dual motions before the court.


J. SHELBY SHARPE
6100 Western Place, Suite 1000
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Date: March 8, 2010