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September 20, 2007

VIA REGULAR MAIL

The Honorable Nathan Hecht
Justice, Supreme Court of Texas
201 W. 14th Street
Austin, Texas 78701

Re: State Bar of Texas Court Rules Committee
TRCP 301; TRAP 26.1(a)

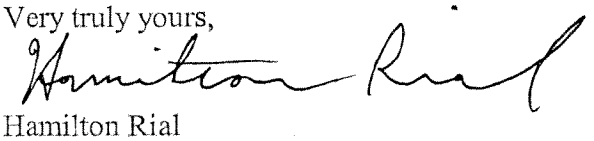
Dear Justice Hecht:

The Court Rules Committee appreciated the visit by you and your colleagues to our May 18, 2007 meeting. Attached for the Court's consideration is our recommendation regarding amendments to Rule 301 and Appellate Rule 26.1(a) to provide:

- a deadline to file a motion for judgment notwithstanding the verdict or to disregard findings;
- that a timely Rule 301 motion extends the Court's plenary power in the same manner as a motion for new trial; and
- that a Rule 301 motion is overruled by operation of law 75 days after the judgment is signed.

As always, we appreciate the Court's consideration of this recommendation.

Very truly yours,



Hamilton Rial

HR:sj
Encl.

cc: Chief Justice Wallace Jefferson (w/encl.)
Justice Dale Wainwright (w/encl.)
Jody Hughes (w/encl.)
Chip Babcock (w/encl.)

TEXAS RULE OF CIVIL PROCEDURE 301. JUDGMENTS

The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. Provided, that upon motion and reasonable notice the court may render judgment non obstante veredicto if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any jury finding on a question that has no support in the evidence. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

TEXAS RULE OF APPELLATE PROCEDURE 29.1(a). TIME TO PERFECT APPEAL

26.1 Civil Cases. The notice of appeal must be filed within 30 days after the judgment is signed, except as follows:

(a) the notice of appeal must be filed within 90 days after the judgment is signed if any party timely files:

(1) a motion for new trial;

(2) a motion to modify the judgment;

(3) a motion to reinstate under Texas Rule of Civil Procedure 165a; or

(4) a request for findings of fact and conclusions of law if findings and conclusions either are required by the Rules of Civil Procedure or, if not required, could properly be considered by the appellate court;

PROPOSED RULE 301. JUDGMENTS

1. The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the parties all the relief to which each may be entitled either in law or equity.

2. After the verdict has been entered under Rule 293, upon motion and reasonable notice the court may render judgment not withstanding the verdict if a directed verdict would have been proper. The court may, upon like motion and notice, set aside any jury finding on a question that has no support in the evidence. Such motions and any amended motions shall be filed not later than the time for filing a motion for new trial under Rule 329b. Any timely filed motion or amended motion shall extend the trial court's plenary power to grant a judgment notwithstanding the verdict, set aside any jury finding, grant a new trial or to vacate, modify, correct, or reform the judgment or appealable order for the same period as would a timely filed motion for new trial under Rule 329b. In the event an original or amended motion under this rule is not determined by written order signed within seventy-five days after the judgment was signed, it shall be considered overruled by operation of law on the expiration of that period.

3. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

PROPOSED TEXAS RULE OF APPELLATE PROCEDURE 29.1(a). TIME TO PERFECT APPEAL

26.1 Civil Cases. The notice of appeal must be filed within 30 days after the judgment is signed, except as follows:

(a) the notice of appeal must be filed within 90 days after the judgment is signed if any party timely files:

(1) a motion for new trial;

(2) a motion to modify the judgment;

(3) a motion to reinstate under Texas Rule of Civil Procedure 165a;

(4) a motion for judgment notwithstanding the verdict or to disregard jury findings under Texas Rule of Civil Procedure 301; or

(5) a request for findings of fact and conclusions of law if findings and conclusions either are required by the Rules of Civil Procedure or, if not required, could properly be considered by the appellate court;

Comment/Discussion

TRCP 301: Paragraph 3 is verbatim from the old rule. Paragraph 1 made minor grammatical changes in the first sentence of the old rule. Paragraph 2 is changed to:

- provide a deadline to file a motion for judgment nov or to disregard findings
- provide that a timely Rule 301 motion extends the court's plenary power
- provide that a Rule 301 motion is overruled by operation of law 75 days after the judgment is signed.

Currently, Rules 301 and 329b set no deadline to file a motion for judgment nov or to disregard findings. Also, they do not extend the time for the trial court to rule. Finally, the case law indicates that there must be a formal ruling on the motion to preserve error, which occasionally becomes an error preservation issue should a judge take it "under advisement" and never formally rule.

TRAP 26.1(a): Adds a Rule 301 motion to the list of motions that, if timely filed, extend the time to file a notice of appeal.