

STATE OF THE JUDICIARY

75th Legislature

February 24, 1997

Chief Justice Thomas R. Phillips

*DISTINGUISHED MEMBERS OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF
THE SEVENTY-FIFTH LEGISLATURE:*

On behalf of the Judicial Department of the State of Texas, I appreciate this opportunity to deliver this, my fifth State of the Judiciary Address. It is particularly significant for me that we meet today in the Old Supreme Court courtroom, now so beautifully restored to its appearance when many landmark cases were heard and decided here.

The nature of these addresses, of course, is to focus on needed changes to improve the administration of justice. And, no doubt, we have a long way to go before every citizen has equal access to fair, affordable and timely justice. But we are making progress. On many fronts, the Legislature and the courts in their administrative capacities have been working to improve our judiciary.

In the appropriations process, for example, the Legislature has shown real insight into the needs of our court system. You provided funds for the Commission on Judicial Conduct to increase its investigative and prosecutorial staff by almost fifty percent, to restore Texas' full dues payments

to the National Center for State Courts, and to modernize the appellate information management system. These increases will help make a more ethical, informed and efficient judiciary, and were wise investments for the future.

The appropriations bill also created the Commission on Judicial Efficiency, which at your direction studied judicial funding parity, staff diversity, court technology and judicial selection. Chancellor Herbert H. Reynolds of Baylor University chaired this effort with matchless dedication and energy, and Task Force Chairs Judge Jack Hightower, Dean Susana Aleman, Dean Donald Hardcastle and Tom Luce each did a remarkable job in chairing their respective groups. Anthony Haley, the general counsel, won praise from across the state for his marvelous performance. In all, more than 140 legislators, judges, attorneys and lay persons gave of their time and talents on this important project.

We hope that the Commission's report was worthy of your confidence and your appropriation. Although I will not take time to review each of the Commission's fifteen principal recommendations individually, I do want to mention the highlights from each area of inquiry.

Funding Parity

In Texas, local government bodies are responsible for more of the funding of the judicial system than in almost any other state. Because, as Thomas Paine aptly observed, "the more simple anything is, the less liable it is to be disordered, and the easier repaired when disordered," Thomas Paine, *Common Sense* 3 (1776), the Commission recommended that the state assume full funding

for all appellate courts in this biennium and for all district courts in the next biennium.

Like the Judicial Committee on Court Funding, the Appellate and Trial Court Legislative Committees of the Judicial Section of the State Bar of Texas, the Alliance for Judicial Funding, and the Texas Association of State Judges, the Commission also recommended that the salaries of high court justices and judges be raised to the level of the lowest-paid federal judges, with appellate justices receiving 95% and district judges 90% of that salary. Moreover, the Commission recommended that Texas join seventeen other states in establishing an independent compensation commission to set future judicial salaries, a proposal currently before you in Senate Joint Resolution 20, Senate Bill 328, House Joint Resolution 49, and House Bill 518. Finally, the Commission recommended setting comprehensive court performance measures and standards for all levels of the state judiciary. Adopting these three recommendations will enhance the stability, independence and accountability of the state judiciary for years to come.

Staff Diversity

Recognizing the need for a diverse judicial staff, as well as a diverse judiciary, in order to enhance public confidence in the fairness of the courts, the Commission made several recommendations to encourage a broader applicant pool for judicial staff positions, clerkships and internships, with particular emphasis on securing more minority applicants. One key recommendation is that the Legislature establish a fund to assist in repaying student loans for persons with proven need who accept short-term attorney employment with the courts.

Information Technology

Because of Texas' patchwork system of court funding, court technology has been implemented across the state in a haphazard and totally uncoordinated fashion. Now, with the advent of the Internet, e-mail, electronic bulletin boards and exciting new interactive technologies, all courts should be brought into a statewide information network. With proper planning, we can dramatically increase public access to the courts while also saving time and money for taxpayers, lawyers and litigants. Implementing a first-class system may entail substantial start-up costs, but most of this investment could be recouped over time by imposing nominal user fees and access charges. Perhaps the Telecommunications Infrastructure Fund could be modified to allow that money to be applied to courts.

The era of docket management by lined manila sheets and 3 x 5 index cards is gone forever, whether we like it or not. I attach as *Exhibit A* a recent National Center for State Courts memorandum outlining six existing federal statutes that require states to gather and report various types of court activity. Failure to devise an information system to capture this data will, in most instances, result in a partial loss of various federal grant funds.

The core recommendation of the Judicial Efficiency Commission is the creation of a Judicial Committee on Information Technology, appointed by the Supreme Court, to develop and oversee the building of a statewide system. This group would work closely with the Department of Information Resources to provide an efficient and effective means to use modern technology to help achieve equal access to justice for all.

Judicial Selection

Finally, the Commission unanimously recommended that our antiquated, even embarrassing judicial selection system be replaced by a method that better serves the needs of modern Texans. Although serious reform efforts have been mounted for more than one hundred years, the need for change has become more urgent with the increased size of the judiciary and the advent of two-party politics. Our current system may have been acceptable in 1876, when there were six appellate and twenty-six trial judges in the entire state, and nomination by the Democratic Party Convention (not primary) was tantamount to election. By 1994, in contrast, Harris County voters alone were obliged to make decisions in 45 primary (23 Republican, 22 Democratic), 8 runoff (5 Republican, 3 Democratic) and 59 general election judicial contests! It could have been worse - 16 more judicial races were unopposed.

Sadly, the results of these races are determined far more by party strength than by individual merit. At the 1994 general election, for example, 31 of the 40 incumbent opposed Democratic district and appellate judges in Texas were defeated, while all Republican incumbents prevailed. At the last general election, however, Democrats lost only 3 of 18 opposed judges, while Republicans lost 8 of 28. Thus, the shifting tides of party fortune, which have almost nothing to do with judicial performance, have caused the defeat of almost ten percent of the state judiciary in the last two years, with the prospect of further future destabilization.

Another major problem with the current system is the perception of unequal justice that inevitably arises when judges and judicial candidates accept campaign contributions from lawyers

and litigants who have a stake in current or future court decisions. With such a large electorate and with so many contested elections, the sums raised and spent are enormous. As the chart attached as *Exhibit B* demonstrates, judicial candidates for Texas appellate courts alone received over fifty million dollars in donations between 1988 and 1994. Last session, the Legislature made a valiant effort to reduce the appearance of impropriety by passing the Judicial Campaign Fairness Act, which limited the time and amount of judicial campaign donations. While the Act served some worthwhile purposes, it has not diminished the aura of impropriety that surrounds judicial campaign solicitations. As the *Austin American-Statesman* noted in endorsing my re-election last year: “The way Texas elects partisan judges, and allows those who practice before them to supply the campaign money, will always fuel suspicion that justice here is for sale.” That’s hardly an endorsement to frame on the wall, but its about the most a Texas judge can hope for under the current system.

These high-dollar, partisan races not only lower Texans’ confidence in their courts, but also discourage out of state investment and job creation here. For example, Richard Posner, Chief Judge of the Seventh Circuit and a nationally recognized legal commentator, has opined that public distrust of state courts exceeds that of federal courts because “it is reinforced by the low professional quality and rampant politicization of many of the state judiciaries, led by Texas.” Posner’s critique appeared in *Commentary* magazine, but one could easily find similar observations in the pages of *The New York Times*, *Forbes*, *The Financial Times*, or numerous other sources which influence decision-makers throughout the world.

Finally, the continuing lack of diversity among the state judiciary threatens the legitimacy

of the administration of justice in the eyes of many Texans. Although more than forty percent of all Texans are minorities, only one-ninth of the state judiciary is Hispanic or African American. Of course, no method of judicial selection can or should create guarantees or mandate quotas. But a successful system must encourage more minority lawyers to seek judicial positions and, once in office, afford them a more reasonable prospect of remaining there.

The Judicial Efficiency Commission's proposed solutions were the product of a full year of intense effort by a diverse and knowledgeable group of concerned Texans. If it is not politically feasible to accomplish comprehensive reform in this session, I hope that you will at least attempt to implement some of the Commission's suggestions at some levels of the court system.

In addition to the four areas of the Judicial Efficiency Commission's inquiry, the Supreme Court has been involved in many other issues of legal reform in the last two years. I will briefly report on these initiatives to you.

Rules of Procedure and Evidence

Our Court, together in some instances with the Court of Criminal Appeals, is nearing the end of a six-year effort to promulgate comprehensive amendments to the rules of civil procedure, appellate procedure and evidence for Texas courts.

Next month, the two high courts will publish new rules of appellate procedure for comment, with a view to final adoption this summer. These rules will remove many of the traps from the so-

called TRAP rules, enabling appeals to be resolved on their merits in an expeditious fashion.

Later this spring, the two courts will also publish the first ever combined Rules of Evidence, replacing the separate civil and criminal codes that now exist. These rules will become effective before the end of the year.

By summer, the Supreme Court intends to publish comprehensive amendments to the rules of civil procedure. These amendments will decrease the amount and expense of pretrial discovery and encourage the earlier resolution of all cases. If these rules are to work, however, all trial judges will have to assume an active role in managing their dockets. For those thirty to forty rural district courts that do not yet have full-time court coordinators, it is imperative that the Legislature make some provision to see that these judges have the necessary management assistance.

Later this year, the Court will consider comprehensive revisions to the civil rules governing justice of the peace and small claims courts. A task force chaired by former Judge Paul Heath Till has recently forwarded its recommendations to the Court and the Supreme Court Rules Advisory Committee.

Finally, we are contemplating the creation of a new task force to study possible amendments to Texas Rule of Civil Procedure 42, which governs class actions. Almost one hundred highly qualified lawyers and judges have asked to be considered for appointment.

Justice Nathan Hecht and Judges Sam Houston Clinton and Paul Womack have served ably as our liaisons to the several committees and task forces that have assisted on these projects. Hundreds of lawyers, judges and professors from across the state who bring very diverse perspectives to these issues have served on the legislatively-mandated Supreme Court Rules Advisory Committee, five Court task forces, the State Bar Committees on Court Rules and on the Administration of the Rules of Evidence, and various committees of the Appellate Practice, Family Law, and Litigation Sections of the State Bar. With the help of these distinguished and creative minds, we believe that our new rules will give Texans the fairest and most efficient court procedural rules in the nation.

We are indeed proud of our efforts, but we need your help in one important respect to ensure their continued viability. Since 1989, the Legislature has, by express provision, routinely forbidden the Supreme Court from modifying or repealing any procedural provision in any new law touching on court procedure. This wording is found in 14 laws passed in the last four sessions, and appears in at least seven bills introduced so far this year.

Each time it is used, this language effects a limited repealer of the Rules Enabling Act of 1939, Tex. Gov't Code sec. 22.004. It was incorporated into the *Texas Legislative Council Drafting Manual* in 1987, after the Supreme Court repealed a portion of that year's tort reform package by rule. I am not here to defend that arrogant action by the Court, but I am here to remind you that no judge who supported that move remains in public service. I recognize that there may be legitimate policy reasons for limiting the Court's power in certain circumstances. But the routine inclusion of

such language will in the long run substantially impair the Court's ability to keep court procedures current and efficient. Instead, we will be left with a pastiche of old and new statutes and interstitial rules, which may or may not meet the actual needs of the time.

Court-Annexed Mediation

At the request of the Alternate Dispute Resolution Section of the State Bar of Texas, the Supreme Court created an Advisory Committee on Court-Annexed Mediation last May. The Committee, co-chaired by non-attorney Bill Low and attorney Bruce Stratton, is charged with recommending ethical rules for court-annexed mediators and with examining whether a credentialing program should be established. Justice Priscilla Owen is our liaison to this committee.

Bar Examination

In October 1995, the Supreme Court adopted the recommendation of the Board of Law Examiners to modify the bar examination. Beginning in July 1999, oil and gas will be included with real property, while consumer rights and income, gift and estate taxes will be added as separate subjects. Beginning in February 1998, the Multi-State Performance Test will also be added to the bar examination. On the basis of a single problem, it will test legal and factual analysis, written communication skills, organizational abilities, and the recognition and resolution of ethical dilemmas. Justice Gonzalez now serves as our liaison to the Board.

Foster Care Task Force

A Supreme Court Task Force on Foster Care, funded by a grant from the United States

Department of Health and Human Services, will implement pilot projects in both rural and urban judicial districts to improve the quality of foster care and shorten the time that children remain in the system. The Task Force is chaired by John John Specia of Bexar County, and Justice Greg Abbott serves as the liaison from our Court.

Pro Bono Representation in Civil Cases

For the past two years, a petition to implement a mandatory program for free provision of legal services to the poor in civil cases has been pending on the Supreme Court's administrative docket. For now, the Court has been working with the State Bar of Texas to develop various initiatives to encourage more and more effective pro bono activities among Texas lawyers. Justice Owen is also serving as our liaison in this important area, which becomes even more critical as Congress reduces the funding of Legal Services Corporation and the federal courts place the constitutionality of our mandatory IOLTA program in doubt. See *Washington Legal Foundation v. Texas Equal Access to Justice Foundation*, 1996 WL 486644 (5th Cir. (Tex.)), rehearing *en ban denied*, February 14, 1997.

Jury Task Force

Last September, the Supreme Court appointed a task force of almost one hundred legislators, judges, lawyers and lay persons to study and make recommendations to the Legislature and the Supreme Court on jury system reforms. Dean Frank Newton of the Texas Tech University School of Law and President-elect of the State Bar of Texas, chairs this effort, and Justice John Cornyn and Judge Sharon Keller serve as liaisons from the high courts.

Gender Bias Reform Implementation Task Force

The Gender Bias Reform Implementation Task Force, co-chaired by Judge Charles Baird of the Court of Criminal Appeals and former Justice Barbara Rosenberg of Dallas, has recently submitted to the Court a *Handbook of Guidelines for Gender-Neutral Courtroom Procedures*. We published the text in the February 1997 *Texas Bar Journal*, and will review all comments before making a final determination on publication and distribution. Justice Owen has been the Court's liaison to this Task Force, which we created in 1995 upon the recommendation of the Court's Gender Bias Task Force.

National Center for State Courts Self Study

During the last two years, the Supreme Court became the first court of last resort in America to undergo an external management study of its operation. Justice Enoch was the liaison from our Court to the authors of the study, which was conducted by the National Center for State Courts through grants to the State Bar of Texas from the State Justice Institute and the Texas Bar Foundation. Although the authors concluded that the Court is "functioning quite well," they offered numerous suggestions to further improve our internal procedures. We have already implemented several of these suggestions, while a number of others are under active consideration.

Prisoner Lawsuit Magistrates

Pursuant to H.B. 1343, 74th Legislature, the Supreme Court created a committee in 1995, chaired by Judge Joe Ned Dean of Trinity County, to devise a procedure for referring inmate civil litigation to magistrates for review and recommendation. The Court promulgated the rules proposed

to us last December. A copy of our Order is attached as *Exhibit C*. As no system has been established for funding the magistrates, we are uncertain how widely these procedures will be employed.

Conclusion

As you can see, the Supreme Court has an ambitious agenda to improve the fairness and efficiency of our legal system. But our efforts, though extensive, do not begin to tell the whole story of what our courts are doing to improve the administration of justice. Consider these initiatives:

- The Court of Criminal Appeals has appointed over one hundred attorneys to represent death row inmates in applications for writ of habeas corpus, and is preparing standards of competency so that Texas may invoke the benefits of the new federal limitations on post-conviction review procedures of state capital convictions.
- The Presiding Judges of the Administrative Judicial Regions are not only working hard to administer the Title IV-D child support program, but just last Friday released a comprehensive report to you on voluntary efforts to improve the quality of visiting judge assignments.
- The Chief Justices of the Courts of Appeals meet regularly to discuss the voluntary equalization of their dockets and to exchange management ideas.
- The district judges of Travis County have developed a mandatory mediation program

for all civil cases set for jury trial or the longer non-jury docket, resulting in increased settlements and more definite settings for those cases that must be tried.

- The El Paso Bar Association, working with the local judiciary, established a mandatory pro bono program requiring every local attorney to handle two domestic relations cases each calendar year. This highly successful program is now in its fifteenth year.
- The Office of Court Administration has developed a model program to increase the collection of fines and costs, including the Crime Victims Compensation Fund Fee, which is being field tested in Brazoria County's three statutory county and probate courts.

These examples, which could be multiplied many times over, amply demonstrate that the bench and bar of Texas have the energy and ingenuity to meet the many challenges before us. By continuing to provide the help we need, the Legislature can help assure that we do in fact meet these challenges, and that the promise of equal justice for all becomes a reality for every citizen.

ISSUE BRIEF

FEDERAL REPORTING REQUIREMENTS

February 1997

State court systems can no longer plan their automated judicial information systems without looking to the ever-expanding array of federal reporting requirements. On November 8, representatives of CCJ and COSCA, during their quarterly meeting with U.S. Attorney General Janet Reno, discussed at some length the issue of federal reporting requirements impacting state courts. There was a consensus that the leadership of the state courts and staff from the Department of Justice, especially the Federal Bureau of Investigation (FBI) and the Bureau of Justice Statistics (BJS), should work together on the development of state court data elements and data transmission protocols necessary to implement the myriad of recent federal laws affecting court records.

The list of recent criminal justice acts that contain court reporting requirements includes the Brady Gun Control Act (persons convicted of a felony, adjudicated as mentally defective, or subject to a domestic violence protection order); the National Child Protection Act (persons convicted of child abuse); the Violence Against Women Act (persons subject to protection orders); and the Jacob Wetterling Act (offenders convicted of crimes against minors or sexually violent offenses). Reporting mandates are not limited to criminal justice data. The Welfare Reform Act requires state courts to report any individual convicted of a crime involving drugs, and to register all child support orders with a central data bank. Penalties are spelled out for failure to comply. The Jacob Wetterling Act, for example, specifies that states that do not create a central registry for persons found to be sexually violent offenders will lose 10% of their Byrne Block Grant funds. And the Pam Lyncher Sexual Offender Tracking and Identification Act, which instructs the FBI to establish a national tracking system, also contains an additional 10% penalty for those states that do not provide the mandated information.

As a first step in identifying the federal requirements, the COSCA/NACM Joint Technology Committee invited representative from BJS, the FBI, and

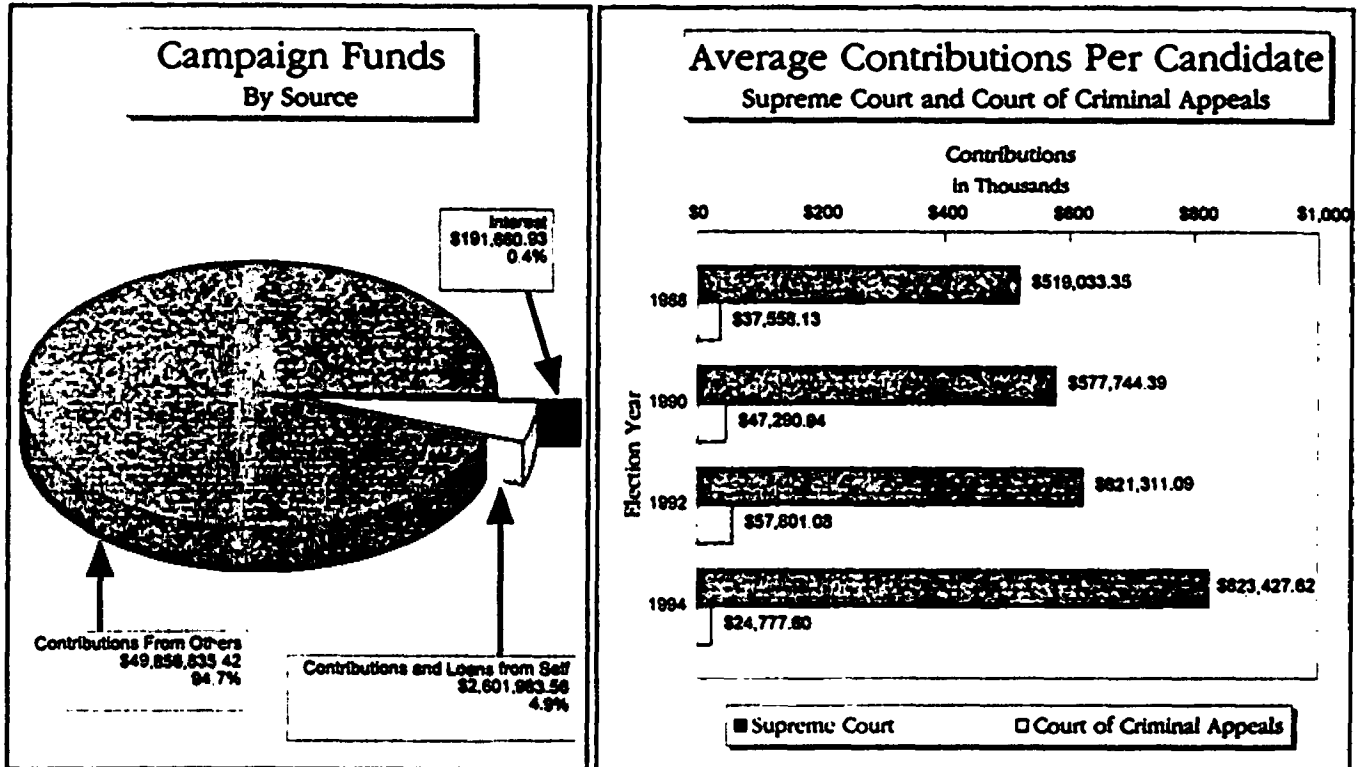
**CONFERENCE OF CHIEF JUSTICES
NATIONAL AFFAIRS BRIEFING BOOK**

SEARCH to meet with them in San Francisco in December as part of the COSCA Midyear Meeting. SEARCH works closely with BJS in providing technical assistance to the states, particularly state repositories of criminal justice information, and the FBI is responsible for the National Crime Information Center (NCIC) which is the principle national repository for such information. During that meeting it was agreed that the initial step in addressing the issue would be the formation of a National Task Force made up of representatives from the courts, and the criminal justice community to develop standards for the reporting of this information.

Summary: Campaign Contribution Statistics Exhibit B

Texas Appellate Judicial Candidates in 1988, 1990, 1992, and 1994

The following information has been compiled from the records retained by the Texas Ethics Commission. The data summarizes over 148,000 contributions contained in 3,013 reports from 273 people (362 candidates for the 175 seats available during the period) and their specific purpose committees. The information contained in this document is only as accurate as what the candidates have reported. Due to changes in reporting forms, unfamiliarity with the forms, and numerous other factors, this information may not be totally accurate, but is the best available.



The following two tables show statistics based on all data collected including the totals of all data in a category, the averages of all data in a category, the number of times each type of data appeared on reports, and the highest value reported in each category. This information is based on the reporting time frames required by the Texas Ethics Commission not on an entire election cycle.

	Total Contrib.s Rec'd for Period	Amt. of Itemized Contributions	# of Itemized Contrib.s	Avg. Itemized Contribution	Contributions From Self	Contributions Under \$50	Interest	Loan From Self
Total all reports	\$50,253,564.38	\$49,348,518.84	147,503	\$334.56	\$205,068.03	\$908,316.58	\$191,660.93	\$2,396,915.53
Average all reports	\$16,678.91	\$30,219.55	90.83	\$332.72	\$2,030.38	\$854.31	\$757.55	\$7,513.84
Number of occurrences	3,013	1,633	1,624	1,624	101	595	253	319
Highest report for category*	\$896,209.09	\$893,664.09	4,506	\$50,000.00	\$34,000.00	\$12,713.40	\$48,043.95	\$250,000.00

Detail of highest report for category:

Category	Candidate/Specific Purpose Cmte.	Report Period		Amount/Number
		Begin	End	
"Total Contributions Received for Period"	Texans for Rene Haas	02/27/94	04/02/94	\$896,209.09
"Amount of Itemized Contributions"	Texans for Rene Haas	02/27/94	04/02/94	\$893,664.09
"Number of Itemized Contributions"	Chief Justice Phillips Campaign	07/01/90	09/27/90	4,506
"Average Itemized Contribution"	Bob Gammage	01/01/91	06/30/91	\$50,000.00
	Ross Sears	01/01/91	06/30/91	\$10,011.11
	Texans for Rene Haas	12/13/93	12/31/93	\$4,929.27
"Contribution from Self"	Richard Edelman	07/01/94	09/29/94	\$34,000.00
"Contributions Under \$50"	Nathan L. Hecht	09/30/88	10/29/88	\$12,713.40
"Interest"	Lloyd Doggett	01/01/92	06/30/92	\$48,043.95
	Chief Justice Phillips Campaign	07/01/90	09/27/90	\$14,667.18
"Loan from Self"	Texans for Rene Haas	02/27/94	04/02/94	\$250,000.00

- * One contribution from own committee.
- b 9 contributors, including \$75,000.00 loan forgiven.
- c Highest with more than 10 contributors.
- d Total for 1989, 1990, and 1991.
- e Highest for single reporting period.

ORDER OF THE SUPREME COURT OF TEXAS

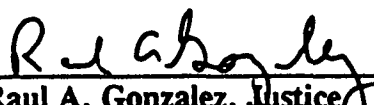
Misc. Docket No. 96- 9273

Pursuant to Section 14.013 of the Texas Civil Practice and Remedies Code, the Supreme Court hereby adopts the attached Rule for Magistrates in Inmate Litigation.

In Chambers, this 11th day of December, 1996.



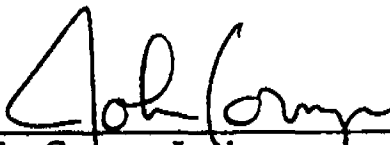
Thomas R. Phillips, Chief Justice



Raul A. Gonzalez, Justice




Nathan L. Hecht, Justice




John Cornyn, Justice



Craig T. Enoch, Justice




Rose Spector, Justice



Priscilla R. Owen, Justice



James A. Baker, Justice



Greg Abbott, Justice

RULE FOR MAGISTRATES IN INMATE LITIGATION

1.01 AUTHORITY

This rule is promulgated under authority of Section 14.013, Civil Practice and Remedies Code.

2.01 APPOINTMENT

(a) A judge of a court having jurisdiction of a suit subject to Chapter 14, Civil Practice and Remedies Code, may appoint a full-time or part-time magistrate to perform the duties authorized by that chapter if the commissioners court of a county in which the court has jurisdiction authorizes the employment of a magistrate.

(b) If a court has jurisdiction in more than one county, a magistrate appointed by that court may serve only in a county in which the commissions court has authorized the magistrate's appointment.

(c) If more than one court in a county has jurisdiction of a suit under Chapter 14 the commissioners court may authorize the appointment of a magistrate for each court or may authorize one or more magistrates to share service with two or more courts.

(d) If a magistrate serves more than one court, the magistrate's appointment must be made with the unanimous approval of all the judges under whom the magistrate serves.

3.01 QUALIFICATIONS

To be eligible for appointment as a magistrate, a person must meet the requirements and qualifications to serve as a judge of the court or courts for which the magistrate is appointed.

4.01 COMPENSATION

(a) If funds are provided to the Supreme Court by appropriation or interagency contracts as provided by Section 14.013 (b), Civil Practice and Remedies Code, a magistrate may be paid a salary, on a hourly basis, on a per-case basis, or on such other basis as may be specified by administrative order of the Supreme Court.

(b) If funds are not provided the Supreme Court, a magistrate may be paid a salary or fees provided in the schedule of fees adopted by the judges of the county pursuant to Article 26.05, Code of Criminal Procedure, as approved by the commissioners court in which the magistrate serves.

(c) If paid a salary, the magistrate's salary is paid from the county fund available for payment of officers' salaries. If paid by fee, the magistrate's fees are paid from the general fund of county.

Rule for Magistrates in Inmate Litigation - con't

5.01 TERMINATION OF MAGISTRATE

- (a) A magistrate who serves a single court serves at the will of the judge of that court.
- (b) The employment of a magistrate who serves more than two courts may only be terminated by a majority vote of all the judges of the courts which the magistrate serves.
- (c) The employment of a magistrate who serves two courts may be terminated by either of the judges of the courts which the magistrate serves.

6.01 CASES THAT MAY BE REFERRED

Except as provided by this rule, a judge of a court may refer to a magistrate any suit brought by an inmate in a district, county, justice of the peace, or small claims court in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate. This rule does not apply to an action brought under the Family Code.

7.01 ORDER OF REFERRAL

- (a) In referring a case to a magistrate, the judge of the referring court shall render:
 - (1) an individual order of referral; or
 - (2) a general order of referral specifying the class and type of cases to be heard by the magistrate.
- (b) The order of referral may limit the power or duties of a magistrate.

8.01 AUTHORITY OF MAGISTRATE

Except as limited by an order of referral, a magistrate has the same jurisdiction, authority, and power as the judge of the referring court under Chapter 14, Civil Practice and Remedies Code, including, but not limited to the authority to:

- (1) dismiss a claim pursuant to Sections 14.003, 14.005, 14.006, or 14.010, Civil Practice and Remedies Code,
- (2) order payment of costs pursuant to Sections 14.006 and 14.007, Civil Practice and Remedies Code, and
- (3) hold hearings as provided in Section 14.008, Civil Practice and Remedies Code.

Rule for Magistrates in Inmate Litigation - con't

9.01 POWERS OF MAGISTRATE

A magistrate may:

- (1) conduct a hearing;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue a summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) recommend an order to be rendered in a case;
- (11) regulate all proceedings in a hearing before the magistrate, and
- (12) take action as necessary and proper for the efficient performance of the magistrate's duties.

10.1 ATTENDANCE OF BAILIFF

A bailiff may attend a hearing by a magistrate if directed by the referring court.

11.01 COURT REPORTER

(a) A court reporter is not required during a hearing held by a magistrate appointed under this rule.

(b) A party, the magistrate, or the referring court may provide for a reporter during the hearing.

(c) The record may be preserved by any other means approved by the magistrate.

(d) The referring court or magistrate may tax the expense of preserving the record as costs.

12.01 WITNESS

(a) A witness appearing before a magistrate is subject to the penalties for perjury provided by law.

(b) A referring court may fine or imprison a witness who:

- (1) failed to appear before a magistrate after being summoned; or
- (2) improperly refused to answer questions if the refusal has been certified to the court by the magistrate.

Rule for Magistrates in Inmate Litigation - con't

13.01 REPORT

(a) The magistrate's report may contain the magistrate's findings, conclusion, or recommendations. The magistrate's report must be in writing in the form directed by the referring court. The form may be a notation on the referring court's docket sheet.

(b) After a hearing, the magistrate shall provide the parties participating in the hearing notice of the substance of the magistrate's report.

(c) Notice may be given to the parties:

- (1) in open court, or an oral statement or a copy of the magistrate's written report; or
- (2) by certified mail, return receipt requested.

(d) The magistrate shall certify the date of mailing of notice by certified mail. Notice is considered given on the third day after the date of mailing.

(e) After a hearing conducted by a magistrate, the magistrate shall send the magistrate's signed and dated report and all other papers relating to the case to the referring court.

14.01 NOTICE OF RIGHT TO APPEAL

(a) Notice of the right of appeal to the judge of the referring court shall be given to all parties.

(b) The notice may be given:

- (1) by oral statement in open court;
- (2) by posting inside or outside the courtroom of the referring court; or
- (3) as otherwise directed by the referring court.

15.01 ORDER OF COURT

(a) Pending appeal of the magistrate's report to the referring court, the decisions and recommendations of the magistrate are in full force and effect and are enforceable as an order of the referring court, except for orders providing for incarceration or for the appointment of a receiver.

(b) If an appeal to the referring court is not filed or the right to an appeal to the referring court is waived, the findings and recommendations of the magistrate become the order of the referring court only on the referring court's signing an order conforming to the magistrate's report.

Rule for Magistrates in Inmate Litigation - con't

16.01 JUDICIAL ACTION ON MAGISTRATE'S REPORT

Unless a party files a written notice of appeal, the referring court may:

- (1) adopt, modify, or reject the magistrate's report;
- (2) hear further evidence; or
- (3) recommit the matter to the magistrate for further proceedings.

17.01 APPEAL TO REFERRING COURT

(a) A party may appeal a magistrate's report by filing notice of appeal not later than the third day after the date the party receives notice of the substance of the magistrate's report as provided by 13.01.

(b) An appeal to the referring court must be in writing specifying the findings and conclusions of the magistrate to which the party objects. The appeal is limited to the specified findings and conclusions.

(c) On appeal to the referring court, the parties may present witnesses as in a hearing de novo on the issues raised in the appeal.

(d) Notice of an appeal to the referring court shall be given to the opposing attorney under Rule 21a, Texas Rules of Civil Procedure.

(e) If an appeal to the referring court is filed by a party, any other party may file an appeal to the referring court not later than the seventh day after the date the initial appeal was filed.

(f) The referring court, after notice to the parties, shall hold a hearing on all appeals not later than the 30th day after the date on which the magistrate's report was adopted by the referring court.

(g) The parties may waive the right of appeal to the referring court in writing or on the record.

18.01 APPELLATE REVIEW

(a) Failure to appeal to the referring court, by waiver or otherwise, the approval by the referring court of a magistrate's report does not deprive a party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) The date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

Rule for Magistrates in Inmate Litigation - con't

19.01 IMMUNITY

A magistrate appointed under the subchapter has the judicial immunity of a district judge. All existing immunity granted a magistrate by law, express or implied, continues in full force and effect.