



Misc. Docket No. 12-9030

FINAL APPROVAL OF AMENDMENTS TO TEXAS RULE OF CIVIL PROCEDURE 306, TEXAS RULES OF APPELLATE PROCEDURE 20, 25, 28, 32, AND 35

ORDERED that:

1. Pursuant to section 22.004 of the Texas Government Code, and in accordance with the Act of May 5, 2011, 82nd Leg., R.S., ch. 75 (HB 906), Rule of Civil Procedure 306 and Rules of Appellate Procedure 20, 25, 28, 32, and 35 are amended as follows.
2. By Order dated December 12, 2011, in Misc. Docket No. 11-9251, the Court proposed amendments to Rule of Civil Procedure 306 and Rules of Appellate Procedure 20, 25, 28, 32, and 35 and invited public comment. Following public comment, the Court made revisions to the rules. This Order incorporates those revisions and contains the final version of Rule of Civil Procedure 306 and Rules of Appellate Procedure 20, 25, 28, 32, and 35, effective March 1, 2012.
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: February 13, 2012.

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.

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(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.

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(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.

(k) *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.

(l) *Partial Payment of Costs.* If the party can pay or give security 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.

(m) *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.

(n) *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.

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Rule 25. Perfecting Appeal

25.1. Civil Cases

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(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).

(e) *Service of Notice; ~~Copy Filed With Appellate Court.~~* The notice of appeal must be served on all parties to the trial court's final judgment or, in an interlocutory appeal, on all parties to the trial court proceeding. ~~A copy of the notice of appeal must be filed with the appellate court clerk.~~



(f) Clerk's Duties. The trial court clerk must immediately send a copy of the notice of appeal to the appellate court clerk and to the court reporter or court reporters responsible for preparing the reporter's record.

(fg) Amending the Notice. An amended notice of appeal correcting a defect or omission in an earlier filed notice may be filed in the appellate court at any time before the appellant's brief is filed. The amended notice is subject to being struck for cause on the motion of any party affected by the amended notice. After the appellant's brief is filed, the notice may be amended only on leave of the appellate court and on such terms as the court may prescribe.

(gh) Enforcement of Judgment Not Suspended by Appeal. The filing of a notice of appeal does not suspend enforcement of the judgment. Enforcement of the judgment may proceed unless:

- (1) the judgment is superseded in accordance with Rule 24, or
- (2) the appellant is entitled to supersede the judgment without security by filing a notice of appeal.

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 30 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 Promptly upon filing the notice of 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.