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# West's 1989 "Texas Rules of Court"— One Step Forward, One Step Back

By Jim Paulsen and James Hambleton

As with many of its other publications, West Publishing Company dominates the Texas market with its "desk copies" of Texas court rules. Over the past few years, those rules have undergone considerable mutation—in color, from white to blue to gray to red—and in length, from one volume to two volumes. There have also been numerous substantive changes. In view of the evolving nature of the "Texas Rules of Court" and the widespread use of these desk books by Texas attorneys, we feel it is about time to chronicle a few of the changes, make some constructive suggestions for improvement and, last but not least, poke a little fun at the finished product.

The primary purpose of a "desk copy" of court rules is, one would think, to provide a busy attorney with a convenient source for the text of rules. After all, if any sort of intensive research is contemplated, an attorney will most likely go to the annotated "Vernon's" version. Put differently, the sole advantage of the desk copy is ease of use: An attorney can flip to the text of the rule or, for a court appearance, can just throw the book in his or her briefcase and take it along.

In some part, the "Texas Rules of Conduct" paperbacks reflect steps that have been taken to improve the publication's usefulness as a handy reference tool. For example, the decision to split the book into two volumes in 1986—one for state and one for federal courts—makes a lot of sense. An attorney heading for court need only carry half as much weight.

Likewise, West Publishing Company has weeded out some of the materials that used to clutter up the books. The 1988 printing, for example, removed nearly 100 pages just by eliminating the "timetable for lawyers" and 30 pages of amendatory orders, chronicling every change in the Rules of Civil Procedure since

their inception. At the same time, however, West Publishing Company is beginning a new collection of useless material, having decided to print the text of every order adopting or amending rules of appellate procedure.

If West Publishing Company really wanted to cut down on the length of the books, there is ample room for improvement. The 1989 "state" volume still contains the child support guidelines, a comprehensive set of the State Bar Rules (not just the Code of Professional Responsibility), the Code of Judicial Conduct,

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and the Rules of Judicial Administration. A reasonable argument could certainly be made for eliminating these items of less-than-universal interest.

Unfortunately, the 1989 version seems to have only added to the list of trivia contained in the "state" book. Not only are the Dallas Civil District Court rules still printed, while the rules of all other district courts are not; they have been moved to a position of prominence, sandwiched in between the Rules of Civil Procedure and Rules of Civil Evidence. In addition, for the first time, Texas lawyers can now review the "Rules Governing the Operation of the Texas Equal Access to Justice Program" and the "Rules Governing Admission to the Bar of Texas," including the subjects on the bar examination. The last is particularly interesting, since most attorneys wait until after they have passed the bar to purchase their law books.

Given all that West has chosen to include in its desk books, it is difficult to understand one major omission: The federal volume does not include the Federal Rules of Civil Procedure. The federal volume of "Texas Rules of Court" currently contains the Federal Rules of Evidence, the local rules of court for all Texas federal district courts and bankruptcy courts, and even the Federal Rules of Appellate Procedure, together with the Fifth Circuit's local rules. An attorney trying a case, however, would certainly want both the Federal Rules of Civil Procedure and Rules of Evidence close to hand. The omission of the Federal Rules of Civil Procedure therefore makes the federal "Texas Rules of Court" useless as a federal trial book.

One uncharitable conclusion that could be drawn from the omission of the Federal Rules of Civil Procedure is that West Publishing Company is trying to encourage attorneys to buy their "Federal Rules of Court" desk book—currently a bright orange paperback. This might seem self-defeating, since an omission of this magnitude from the "Texas Rules of Court" federal volume could encourage attorneys to buy only the state volume. On the other hand, since the price West charges is the same, whether

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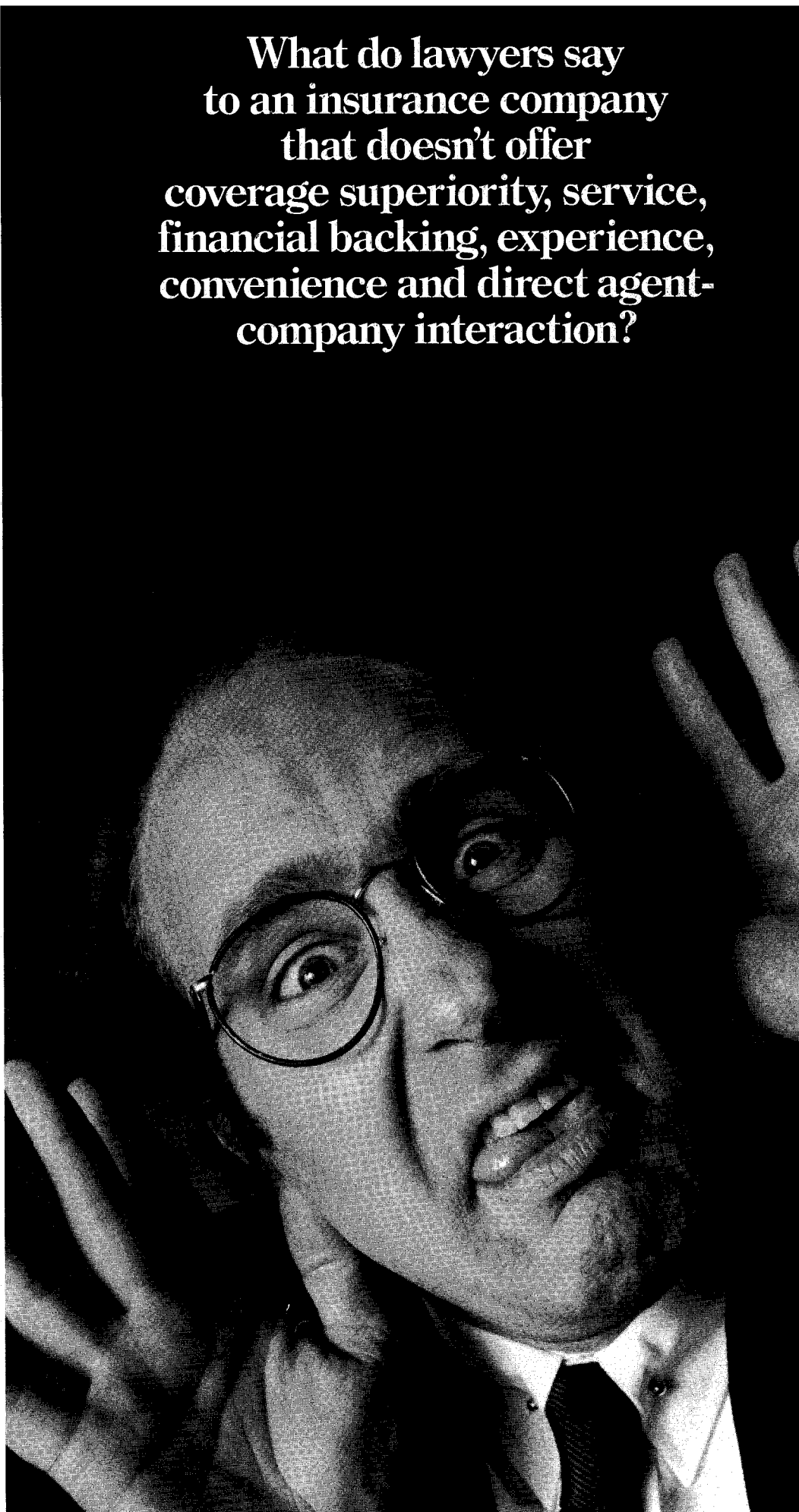
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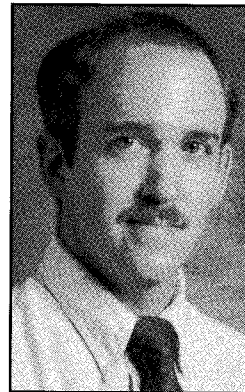


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one or both books is ordered, an attorney is pretty well boxed in.

One minor feature of the "Texas Rules of Court" also deserves brief mention. Small-print notations following the Rules of Civil Procedure and some of the Rules of Appellate Procedure occasionally shed some light on the derivation of rules and the meaning of rules amendments. West Publishing's treatment of these notes, however, is odd.

First, the notes are actually comments of the Supreme Court Advisory Committee and, as such, are probably entitled to a little more weight than if they were just typed up by some editorial assistant in Minnesota. There is, however, no explanation of the source of these comments in the "Texas Rules of Court" desk book, with the exception of a vague, one-sentence preamble to Tex. R. Civ. P. 1. Even that reference does not spell out the original source of the comments.

Second, these Advisory Committee notes are found only in the paperback "desk book" and not in the annotated "Vernon's" rules books. The Advisory Committee notes are the sort of "legislative history" that would be useful in detailed study of a court rule, much like the text of superseded rules and court interpretations that are found in the annotated hardbound volumes. By putting these annotations in the desk book, however, an in-depth study of a rule would necessarily involve use of both the hardbound volume and the paperback desk book.

The 1989 "Texas Rules of Court" also contains the most recent chapter in a mystery surrounding the Texas Rules of Appellate Procedure. When the appellate rules went into effect, in 1986, the disposition and derivation tables for the appellate rules, as well as comments by Prof. William Dorsaneo, chairperson of the Supreme Court Advisory Committee, were stuck at the beginning of the 1986 desk book, rather than next to the appellate

rules, as one might logically have expected. Even worse, the table of contents for the 1986 rule book was so cryptic that an attorney who did not already know that the tables and comments for the appellate rules were in the books could never have found them by using the table of contents.

The editors of the 1986 desk book can perhaps be forgiven for the gaffe. The Rules of Appellate Procedure were a last-minute development, so far as the 1986 desk book was concerned. By the time the next desk book came out, in 1988, West Publishing Company ought to have had a chance to think things out. Nonetheless, the 1988 desk book was only a marginal improvement. The tables and comments for the appellate rules were still contained in the preface of the book, rather than next to the appellate rules themselves. The disposition and derivation tables still gave no hint that they had anything to do with the appellate rules. Only Prof. Dorsaneo's comments were properly labeled.

So far as the appellate rules are concerned, the 1989 desk book took one step forward and one step back. On the plus side, the disposition and derivation tables for the appellate rules have finally been moved next to the appellate rules themselves, although the derivation table would have been more useful had it simply been integrated, rule-by-rule, as "source notes." The negative change in the 1989 book, so far as the appellate rules are concerned, is that Prof. Dorsaneo's comments have simply disappeared.

In summary, the main problem with the "Texas Rules of Court" desk book is that it lacks any coherent focus. If it is indeed a trial desk book of court rules and procedure for the Texas practitioner, then the book should contain the local rules of the Texas appellate courts and perhaps some relevant unannotated statutes from the Civil Practice and Remedies Code. Material currently in the book unrelated to court procedure, such as the "Rules Governing Admission to the Bar of Texas," should be jettisoned.

If, on the other hand, the "Texas Rules of Court" is simply a compilation of all the rules and other miscellaneous orders of the two high courts, regardless of whether those rules have anything to do with court practice and procedure, then the title of the book is somewhat misleading. If the book is indeed "Texas Rules and Orders of Court Affecting the Practice of Law," this would explain inclusion of the Child Support Guidelines, the rules governing IOLTA, the Code of Judicial Conduct, and all of the rules of the State Bar. But if this truly is the focus of the book, the Dallas district court rules are markedly out of place.

Overall, the 1989 "Texas Rules of Court" is much like its predecessors, a good idea that could be made a great deal better. If it is viewed as a rules of court source for the busy practitioner, then the publication could cut out a good share of the trivia it contains, and end up as a better product. What the "Texas Rules of Court" desk book readily lacks is any coherent philosophy, a concept of exactly what service it is designed to provide the Texas practitioner.

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