

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 05-9200

AMENDMENTS TO RULE 13 OF THE TEXAS RULES OF JUDICIAL ADMINISTRATION

ORDERED that:

1. Rule 13.1 of the Texas Rules of Judicial Administration is amended as follows.
2. Rule 13.11 of the Texas Rules of Judicial Administration is added as follows.
3. These changes in Rule 13 are effective November 29, 2005, as necessitated by Act of May 16, 2005, 79th Leg., R.S., ch. 97, 2005 Tex. Gen. Laws 169.
4. These amendments may be changed in response to comments received before April 1, 2006. Any interested party may submit comments in writing as follows:

by mail to: Mr. Jody Hughes
Rules Attorney
The Supreme Court of Texas
P.O. Box 12248
Austin TX 78711

by fax to: 512-463-1365 — Attn: Rules Attorney

by email to: Jody.Hughes@courts.state.tx.us

5. The Clerk is directed to:

a. publish a copy of this Order on the Court's internet website at www.courts.state.tx.us;

b. file a copy of this Order with the Secretary of State;

c. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

d. send a copy of this Order to each member of the Legislature; and

e. submit a copy of the Order for publication in the *Texas Register*.

SIGNED AND ENTERED this 29th day of November, 2005.

/x/

Wallace B. Jefferson, Chief Justice

/x/

Nathan L. Hecht, Justice

/x/

Harriet O'Neill, Justice

/x/

J. Dale Wainwright, Justice

/x/

Scott Brister, Justice

/x/

David M. Medina, Justice

/x/

Paul W. Green, Justice

/x/

Phil Johnson, Justice

/x/

Don R. Willett, Justice

RJA 13.1 should be amended as follows:

13.1 Authority and Applicability.

(a) *Authority.* This rule is promulgated under sections 74.161-.164 of the Texas Government Code and chapter 90 of the Texas Civil Practices and Remedies Code.

(b) *Applicability.* This rule applies to:

(1) civil actions that involve one or more common questions of fact and that were filed in a constitutional county court, county court at law, probate court, or district court on or after September 1, 2003;

(2) civil actions filed before September 1, 2003, that involve claims for asbestos- or silica-related injuries, to the extent permitted by chapter 90 of the Texas Civil Practice and Remedies Code.

(c) *Other Cases.* Cases ~~filed before that date~~ to which this rule does not apply are governed by Rule 11 of these rules.

Comment — 2005

Subsections (a) and (b) are amended and subsection (c) is added to provide procedures for cases covered by chapter 90 of the Texas Civil Practices and Remedies Code, enacted effective September 1, 2005.

RJA 13.11 should be added as follows:

13.11 Civil Actions Filed Before September 1, 2003, Involving Claims for Asbestos- and Silica-Related Injuries.

(a) *Applicability.* To the extent permitted by chapter 90 of the Texas Civil Practice and Remedies Code, Rule 13.11 applies to civil actions filed before September 1, 2003, that involve claims for asbestos- or silica-related injuries.

(b) *Statutory References; Definitions.* Statutory references in Rule 13.11 are to chapter 90 of the Texas Civil Practice and Remedies Code. “Claimant” has the meaning assigned in section 90.001(6). “Report” has the meaning assigned in section 90.001(24).

(c) *Notice of Transfer Under Section 90.010(b).* A notice of transfer under section 90.010(b) must be filed in the trial court and the pretrial court and must:

- (1) be titled “Notice of Transfer Under Section 90.010(b)”;
- (2) list all parties who have appeared and remain in the case, and the names, addresses, phone numbers, and bar numbers of their attorneys or, if a party is pro se, the party’s name, address and phone number;
- (3) state the name of each claimant transferred;
- (4) attach to the notice filed in the pretrial court a copy of the claimant’s live petition; and
- (5) if filed by a defendant, contain a certificate stating that the filing party conferred, or at least made a reasonable attempt to confer, with opposing counsel about whether the notice of transfer is appropriate as to each individual claimant transferred.

(d) *Effect on Pending Motion for Severance.* If, when a notice of transfer is filed in the trial court, a motion for severance has been filed but the trial court has not ruled, the trial court must rule on the motion within 14 days of the date the notice of transfer is filed, or the motion is deemed granted by operation of law.

(e) *When Transfer Effective.* A case is deemed transferred from the trial court to the pretrial court when a notice of transfer is filed with the trial court unless a motion for severance is pending. If a motion for severance is pending when a notice of transfer is filed with the trial court, a case is deemed transferred when the trial court rules on the motion or the motion is deemed granted by operation of law.

(f) *Further Action in Trial Court Limited.* After a notice of transfer is filed, the trial court must take no further action in the case except:

- (1) to rule on a motion for severance pending when the notice of transfer was filed, or
- (2) for good cause stated in the order in which such action is taken and after conferring with the pretrial court.

But service of any process already issued by the trial court may be completed and the return filed in the pretrial court.

(g) *Severed Case File.* If a claim is severed from a case that includes one or more claimants covered by section 90.010(a), the file for the severed claims in the trial court should be numerically linked to the original case file and should contain only the live petition containing the severed claim. The severed case file is deemed to include all papers in the original case file. The pretrial court may require a different procedure in the interests of justice and efficiency.

(h) *Transfer of Files.* The pretrial court may order the trial court clerk to transfer a case file to the pretrial court. A case file must not be transferred to the pretrial court except as ordered by that court.

(i) *Filing Fees and Costs.* A defendant who files a notice of transfer must pay the cost of filing the case in the pretrial court, including filing fees and other reasonable costs. If the pretrial court remands the case to the trial court, the pretrial court may order that costs be allocated between the parties in a way that encourages just and efficient compliance with this rule, and may award appropriate and reasonable attorney fees.

Comment — 2005

1. Rule 13.11 is added to provide procedures for cases covered by chapter 90 of the Texas Civil Practice and Remedies Code, enacted effective September 1, 2005.

2. The rule does not require a statement in the notice of transfer that no report has been served under chapter 90, or that a report has been served but does not comply with the provisions of that statute. The omission of such a requirement in the notice of transfer is not intended to limit the pretrial court's authority under Rule 166 of the Texas Rules of Civil Procedure to employ appropriate procedures to ascertain a party's position on the issue.

3. It is anticipated that the party filing a notice of transfer will usually be a defendant, and that the party filing a motion for severance will usually be a claimant. Ordinarily, a party filing the notice of transfer is responsible for filing fees and costs in the pretrial court, although there may be exceptions. See Rule 13.5(d). Also, a party who successfully moves to sever a claim into a separate proceeding in the trial court is customarily responsible for filing fees and costs, although severance is "on such terms as are just", Tex. R. Civ. P. 41, and again, there may be exceptions. The intent of this rule is that severance and transfer procedures minimize costs and burdens on parties and the courts.

4. A pretrial court has discretion under Rule 13.11(g)-(i) to order the maintenance and transfer of physical case files and to allocate costs and fees so as to minimize costs and burdens on parties and the courts.