



## **FROM THE PRESIDENT**

### ***Following-up on HB 274***

Keith B. O'Connell,  
O'Connell & Avery, L.L.P; San Antonio



*Although the Legislative Session is over, our work is not, and continues. As you know, HB 274, by amendment to Section 22.004 of the Texas Government Code, directs the Supreme Court of Texas to adopt rules to provide for the dismissal of causes of action that have no basis in law or fact, on motion and without consideration of evidence. Furthermore, HB 274, by amendment to Section 22.004 of the Texas Government Code, directs the Supreme Court of Texas to adopt rules to promote the prompt, efficient and cost-effective resolution of civil actions in which all claims for damages of any kind do not exceed \$100,000. As a result of this directive, Dan Worthington, Executive Vice President of TADC, and I met with representatives of TEX-ABOTA and the Texas Trial Lawyers Association (TTLA) and formed a voluntary working group to formulate proposed rules promoting both the letter and the spirit of those statutory mandates. The working group convened on July 19, 2011 to reach consensus on rules for expedited jury trials and early motions to dismiss. This was followed by a subsequent meeting on August 4, 2011. Our working group meetings were attended by Mr. Corey Pomery, General Counsel to Senator Robert Duncan, on Senator Duncan's behalf. Additionally, the State Bar of Texas Section of Litigation agreed to serve the working group's efforts as a resource, including Justice Craig Enoch and TADC Board Member Pat Long Weaver. In addition to meeting, research of expedited jury trial procedures in other jurisdictions was performed, exchanged, analyzed and discussed. Numerous e-mails were exchanged among working group members, facilitating an additional collegial exchange of ideas. Craig Lewis, a past president of TEX-ABOTA and a member of TTLA, agreed to take the lead in drafting proposed rules on the early motion to dismiss, based on the consensus reached by our working group on the substance of those rules. Dan Worthington and I took the lead in writing proposed*

*rules for the expedited jury trial. I also accepted responsibility to draft a letter on behalf of our working group to Justice Hecht, essentially a “white paper” explaining the key features and rationale of our proposed rules on expedited jury trials.*

*Somewhat surprisingly, at the initial meeting of July 19, 2011 we received some “pushback” to a voluntary expedited trial procedure, versus a mandatory procedure. The pushback was not because a mandatory procedure was more desirable; rather, it was purportedly based upon the statute requiring mandatory rules, and a perception that the Supreme Court is going to require that the rules be mandatory. In response, we pointed out that while HB 274 requires the Court to write rules for a procedure, it is actually silent as to whether the procedure is to be voluntary or mandatory. We advised further that we had previously met on separate occasions with Justice Hecht, Justice Lehrmann, Justice Medina and Justice Green and suggested the importance that the rules to be voluntary, and received no negative response. After discussion, it was unanimously agreed to move forward with drafting rules for a voluntary procedure.*

*Following our July 19, 2011 meeting, we were advised that Justice Hecht contacted former Chief Justice Tom Phillips to chair and form a committee separate from the Supreme Court Advisory Committee to develop rules on expedited jury trials for the Court. When Justice Phillips learned of our working group, he communicated the formation of our working group to Justice Hecht. Evidently, a decision was then made not to form a special committee at this time, but rather, to first evaluate the work product of our working group. This resulted in Chief Justice Phillips attending our August 4, 2011 meeting, at which time I was asked to present our proposed rules on expedited jury trials to Chief Justice Phillips on behalf of the working group. My presentation to Chief Justice Phillips in substance was essentially identical to the points I have made on behalf of the working group in the letter or white paper to Justice Hecht accompanying our proposed rules. Chief Justice Phillips was very attentive and appreciative, and he seemed to recognize the value of a voluntary procedure, although he cautioned we may be swimming upstream on that issue. The idea that the procedure should be mandatory is apparently premised on the notion that because no one uses Level I Discovery Control Plans, no one will use a voluntary expedited jury trial procedure either. In my opinion, that is an argument easily undressed. I believe our arguments for a voluntary procedure are compelling.*

*On August 25, 2011 the work product of the working group and the accompanying explanatory letters were forwarded to Justice Hecht for consideration by the Court and the Supreme Court Advisory Committee. On August 29, 2011, the Court responded and expressed their appreciation for our materials. The Court characterized our work product as a “significant contribution to the process.” The Supreme Court Advisory Committee discussed expedited jury trials briefly at its meeting on Friday, August 26, 2011, and will soon take up these matters in earnest.*

*It was very important in my view that TADC take the lead role on the rules related to expedited jury trials. It is critically important that any proposed rules be voluntary. The rationale for this and other important elements of our proposed rules on expedited jury trials is set forth in the letter to Justice Hecht accompanying the proposed rules, and I encourage you to read it. The proposed rules and the groups' two letters of explanation to the Supreme Court can be found here: [Expedited Trial](#) ; [Dismissal Practice](#)*

*Be assured that TADC will continue to follow the work of the Supreme Court Advisory Committee and the Court with respect to both of these rules and will keep you advised of their progress, will continue to advocate an expedited jury trial procedure that is totally voluntary, and will continue to work toward the adoption of rules that are fair and balanced, that allow full access to our civil justice system and that promote the right to trial by jury.*

## ***CALENDAR OF EVENTS***

### ***September 13, 2011***

TADC/Dallas Bar Association/TTLA Legislative Reception  
Belo Mansion Pavilion – Dallas

### ***September 15, 2011***

TADC/Hidalgo County Bar Association Reception  
Santa Fe Cantina - McAllen

### ***Sept. 27-Oct. 1, 2011***

2011 Annual Meeting  
Hyatt Regency Maui – Maui, Hawaii  
David Chamberlain & Mitzi Mayfield, Co-Chairs

### ***November 11-12, 2011***

TADC Board of Directors Meeting  
Galveston, Texas

### ***January 20-21, 2012***

TADC Board of Directors Meeting  
San Antonio, Texas

### ***February 1-5, 2012***

Joint TADC/ADC (Alabama) Winter Seminar  
Elevation Resort & Spa – Crested Butte, Colorado

**March 30-31, 2012**

2012 TADC Trial Academy  
South Texas College of Law  
Michele Smith & Chad Gerke, Co-Chairs

**April 25-29, 2012**

TADC Spring Meeting  
Inn & Spa at Loretto – Santa Fe, New Mexico  
Sofia Ramon & Randy Grambling, Co-Chairs

**July 18-22, 2012**

TADC Summer Seminar  
The Grand Sandestin Resort – Sandestin, Florida  
Darin Brooks & Greg Binns, Co-Chairs

**August 3-4, 2012**

Budget/Nominating Committee  
Austin, Texas

**September 26-30, 2012**

2012 Annual Meeting  
Westin St. Francis – San Francisco, California  
Gayla Corley & Mike Hendryx, Co-Chairs

---

*Texas Association of Defense Counsel, Inc.*

400 W. 15th Street, Suite 420, Austin, Texas 78701 512.476.5225 - 512.476.5384 FAX - [tadc@tadc.org](mailto:tadc@tadc.org)