



Misc. Docket No. 11-9249

ORDER ADOPTING TEXAS RULE OF JUDICIAL ADMINISTRATION 16

ORDERED that:

1. Pursuant to the Texas Constitution, article V, section 31(a), and section 74.024 of the Texas Government Code, and in accordance with the Act of June 29, 2011, 82nd Leg., 1st C.S., ch. 3 (HB 79), Texas Rule of Judicial Administration 16 is adopted as follows.
2. Rule of Judicial Administration 16, with any modifications made after public comments are received, takes effect May 1, 2012. Any interested party may submit written comments before February 29, 2012, directed to Marisa Secco, Rules Attorney, at P.O. Box 12248, Austin, TX 78711 or marisa.secco@txcourts.gov.
3. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. 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*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of the Order for publication in the *Texas Register*.

Dated: December 12, 2011.

Wallace B. Jefferson, Chief Justice
Nathan L. Hecht, Justice
Dale Wainwright, Justice
David M. Medina, Justice
Paul W. Green, Justice
Phil Johnson, Justice
Don R. Willett, Justice
Eva M. Guzman, Justice
Debra H. Lehrmann, Justice

Rule 16. Additional Resources for Certain Cases

16.1 Authority and Applicability.

- (a) *Authority*. This rule is promulgated under Sections 74.251-74.257 of the Government Code.
- (b) *Applicability*. This rule applies to civil actions pending on or after May 1, 2012, in a constitutional county court, county court at law, probate court, or district court and that may require additional judicial resources.
- (c) *Other Cases*. This rule does not apply to:
 - (1) criminal matters;
 - (2) grants for local court improvement under Section 72.029 of the Government Code;
 - (3) cases in which judicial review is sought under Chapter 2001, Subchapter G, of the Government Code; or
 - (4) cases that have been transferred by the judicial panel on multidistrict litigation to a district court for consolidated or coordinated pretrial proceedings under Chapter 74, Subchapter H, of the Government Code.

16.2 Definitions.

As used in this rule:

- (a) *Judicial Committee for Additional Resources (JCAR)* means the judicial committee designated pursuant to Section 74.254 of the Government Code, including the chief justice of the Supreme Court of Texas and the presiding judges of the administrative judicial regions.
- (b) *JCAR Clerk* means the Administrative Director of the Office of Court Administration (OCA).
- (c) *Presiding Officer* means the Chief Justice of the Supreme Court of Texas.
- (d) *Trial court* means the judge of the court in which a case is filed or assigned.

16.3 Duties of the Office of Court Administration.

- (a) OCA will assist the JCAR in carrying out its duties under this rule by:
 - (1) providing support staff, meeting facilities, or technology to the JCAR;
 - (2) requesting appropriations for additional judicial resources from the legislature; and
 - (3) providing additional resources approved by the JCAR to the trial court.
- (b) The JCAR Clerk must file any requests for additional resources, and any written determination by a presiding judge or the JCAR of such a request, made pursuant to this rule.
- (c) At the conclusion of any case where additional resources were made available under this rule, OCA must prepare and file with the JCAR Clerk a report stating the additional resources provided and their estimated costs.

16.4 Considerations for Determining Whether a Case Requires Additional Resources.

In determining whether a case requires additional judicial resources, the trial court, presiding judge of the administrative judicial region in which the case is filed, and JCAR may consider whether a case involves or is likely to involve:

- (a) a large number of parties who are separately represented by counsel;
- (b) coordination with related actions pending in one or more courts in other counties of this state or in one or more United States district courts;
- (c) numerous pre-trial motions that present difficult or novel legal issues that will be time consuming to resolve;
- (d) a large number of witnesses or substantial documentary evidence;
- (e) substantial post-judgment supervision;
- (f) a trial that will last more than four weeks; or
- (g) a substantial additional burden on the trial court's docket and the resources available to the trial court to hear the case.

16.5 Additional Resources.

One or more of the following resources may be made available under this rule:

- (a) the assignment of an active or retired judge, subject to the consent of the trial court;
- (b) additional legal, administrative, or clerical personnel;
- (c) information and communication technology, including case management software, video conferencing, and specially designed courtroom presentation hardware or software to facilitate presentation of the evidence to the trier of fact;
- (d) specialized continuing legal education;
- (e) an associate judge;
- (f) special accommodations or furnishings for the parties;
- (g) other services or items determined necessary to try the case; and
- (h) any other appropriate resources.

16.6 Procedure for Requesting Additional Resources.

- (a) *Motion for Additional Resources.* A party in a case may move for the case to be designated as a case requiring additional resources. The motion must be in writing and must state:
 - (1) how the case involves or is likely to involve considerations that justify additional judicial resources;
 - (2) what additional judicial resources will promote the just and efficient conduct of the case;
 - (3) the time by which the additional resources are needed; and
 - (4) whether all parties in the case agree to the motion.
- (b) *Determination by Trial Court.* The trial court, upon motion complying with subparagraph (a), or on its own initiative,

must determine whether a case will require additional resources.

- (c) *Request for Additional Judicial Resources.* If the trial court determines that a case requires additional resources under this rule it must:
 - (1) prepare a written request that states the nature of the case, the requested resources, and why the resources are needed;
 - (2) submit the request to the presiding judge of the administrative region in which the case is filed; and
 - (3) forward a copy of the request to the JCAR Clerk at the mailing address or email address listed on the "Contact Information" page of OCA's website.
- (d) *Notice of Request for Additional Resources.* Upon receiving a request for additional resources, the JCAR clerk must send a copy of the request to the JCAR. Within 15 days of receiving the request, the presiding judge of the affected administrative judicial region or the JCAR Clerk must provide notice to the trial court of any action on the request, even if to report the inability to take action.

16.7 Review of Request for Additional Resources.

- (a) *Review by Presiding Judge of Administrative Judicial Region.* Upon receipt, the presiding judge of the administrative judicial region in which the case is filed must review the trial court's request for additional resources. If the presiding judge agrees with the trial court's determination that the case requires additional resources, the presiding judge must:
 - (1) use resources previously allotted to the presiding judge, if the resources are permitted to be used for the purpose requested; or
 - (2) submit a request for additional resources to the JCAR.
- (b) *Review by the JCAR.* If the presiding judge of the administrative judicial region in which the case is filed submits a request for additional resources to the JCAR under subparagraph (a)(2), the JCAR must determine whether the case requires additional resources. If the JCAR determines additional resources are required, the JCAR may make available any resources the JCAR considers necessary or appropriate.
- (c) *Notice of Determination of Request.* The presiding judge of the administrative judicial region in which the case is filed or, if a request is submitted to the JCAR under subparagraph (a)(2), the JCAR must notify the JCAR Clerk in writing upon approval or denial of a request for additional resources. On receipt of such notice, the JCAR Clerk must transmit a copy to the affected trial court.

16.8 Implementation of Additional Resources.

If the JCAR determines that a case requires additional resources, the presiding judge of the administrative judicial



region in which the case is filed and the Office of Court Administration must cooperate with the trial court or its designee in providing the approved additional resources.

16.9 Effect of Motion for Additional Resources.

- (a) *Jurisdiction.* The filing of a motion under this rule does not deprive the trial court of jurisdiction or suspend proceedings or orders in that court.
- (b) *No Stay or Continuance of Proceedings.* The filing of a motion under this rule is not grounds for a stay or continuance of the proceedings during the period the motion or request is being considered.

16.10 Review of Determinations by the Trial Court, Presiding Judge or JCAR.

A determination by the trial court, the presiding judge of the administrative region, or the JCAR of a request or motion for additional resources is not appealable or subject to review by mandamus.

16.11 Provisions for Additional Resources.

- (a) *Costs for Additional Resources.* The costs for additional resources provided under this rule must be paid by the state and must not be taxed against any party in the case for which the resources are provided or against the county in which the case is pending.
- (b) *Appropriations for Additional Resources.* Additional resources are subject to the availability of appropriations made by the legislature or as provided through budget execution authority or other budget adjustment method, or from funds made available by grants or donations.

Comment

Rule 16 is added to provide procedures for cases that require additional resources, as mandated by sections 74.252-74.257 of the Government Code, enacted effective January 1, 2012. The procedures in Rule 16 are not exclusive; judges may still be assigned as provided for in sections 74.052-74.062 of the Government Code. ☛

Misc. Docket No. 11-9250

FINAL APPROVAL OF AMENDMENTS TO TEXAS RULES OF CIVIL PROCEDURE 99, 107, 108, 117, 239, 534, 536a, 688, 689, 737.4, 742, AND 742a

ORDERED that:

1. Pursuant to section 22.004 of the Texas Government Code, and in accordance with the Act of May 19, 2011, 82nd Leg., R.S., ch. 345 (HB 962), Rules of Civil Procedure 99, 107, 108, 117, 239, 534, 536a, 688, 689, 737.4, 742, and 742a, are amended as follows.
2. By Order dated October 17, 2011, in Misc. Docket No. 11-9214, the Court proposed amendments to Rules 99, 107, 108, 117, 239, 536a, 688, 689, 737.4, 742, and 742a of the Texas Rules of Civil Procedure and invited public comment. Following public comment, the Court made additional revisions to the rules. This Order contains the final version of amended Rules of Civil Procedure 99, 107, 108, 117, 239, 534, 536a, 688, 689, 737.4, 742, and 742a that take effect January 1, 2012.
3. The provisions allowing a return of service to be filed electronically or by facsimile when those methods of filing are available supersede any contradictory local rules or court orders.
4. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. 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*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of the Order for publication in the *Texas Register*.

Dated: December 12, 2011.

Wallace B. Jefferson, Chief Justice
Nathan L. Hecht, Justice
Dale Wainwright, Justice
David M. Medina, Justice
Paul W. Green, Justice
Phil Johnson, Justice
Don R. Willett, Justice
Eva M. Guzman, Justice
Debra H. Lehrmann, Justice

RULE 99. ISSUANCE AND FORM OF CITATION

a. **Issuance.** Upon the filing of the petition, the clerk, when requested, shall forthwith issue a citation and deliver the citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citation and a copy of the petition. Upon request, separate or additional citations shall be issued by the clerk. The clerk must retain a copy of the citation in the court’s file.

...

RULE 107. RETURN OF SERVICE

- (a) ~~The return of the officer or authorized person executing the citation must complete a return of service. The return may, but need not, shall be endorsed on or attached to the citation. same; it shall state when the citation was served and the manner of service and be signed by the officer officially or by the authorized person. The return of citation by an authorized person shall be verified.~~
- (b) The return, together with any document to which it is attached, must include the following information:
 - (1) the cause number and case name;
 - (2) the court in which the case is filed;
 - (3) a description of what was served;
 - (4) the date and time the process was received for service;
 - (5) the person or entity served;
 - (6) the address served;
 - (7) the date of service or attempted service;
 - (8) the manner of delivery of service or attempted service;
 - (9) the name of the person who served or attempted to serve the process;
 - (10) if the person named in (9) is a process server certified under order of the Supreme Court, his or her identification number and the expiration date of his or her certification; and
 - (11) any other information required by rule or law.
- (c) When the citation was served by registered or certified mail as authorized by Rule 106, the return by the officer or authorized person must also contain the return receipt with the addressee’s signature.
- (d) When the officer or authorized person has not served the citation, the return shall show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if he can ascertainable.
- (e) The officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable, or the clerk of the court, the return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

“My name is _____, my date of birth is _____ (First) (Middle) (Last) _____, and my address is _____, _____, _____, _____ (Street) (City) (State) (Zip Code) _____. I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, _____ (Month) (Year)

Declarant”

- (f) Where citation is executed by an alternative method as authorized by Rule 106, proof of service shall be made in the manner ordered by the court.
- (g) The return and any document to which it is attached must be filed with the court and may be filed electronically or by facsimile, if those methods of filing are available.
- (h) ~~No default judgment shall be granted in any cause until the citation, or process under Rules 108 or 108a, with proof of service as provided by this rule or by Rules 108 or 108a, or as ordered by the court in the event citation is executed by an alternative method under Rule 106, shall have been on file with the clerk of the court ten days, exclusive of the day of filing and the day of judgment.~~

RULE 108. ~~DEFENDANT WITHOUT SERVICE IN ANOTHER STATE~~

~~Where the defendant is absent from the State, or is a nonresident of the State, the form of notice to such defendant of the institution of the suit shall be the same as prescribed for citation to a resident defendant; and such notice may be served by any disinterested person who is not less than eighteen years of age, competent to make oath of the fact in the same manner as provided in Rule 106 hereof. The return of service in such cases shall be endorsed on or attached to the original notice, and shall be completed in accordance with the form provided in Rule 107, and be signed and sworn to by the party making such service before some officer authorized by the laws of this State to take affidavits, under the hand and official seal of such officer. A defendant served with such notice shall be required to appear and answer in the same manner and time and under the same penalties as if he had been personally served with a citation within this State to the full extent that he may be required to appear and answer under the Constitution of the United States in an action either in rem or in personam.~~

RULE 117. RETURN OF CITATION BY PUBLICATION

~~The return of the officer executing such citation shall be indorsed or attached to the same, and show how and when the~~



citation was executed, specifying the dates of such publication, be signed by him officially and shall be accompanied by a printed copy of such publication.

RULE 239. JUDGMENT BY DEFAULT

Upon such call of the docket, or at any time after a defendant is required to answer, the plaintiff may in term time take judgment by default against such defendant if he has not previously filed an answer, and provided that the ~~citation with the officer's return thereon~~ return of service shall have been on file with the clerk for the length of time required by Rule 107.

RULE 534. ISSUANCE AND FORM OF CITATION

(a) **Issuance.** When a claim or demand is lodged with a justice for suit, the clerk when requested shall forthwith issue a citation and deliver the citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citation and a copy of the petition if any is filed. Upon request, separate or additional citations shall be issued by the clerk. The clerk must retain a copy of the citation in the court's file.

RULE 536a. DUTY OF OFFICER OR PERSON RECEIVING AND RETURN OF CITATION

- (a) The officer or authorized person to whom process is delivered shall endorse thereon the day and hour on which he received it, and shall execute and return the same without delay.
- (b) ~~The return of the officer or authorized person executing the citation must complete a return of service. The return may, but need not, shall be endorsed on or attached to the same citation; it shall state when the citation was served and the manner of service and be signed by the officer officially or by the authorized person. The return of citation by an authorized person shall be verified.~~
- (c) The return, together with any document to which it is attached, must include the following information:
 - (1) the cause number and case name;
 - (2) the court in which the case is filed;
 - (3) a description of what was served;
 - (4) the date and time the process was received for service;
 - (5) the person or entity served;
 - (6) the address served;
 - (7) the date of service or attempted service;
 - (8) the manner of delivery of service or attempted service;
 - (9) the name of the person who served or attempted to serve the process;
 - (10) if the person named in (9) is a process server certified under order of the Supreme Court, his or her identification number and the expiration date of his or her certification; and

(11) any other information required by rule or law.

- (d) When the citation was served by registered or certified mail as authorized by Rule 536, the return by the officer or authorized person must also contain the receipt with the addressee's signature.
- (e) When the officer or authorized person has not served the citation, the return shall show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if ~~he can~~ ascertainable.
- (f) The officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable, or the clerk of the court, the return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is _____, my date of birth is _____ (First) (Middle) (Last), and my address is _____, _____, _____, and _____ (Street) (City) (State) (Zip Code) _____. I declare under penalty of perjury that the (Country) foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, (Month) (Year)

Declarant"

- (g) Where citation is executed by an alternative method as authorized by Rule 536, proof of service shall be made in the manner ordered by the court.
- (h) The return and any document to which it is attached must be filed with the court and may be filed electronically or by facsimile, if those methods of filing are available.
- (i) No default judgment shall be granted in any cause until ~~the citation with~~ proof of service as provided by this rule, or as ordered by the court in the event citation is executed by an alternative method under Rule 536, shall have been on file with the clerk of the court three (3) days, exclusive of the day of filing and the day of judgment.

RULE 688. CLERK TO ISSUE WRIT

When the petition, order of the judge and bond have been filed, the clerk shall issue the temporary restraining order or temporary injunction, as the case may be, in conformity with the terms of the order, and deliver the same to the sheriff or any constable of the county of the residence of the person enjoined,

or to the applicant, as the latter shall direct. If several persons are enjoined, residing in different counties, the clerk shall issue such additional copies of the writ as shall be requested by the applicant. The clerk must retain a copy of the temporary restraining order or temporary injunction in the court's file.

RULE 689. SERVICE AND RETURN

The officer receiving a writ of injunction shall indorse thereon the date of its receipt by him, and shall forthwith execute the same by delivering to the party enjoined a true copy thereof. ~~The original shall be returned to the court from which it issued on or before the return day named therein with the action of the officer indorsed thereon or annexed thereto showing how and when he executed the same.~~ The officer must complete and file a return in accordance with Rule 107.

RULE 737.4. SERVICE AND RETURN OF CITATION; ALTERNATIVE SERVICE OF CITATION

(a) *Service and Return of Citation.* The sheriff, constable, or other person authorized by Rule 536 who receives the citation must serve the citation by delivering a copy of it, along with a copy of the petition and any attachments, to the landlord at least six days before the appearance date. At least one day before the appearance date, the person serving the citation must file a return of service with the court that return the citation, with the action written on the citation, to the justice who issued the citation. The citation must be issued, served, and returned in like manner as ordinary citations issued from a justice court.

RULE 742. SERVICE OF CITATION

The officer receiving such citation shall execute the same by delivering a copy of it to the defendant, or by leaving a copy thereof with some person over the age of sixteen years, at his usual place of abode, at least six days before the return day thereof; and on or before the day assigned for trial he must complete and file a return of service in accordance with Rule 536a with the court that shall return such citation, with his action written thereon, to the justice who issued the citation same.

RULE 742a. SERVICE BY DELIVERY TO PREMISES

...

(d) Such delivery and mailing to the premises shall occur at least six days before the return day of the citation; and on or before the day assigned for trial he must complete and file a return of service in accordance with Rule 536a with the court that shall return such citation, with his action written thereon, to the justice who issued the citation same. ☒

Misc. Docket No. 11-9251

ORDER ADOPTING AMENDMENTS TO TEXAS RULE OF CIVIL PROCEDURE 306, TEXAS RULES OF APPELLATE PROCEDURE 20, 25, 28, 32, AND 35, AND TEXAS RULE OF JUDICIAL ADMINISTRATION 6

ORDERED that:

1. Pursuant to the Texas Constitution, article V, section 31(a), and sections 22.004 and 74.024 of the Texas Government Code, and in accordance with the Act of May 5, 2011, 82nd Leg., R.S., ch. 75 (HB 906), the Supreme Court of Texas amends Rule of Civil Procedure 306 and Rules of Appellate Procedure 20, 25, 28, 32, and 35, effective March 1, 2012, and Rule of Judicial Administration 6, effective May 1, 2012.
2. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. 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*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of the Order for publication in the *Texas Register*.
3. These amendments may be changed in response to public comments received before February 29, 2012. Any interested party may submit written comments directed to Marisa Secco, Rules Attorney, at P.O. Box 12248, Austin, TX 78711, or marisa.secco@txcourts.gov.

Dated: December 12, 2011.

Wallace B. Jefferson, Chief Justice
Nathan L. Hecht, Justice
Dale Wainwright, Justice
David M. Medina, Justice
Paul W. Green, Justice
Phil Johnson, Justice
Don R. Willett, Justice
Eva M. Guzman, Justice
Debra H. Lehrmann, Justice



AMENDMENT TO TEXAS RULES OF CIVIL PROCEDURE:

Rule 306. Recitation of Judgment

The entry of the judgment shall contain the full names of the parties, as stated in the pleadings, for and against whom the judgment is rendered. In a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, the judgment must state the specific grounds for termination or for appointment of the managing conservator.

AMENDMENTS TO TEXAS RULES OF APPELLATE PROCEDURE:

Rule 20. When Party is Indigent

20.1 Civil Cases.

(e) *Contest to ~~Affidavit~~ Indigence.*

(1) If Affidavit Filed. The clerk, the court reporter, the court recorder, or any party may challenge an affidavit that is not accompanied by a TAJF certificate by filing — in the court in which the affidavit was filed — a contest to the affidavit. The contest must be filed on or before the date set by the clerk if the affidavit was filed in the appellate court, or within 10 days after the date when the affidavit was filed if the affidavit was filed in the trial court. The contest need not be sworn.

(2) If Indigence Presumed. The clerk, the court reporter, the court recorder, or any party may challenge a presumption of indigence that has been established as provided by Rule 20.1(a)(3) by filing a contest in the trial court. The contest must be filed within three days after a notice of appeal is filed. The contest must state specific facts demonstrating a good faith belief that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances. The contest need not be sworn.

(g) *Burden of Proof.*

(1) If Affidavit Filed. If a contest is filed, the party who filed the affidavit of indigence must prove the affidavit's allegations. If the indigent party is incarcerated at the time the hearing on a contest is held, the affidavit must be considered as evidence and is sufficient to meet the indigent party's burden to present evidence without the indigent party's attending the hearing.

(2) If Indigence Presumed. If a presumption of indigence has been established as provided by Rule 20.1(a)(3), the party filing the contest must prove that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances since the most recent determination of indigence.

(i) *Hearing and Decision in the Trial Court.*

(1) Notice Required. If the affidavit of indigence is filed in the trial court or a presumption of indigence has been established as provided by Rule 20.1(a)(3) and a contest is filed, or if the appellate court refers a contest to the trial court, the trial court must set a hearing and notify the parties and the appropriate court reporter of the setting.

(2) Time for Hearing. The trial court must either conduct a hearing or sign an order extending the time to conduct a hearing:

(A) within 10 days after the contest was filed, if initially filed in the trial court; or

(B) within 10 days after the trial court received a contest referred from the appellate court.

(3) Extension of Time for Hearing. The time for conducting a hearing on the contest must not be extended for more than 20 days from the date the order is signed.

(4) Time for Written Decision; Effect. Unless — within the period set for the hearing — the trial court signs an order sustaining the contest, the affidavit's allegations will be deemed true or the presumption of indigence will continue unabated, and the party will be allowed to proceed without advance payment of costs.

(j) *Review of Trial Court's Decision.*

(1) Motion. If the trial court sustains a contest, the party claiming indigence may seek review of the court's order by filing a motion challenging the order with the appellate court without advance payment of costs.

(2) Time for Filing; Extension. The motion must be filed within 10 days after the order sustaining the contest is signed, or within 10 days after the notice of appeal is filed, whichever is later. The appellate court may extend the time for filing on motion complying with Rule 10.5(b).

(3) Record. Within three days after a motion is filed, the trial court clerk and court reporter, respectively, must prepare, certify, and file the clerk's record and reporter's record of the indigence hearing, if any, and the hearing on the contest. The record must be provided without advance payment of costs.

(4) Ruling by Operation of Law. If the appellate court does not deny the motion within 10 days after it is filed, the motion is granted by operation of law.

(5) No Review of Order Overruling Contest. An order overruling a contest is not subject to appellate review.

(j) Record to be Prepared Without Prepayment. If a party establishes indigence, the trial court clerk and the court reporter must prepare the appellate record without prepayment.

(k) Partial Payment of Costs. If the party can pay or give securi-

ty for some of the costs, the court must order the party, in writing, to pay or give security, or both, to the extent of the party's ability. The court will allocate the payment among the officials to whom payment is due.

(~~hm~~) *Later Ability to Pay.* If a party who has proceeded in the appellate court without having to pay all the costs is later able to pay some or all of the costs, the appellate court may order the party to pay costs to the extent of the party's ability.

(~~mn~~) *Costs Defined.* As used in this rule, costs means:

- (1) a filing fee relating to the case in which the affidavit of inability is filed; and
- (2) the charges for preparing the appellate record in that case.

* * *

Rule 25. Perfecting Appeal

25.1. Civil Cases

* * *

(d) *Contents of Notice.* The notice of appeal must:

- (1) identify the trial court and state the case's trial court number and style;
- (2) state the date of the judgment or order appealed from;
- (3) state that the party desires to appeal;
- (4) state the court to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the notice must state that the appeal is to either of those courts;
- (5) state the name of each party filing the notice;
- (6) in an accelerated appeal, state that the appeal is accelerated and state whether it is a parental termination or child protection case, as defined in Rule 28.4;
- (7) in a restricted appeal:
 - (A) state that the appellant is a party affected by the trial court's judgment but did not participate — either in person or through counsel — in the hearing that resulted in the judgment complained of;
 - (B) state that the appellant did not timely file either a postjudgment motion, request for findings of fact and conclusions of law, or notice of appeal; and
 - (C) be verified by the appellant if the appellant does not have counsel.
- (8) state, if applicable, that the appellant is presumed indigent and may proceed without advance payment of costs as provided in Rule 20.1(a)(3).

* * *

Rule 28. Accelerated, Agreed, and Permissive Appeals in Civil Cases

* * *

28.4 Accelerated Appeals in Parental Termination and Child Protection Cases

a) *Application and Definitions.*

(1) Appeals in parental termination and child protection cases are governed by the rules of appellate procedure for accelerated appeals, except as otherwise provided in Rule 28.4.

(2) In Rule 28.4:

(A) a "parental termination case" means a suit in which termination of the parent-child relationship is at issue.

(B) a "child protection case" means a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship.

(b) *Appellate Record.*

(1) *Responsibility for Preparation of Reporter's Record.* In addition to the responsibility imposed on the trial court in Rule 35.3(c), when the reporter's responsibility to prepare, certify and timely file the reporter's record arises under Rule 35.3(b), the trial court must direct the official or deputy reporter to immediately commence the preparation of the reporter's record. The trial court must arrange for a substitute reporter, if necessary.

(2) *Extension of Time.* The appellate court may grant an extension of time to file a record under Rule 35.3(c); however, the extension or extensions granted must not exceed 60 days cumulatively, absent extraordinary circumstances.

(3) *Restriction on Preparation Inapplicable.* Section 13.003 of the Civil Practice & Remedies Code does not apply to an appeal from a parental termination or child protection case.

(c) *Remand for New Trial.* If the judgment of the appellate court reverses and remands a parental termination or child protection case for a new trial, the judgment must instruct the trial court to commence the new trial no later than 180 days after the mandate is issued by the appellate court.

* * *

Rule 32. Docketing Statement

32.1. Civil Cases

Upon perfecting the appeal in a civil case, the appellant must file in the appellate court a docketing statement that includes the following information:

* * *

(g) whether the appeal's submission should be given priority or whether the appeal is an accelerated one under Rule 28 or



another rule or statute, and whether it is a parental termination or child protection case, as defined in Rule 28.4;

Rule 35. Time to File Record; Responsibility for Filing Record

35.3. Responsibility for Filing Record

(c) *Courts to Ensure Record Timely Filed.* The trial and appellate courts are jointly responsible for ensuring that the appellate record is timely filed. The appellate court may extend the deadline to file the record if requested by the clerk or reporter. Each extension must not exceed 30 days in an ordinary or restricted appeal, or 10 days in an accelerated appeal. The appellate court must allow the record to be filed late when the delay is not the appellant's fault, and may do so when the delay is the appellant's fault. The appellate court may enter any order necessary to ensure the timely filing of the appellate record.

AMENDMENT TO TEXAS RULES OF JUDICIAL ADMINISTRATION

Rule 6. Time Standards for the Disposition of Cases

Rule 6.1 District and Statutory County Courts

District and statutory county court judges of the county in which cases are filed should, so far as reasonably possible, ensure that all cases are brought to trial or final disposition in conformity with the following time standards:

~~a.~~(a) **Criminal Cases.** As provided by Article 32A.02, Code of Criminal Procedure.

~~b.~~(b) **Civil Cases Other Than Family Law.**

(1) *Civil Jury Cases.* Within 18 months from appearance date.

(2) *Civil Nonjury Cases.* Within 12 months from appearance date.

~~c.~~(c) **Family Law Cases.**

(1) *Contested Family Law Cases.* Within 6 months from appearance date or within 6 months from the expiration of the waiting period provided by the Family Code where such is required, whichever is later.

(2) *Uncontested Family Law Cases.* Within 3 months from appearance date or within 3 months from the expiration of the waiting period provided by the Family Code where such is required, whichever is later.

~~d.~~ (d) **Juvenile Cases.** In addition to the requirements of Title 3, Texas Family Code:

(1) *Detention Hearings.* On the next business day following admission to any detention facility.

(2) *Adjudicatory or Transfer (Waiver) Hearings.*

(a) Concerning a juvenile in a detention facility: Not later than 10 days following admission to such a facility, except for good cause shown of record.

(b) Concerning a juvenile not in a detention facility: Not later than 30 days following the filing of the petition, except for good cause shown of record.

(3) *Disposition Hearing.* Not later than 15 days following the adjudicatory hearing. The court may grant additional time in exceptional cases that require more complex evaluation.

(4) Nothing herein shall prevent a judge from recessing a juvenile hearing at any stage of the proceeding where the parties are agreeable or when in the opinion of the judge presiding in the case the best interests of the child and of society shall be served.

~~e.~~ (e) **Complex Cases.** It is recognized that in especially complex cases or special circumstances it may not be possible to adhere to these standards.

Rule 6.2 Appeals in Certain Cases Involving the Parent-Child Relationship. In an appeal of a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, appellate courts should, so far as reasonably possible, ensure that the appeal is brought to final disposition in conformity with the following time standards:

(a) *Courts of Appeals.* Within 180 days of the date the notice of appeal is filed.

(b) *Supreme Court.* Within 180 days of the date the petition for review is filed. ❌

**FINAL APPROVAL OF AMENDMENTS TO
TEXAS RULES OF CIVIL PROCEDURE 735 AND 736**

ORDERED that:

1. Pursuant to Section 22.004 of the Texas Government Code, and in accordance with the Act of May 26, 2011, 82nd Leg., R.S., ch. 1282 (HB 1228), Rules of Civil Procedure 735 and 736 are amended as follows.
2. By Order dated October 17, 2011, in Misc. Docket No. 11-9215, the Court proposed amendments to Rules 735 and 736 of the Texas Rules of Civil Procedure and invited public comment. Following public comment, the Court made additional revisions to the rules. This Order contains the final version of amended Rules 735 and 736.
3. Amended Rules 735 and 736 apply in all proceedings filed on or after January 1, 2012. Proceedings filed before that date continue to be governed by the rules prior to these amendments.
4. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. 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*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of the Order for publication in the *Texas Register*.

Dated: December 12, 2011.

Wallace B. Jefferson, Chief Justice
Nathan L. Hecht, Justice
Dale Wainwright, Justice
David M. Medina, Justice
Paul W. Green, Justice
Phil Johnson, Justice
Don R. Willett, Justice
Eva M. Guzman, Justice
Debra H. Lehrmann, Justice

**PART VII. RULES RELATING TO SPECIAL PROCEEDINGS
SECTION 1. PROCEDURES RELATED TO FORECLOSURES
OF CERTAIN LIENS**

RULE 735. FORECLOSURES REQUIRING A COURT ORDER

735.1. Liens Affected

Rule 736 provides the procedure for obtaining a court order, when required, to allow foreclosure of a lien containing a power of sale in the security instrument or declaration creating the lien, including a lien securing any of the following:

- (a) a home equity loan, reverse mortgage, or home equity line of credit under article XVI, sections 50(a)(6), 50(k), and 50(t) of the Texas Constitution;
- (b) a transferred or property tax loan under sections 32.06 and 32.065 of the Tax Code; or
- (c) a property owners' association assessment under section 209.0092 of the Property Code.

735.2. Other Statutory and Contractual Foreclosure Provisions Unaltered

A Rule 736 order does not alter any foreclosure requirement or duty imposed under applicable law or the terms of the loan agreement, contract, or lien sought to be foreclosed. The only issue to be determined in a Rule 736 proceeding is whether a party may obtain an order under Rule 736 to proceed with foreclosure under applicable law and the terms of the loan agreement, contract, or lien sought to be foreclosed.

735.3. Judicial Foreclosure Unaffected

A Rule 736 order is not a substitute for a judgment for judicial foreclosure, but any lien that may be foreclosed using Rule 736 procedures may also be foreclosed by judgment in an action for judicial foreclosure.

RULE 736. EXPEDITED ORDER PROCEEDING

736.1. Application

- (a) *Where Filed.* An application for an expedited order allowing the foreclosure of a lien listed in Rule 735 to proceed must be filed in a county where all or part of the real property encumbered by the lien sought to be foreclosed is located or in a probate court with jurisdiction over proceedings involving the property.
- (b) *Style.* An application must be styled "In re: Order for Foreclosure Concerning [state: property's mailing address] under Tex. R. Civ. Proc. 736."
- (c) *When Filed.* An application may not be filed until the opportunity to cure has expired under applicable law and the loan agreement, contract, or lien sought to be foreclosed.
- (d) *Contents.* The application must:
 - (1) Identify by name and last known address each of the following parties:



- (A) “Petitioner” — any person legally authorized to prosecute the foreclosure;
- (B) “Respondent” — according to the records of the holder or servicer of the lien sought to be foreclosed:
 - (i) each person who breached an obligation secured by the lien;
 - (ii) each mortgagor, if any, of the lien sought to be foreclosed; and
 - (iii) for a transferred or property tax lien or contract, each owner of the property and the holder of any recorded preexisting first lien secured by the property.
- (2) Identify the property encumbered by the lien sought to be foreclosed by its commonly known street address and legal description.
- (3) Describe or state:
 - (A) the type of lien listed in Rule 735 sought to be foreclosed and its constitutional or statutory reference;
 - (B) the authority of the party seeking foreclosure, whether as the servicer, beneficiary, lender, investor, property owners’ association, or other person with authority to prosecute the foreclosure;
 - (C) each person obligated to pay the lien sought to be foreclosed;
 - (D) each mortgagor, if any, of the lien sought to be foreclosed who is not a maker or assumer of the underlying debt;
 - (E) as of a date that is not more than sixty days prior to the date the application is filed:
 - (i) the number of months the obligation secured by the lien sought to be foreclosed is in default,
 - (ii) if the default is monetary, the amount required to cure the default,
 - (iii) if the default is non-monetary, the facts creating the default, and
 - (iv) if applicable, the amount required to pay off the lien;
 - (F) that the requisite notice or notices to cure the default has or have been mailed to each person as required under applicable law and the loan agreement, contract, or lien sought to be foreclosed and that the opportunity to cure has expired; and
 - (G) that before the application was filed, any other action required under applicable law and the loan agreement, contract, or lien sought to be foreclosed was performed.
- (4) For a transferred or property tax lien or contract, state all allegations required to be contained in the applica-

tion in accordance with section 32.06(c-1)(l) of the Tax Code.

- (5) Conspicuously state that if the petitioner obtains a court order, the petitioner will proceed with a foreclosure of the property in accordance with applicable law and the terms of the lien sought to be foreclosed.
- (6) Include an affidavit of material facts in accordance with Rule 166a(f) signed by the petitioner or the servicer describing the basis for foreclosure and, depending on the type of lien sought to be foreclosed, attach a legible copy of:
 - (A) the note, original recorded lien, or pertinent part of a property owners’ association declaration establishing the lien, and current assignment of the lien, if assigned;
 - (B) each notice required to be mailed to any person under applicable law and the loan agreement, contract, or lien sought to be foreclosed before the application was filed and proof of mailing of each notice; and
 - (C) for a transferred or property tax lien or contract, the sworn document and certified statement attesting to the transfer of the lien.

736.2. Costs

All filing, citation, mailing, service, and other court costs and fees are costs of court and must be paid by petitioner at the time of filing an application with the clerk of the court.

736.3. Citation

- (a) *Issuance.*
 - (1) When the application is filed, the clerk must issue a separate citation for each respondent named in the application and one additional citation for the occupant of the property sought to be foreclosed.
 - (2) Each citation that is directed to a respondent must state that any response to the application is due the first Monday after the expiration of 38 days from the date the citation was placed in the custody of the U.S. Postal Service in accordance with the clerk’s standard mailing procedures and state the date that the citation was placed in the custody of the U.S. Postal Service by the clerk.
- (b) *Service and Return.*
 - (1) The clerk of the court must serve each citation, with a copy of the application attached, by both first class mail and certified mail. A citation directed to a respondent must be mailed to the respondent’s last known address that is stated in the application. A citation directed to the occupant of the property sought to be foreclosed must be mailed to Occupant of [state: property’s mail-

ing address] at the address of the property sought to be foreclosed that is stated in the application. For a citation mailed by the clerk in accordance with this subparagraph, the date of service is the date and time the citation was placed in the custody of the U.S. Postal Service in a properly addressed, postage prepaid envelope in accordance with the clerk's standard mailing procedures.

- (2) The clerk must complete a return of service in accordance with Rule 107, except that the return of service need not contain a return receipt.
- (3) The clerk must only charge one fee per respondent or occupant served under this rule.

736.4. Discovery

No discovery is permitted in a Rule 736 proceeding.

736.5. Response

- (a) *Generally.* A respondent may file a response contesting the application.
- (b) *Due Date.* Any response to the application is due the first Monday after the expiration of 38 days from the date the citation was placed in the custody of the U.S. Postal Service in accordance with the clerk's standard mailing procedures, as stated on the citation.
- (c) *Form.* A response must be signed in accordance with Rule 57 and may be in the form of a general denial under Rule 92, except that a respondent must affirmatively plead:
 - (1) why the respondent believes a respondent did not sign a loan agreement document, if applicable, that is specifically identified by the respondent;
 - (2) why the respondent is not obligated for payment of the lien;
 - (3) why the number of months of alleged default or the reinstatement or pay off amounts are materially incorrect;
 - (4) why any document attached to the application is not a true and correct copy of the original; or
 - (5) proof of payment in accordance with Rule 95.
- (d) *Other Claims.* A response may not state an independent claim for relief. The court must, without a hearing, strike and dismiss any counterclaim, cross claim, third party claim, intervention, or cause of action filed by any person in a Rule 736 proceeding.

736.6. Hearing Required When Response Filed

The court must not conduct a hearing under this rule unless a response is filed. If a response is filed, the court must hold a hearing after reasonable notice to the parties. The hearing on the application must not be held earlier than 20 days or later than 30 days after a request for a hearing is made by any party. At the hearing, the petitioner has the burden to prove by affi-

davits on file or evidence presented the grounds for granting the order sought in the application.

736.7. Default When No Response Filed

- (a) If no response to the application is filed by the due date, the petitioner may file a motion and proposed order to obtain a default order. For the purposes of obtaining a default order, all facts alleged in the application and supported by the affidavit of material facts constitute prima facie evidence of the truth of the matters alleged.
- (b) The court must grant the application by default order no later than 30 days after a motion is filed under (a) if the application complies with the requirements of Rule 736.1 and was properly served in accordance with Rule 736.4.
- (c) The return of service must be on file with the clerk of the court for at least 10 days before the court may grant the application by default.

736.8. Order

- (a) The court must issue an order granting the application if the petitioner establishes the basis for the foreclosure. Oth-

PUBLIC NOTICE

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

REAPPOINTMENT OF INCUMBENT MAGISTRATE JUDGE STEPHEN W. SMITH

The current term of the office of United States Magistrate Judge Stephen W. Smith at Houston, Texas, is due to expire July 21, 2012. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of Magistrate Judge Stephen W. Smith to a new 8 year term.

The duties of a Magistrate Judge position include the following:

1. Conducting most preliminary proceedings in criminal cases;
2. Trial and disposition of misdemeanor cases;
3. Conducting various pretrial matters and evidentiary proceedings on delegation from the judges of the district court; and,
4. Trial and disposition of civil cases upon consent of the litigants.

The court invites comments from members of the bar and the public as to whether the panel should recommend the reappointment of Magistrate Judge Stephen W. Smith to the court. Direct comments to: Stephen W. Smith Reappointment Panel; Attention: David J. Bradley, U.S. District Clerk, (under confidential cover), P.O. Box 61010, Houston, Texas 77208.

Comments must be received no later than **January 20, 2012, 5:00 p.m.**



erwise, the court must deny the application.

- (b) An order granting the application must describe:
 - (1) the material facts establishing the basis for foreclosure;
 - (2) the property to be foreclosed by commonly known mailing address and legal description;
 - (3) the name and last known address of each respondent subject to the order; and
 - (4) the recording or indexing information of each lien to be foreclosed.
- (c) An order granting or denying the application is not subject to a motion for rehearing, new trial, bill of review, or appeal. Any challenge to a Rule 736 order must be made in a suit filed in a separate, independent, original proceeding in a court of competent jurisdiction.

736.9. Effect of the Order

An order is without prejudice and has no res judicata, collateral estoppel, estoppel by judgment, or other effect in any other judicial proceeding. After an order is obtained, a person may proceed with the foreclosure process under applicable law and the terms of the lien sought to be foreclosed.

736.10. Bankruptcy

If a respondent provides proof to the clerk of the court that respondent filed bankruptcy before an order is signed, the proceeding under this rule must be abated.

736.11. Automatic Stay and Dismissal if Independent Suit Filed

- (a) A proceeding or order under this rule is automatically stayed if a respondent files a separate, original proceeding in a court of competent jurisdiction that puts in issue any matter related to the origination, servicing, or enforcement of the loan agreement, contract, or lien sought to be foreclosed prior to 5:00 p.m. on the Monday before the scheduled foreclosure sale.
- (b) Respondent must give prompt notice of the filing of the suit to petitioner or petitioner's attorney and the foreclosure trustee or substitute trustee by any reasonable means necessary to stop the scheduled foreclosure sale.
- (c) Within ten days of filing suit, the respondent must file a motion and proposed order to dismiss or vacate with the clerk of the court in which the application was filed giving notice that respondent has filed an original proceeding contesting the right to foreclose in a court of competent jurisdiction. If no order has been signed, the court must dismiss a pending proceeding. If an order has been signed, the court must vacate the Rule 736 order.
- (d) If the automatic stay under this rule is in effect, any foreclosure sale of the property is void. Within 10 business days of notice that the foreclosure sale was void, the trustee or substitute trustee must return to the buyer of the foreclosed property the purchase price paid by the buyer.
- (e) The court may enforce the Rule 736 process under chapters 9 and 10 of the Civil Practices and Remedies Code.

736.12. Attachment of Order to Trustee's Deed

A conformed copy of the order must be attached to the trustee or substitute trustee's foreclosure deed.

736.13. Promulgated Forms

The Supreme Court of Texas may promulgate forms that conform to this rule.

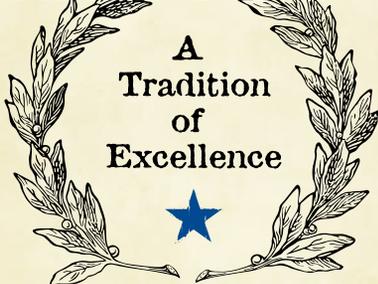
Comment to 2011 change

Rules 735 and 736 have been rewritten and expanded to cover property owners' associations' assessment liens, in accordance with amendments to chapter 209 of the Property Code. Rule 735.1 makes the expedited procedures of Rule 736 available only when the lienholder has a power of sale but a court order is nevertheless required by law to foreclose the lien. Rule 735.2 makes clear that Rule 736 is procedural only and does not affect other contractual or legal rights or duties. Any lien which can be foreclosed under Rule 736 may also be foreclosed in an action for judicial foreclosure, as Rule 735.3 states, but no lienholder is required to obtain both a Rule 736 order and a judgment for judicial foreclosure.

The requirement of conspicuousness in Rule 736.1(d)(5) has reference to section 1.201(b)(1) of the Business and Commerce Code. ❖

SAVE THE DATE!

Lone Star
LAWYERS



**STATE BAR OF TEXAS
ANNUAL MEETING
HOUSTON**

June 14-15, 2012