Texas Courts: A Survey

Appendix

Rules revised through Texas Supreme Court Misc. Docket No. 24-9010 (March 6, 2024) and Statutes revised through 88th Legislature 2023, Regular Session and 1st Called Session.

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The Texas Lawyer's Creed—A Mandate for Professionalism

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Adopted effective Sept. 1, 1941 including amendments through Texas Supreme Court Misc. Docket No. 24-9010 (March 6, 2024).

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Adopted effective February. 4, 1987 including amendments through Texas Supreme Court Misc. Docket No. 24-9010 (March 6, 2024).

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Texas Rules of Civil Procedure

PART I.
GENERAL RULES

RULE 1. OBJECTIVE OF RULES.

The proper objective of rules of civil procedure is to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law. To the end that this objective may be attained with as great expedition and dispatch and at the least expense both to the litigants and to the state as may be practicable, these rules shall be given a liberal construction.

RULE 2. SCOPE OF RULES.

These rules shall govern the procedure in the justice, county, and district courts of the State of Texas in all actions of a civil nature, with such exceptions as may be hereinafter stated. Where any statute in effect immediately prior to September 1, 1941, prescribed a rule of procedure in lunacy, guardianship, or estates of decedents, or any other probate proceedings in the county court differing from these Rules, and not included in the "List of Repealed Statutes," such statute shall apply; and where any statute in effect immediately prior to September 1, 1941, and not included in the "List of Repealed Statutes," prescribed a rule of procedure in any special statutory proceeding differing from these rules, such statute shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in bond or recognizance forfeitures in criminal cases are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in tax suits are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply; provided, however, that Rule 117a shall control with respect to citation in tax suits.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941; June 16, 1943, eff. Dec. 31, 1943; Aug. 18, 1947, eff. Dec. 31, 1947; April 10, 1986, eff. Sept. 1, 1986.)

RULE 3. CONSTRUCTION OF RULES.

Unless otherwise expressly provided, the past, present or future tense shall each include the other; the masculine, feminine, or neuter gender shall each include the other; and the singular and plural number shall each include the other.

RULE 3A. LOCAL RULES, FORMS, AND STANDING ORDERS.

(a) *General Rule*. An administrative judicial region or a court governed by these rules may promulgate local rules, forms, and standing orders that govern local practice.

(b) *Relationship with Other Authorities*. Local rules, forms, and standing orders must not be inconsistent with state or federal law or rules adopted by the Supreme Court of Texas. This requirement extends to any time period provided by these rules. If adopted by a court, local rules, forms, and standing orders must not be inconsistent with any rule of the administrative judicial region in which the court is located.

(c) *Publication Required*. To be effective, local rules, forms, and standing orders must be published on the Office of Court Administration's website.

(Renumbered from former rule 817 and amended Dec. 5, 1983, eff. April 1, 1984. Amended April 10, 1986, eff. Sept. 1 1986; July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990; Tex. Sup. Ct. Misc. Docket No. 22-9026, March 30, 2022 and Tex. Sup. Ct. Misc. Docket No. 22-9081, July 25, 2022, eff. Jan. 1, 2023.)

Notes and Comments

Comment to 1990 change: To make Texas Rules of Civil Procedure timetables mandatory and to preclude use of unpublished local rules or other "standing" orders to local practices to determine issues of substantive merit.

Comment to 2023 change: Rule 3a is amended to remove the requirement that the Supreme Court of Texas approve local rules and to expressly address local forms and standing orders. The amended rule provides that local rules, forms, and standing orders must not conflict with other laws or rules and that they are not effective unless published on the Office of Court Administration's website. Section 74.093(b) of the Texas Government Code imposes additional requirements for local rules.

RULE 4. COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Saturdays, Sundays, and legal holidays shall not be counted for any purpose in any time period of five days or less in these rules, except that Saturdays, Sundays, and legal holidays shall be counted for purpose of the three-day periods in Rules 21 and 21a, extending other periods by three days when service is made by mail.

(Amended by Order July 26, 1960, eff. Jan. 1, 1961; April 24, 1990, eff. Sept. 1, 1990; Aug. 16, 2013, eff. Jan. 1, 2014; Dec. 13, 2013, eff. Jan. 1, 2014.)

Notes and Comments

Comment to 1990 change: Amended to omit counting Saturdays, Sundays and legal holidays in all periods of less than five days with certain exceptions.

RULE 5. ENLARGEMENT OF TIME.

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (a) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or (b) upon motion permit the act to be done after the expiration of the specified period where good cause is shown for the failure to act. The court may not enlarge the period for taking any action under the rules relating to new trials except as stated in these rules. If any document is sent to the proper clerk by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail on or before the last day for filing same, the same, if received by the clerk not more than ten days tardily, shall be filed by the clerk and be deemed filed in time. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

(Amended by Order Oct. 12, 1949, eff. March 1, 1950; July 21, 1970, eff. Jan. 1, 1971; Oct. 3, 1972, eff. Feb. 1, 1973; July 22, 1975, eff. Jan. 1, 1976; April 10, 1986, eff. Sept. 1, 1986; April 24, 1990, eff. Sept. 1, 1990.)

Notes and Comments

Comment to 1990 change: To make the last date for mailing under Rule 5 coincide with the last date for filing.

RULE 6. SUITS COMMENCED ON SUNDAY.

No civil suit shall be commenced nor process issued or served on Sunday, except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings, provided that citation by publication published on Sunday shall be valid.

(Amended by Order Oct. 3, 1972, eff. Feb. 1, 1973.)

RULE 7. MAY APPEAR BY ATTORNEY.

Any party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney of the court.

RULE 8. ATTORNEY IN CHARGE.

On the occasion of a party's first appearance through counsel, the attorney whose signature first appears on the initial pleadings for any party shall be the attorney in charge, unless another attorney is specifically designated therein. Thereafter, until such designation is changed by written notice to the court and all other parties in accordance with Rule 21a, said attorney in charge shall be responsible for the suit as to such party. All communications from the court or other counsel with respect to a suit shall be sent to the attorney in charge.

(Amended by Order July 16, 1987, eff. Jan. 1, 1988.)

RULE 8A. [SUSPENDED, *SEE* MISC. DOCKET NO. 03-9207, DEC. 23, 2003, EFF. DEC. 30, 2003.]

(Adopted by Order Oct. 9, 2003, eff. Jan. 1, 2004, only in cases filed on or after effective date. Order Dec. 23, 2003 suspends effective date pending further order of the Court.)

RULE 9. NUMBER OF COUNSEL HEARD.

Not more than two counsel on each side shall be heard on any question or on the trial, except in important cases, and upon special leave of the court.

RULE 10. WITHDRAWAL OF ATTORNEY.

An attorney may withdraw from representing a party only upon written motion for good cause shown. If another attorney is to be substituted as attorney for the party, the motion shall state: the name, address, telephone number, telecopier number, if any, and State Bar of Texas identification number of the substitute attorney; that the party approves the substitution; and that the withdrawal is not sought for delay only. If another attorney is not to be substituted as attorney for the party, the motion shall state: that a copy of the motion has been delivered to the party; that the party has been notified in writing of his right to object to the motion; whether the party consents to the motion, the party's last known address and all pending settings and deadlines. If the motion is granted, the withdrawing attorney shall immediately notify the party in writing of any additional settings or deadlines of which the attorney has knowledge at the time of the withdrawal and has not already notified the party. The Court may impose further conditions upon granting leave to withdraw. Notice or delivery to a party shall be either made to the party in person or mailed to the party's last known address by both certified and regular first class mail. If the attorney in charge withdraws and another attorney remains or becomes substituted, another attorney in charge must be designated of record with notice to all other parties in accordance with Rule 21a.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990.)

Notes and Comments

Comment to 1990 change: The amendment repeals the present rule and clarifies the requirements for withdrawal.

RULE 11. AGREEMENTS TO BE IN WRITING.

Unless otherwise provided in these rules, no agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

Notes and Comments

Comment to 1988 change: The amendment makes it clear that Rule 11 is subject to modification by any other Rule of Civil Procedure.

RULE 12. ATTORNEY TO SHOW AUTHORITY.

A party in a suit or proceeding pending in a court of this state may, by sworn written motion stating that he believes the suit or proceeding is being prosecuted or defended without authority, cause the attorney to be cited to appear before the court and show his authority to act. The notice of the motion shall be served upon the challenged attorney at least ten days before the hearing on the motion. At the hearing on the motion, the burden of proof shall be upon the challenged attorney to show sufficient authority to prosecute or defend the suit on behalf of the other party. Upon his failure to show such authority, the court shall refuse to permit the attorney to appear in the cause, and shall strike the pleadings if no person who is authorized to prosecute or defend appears. The motion may be heard and determined at anytime before the parties have announced ready for trial, but the trial shall not be unnecessarily continued or delayed for the hearing.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 13. EFFECT OF SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS; SANCTIONS.

The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. Attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215-2b, upon the person who signed it, a represented party, or both.

Courts shall presume that pleadings, motions, and other papers are filed in good faith. No sanctions under this rule may be imposed except for good cause, the particulars of which must be stated in the sanction order. "Groundless" for purposes of this rule means no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law. A general denial does not constitute a violation of this rule. The amount requested for damages does not constitute a violation of this rule.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990.)

Notes and Comments

Comment to 1990 change: To require notice and hearing before a court determines to impose sanctions, to specify that any sanction imposed be appropriate, and to eliminate the 90-day "grace" period provided in the former version of the rule.

RULE 14. AFFIDAVIT BY AGENT.

Whenever it may be necessary or proper for any party to a civil suit or proceeding to make an affidavit, it may be made by either the party or his agent or his attorney.

RULE 14A. [REPEALED EFFECTIVE SEPT. 1, 1986]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 14B. RETURN OR OTHER DISPOSITION OF EXHIBITS.

The clerk of the court in which the exhibits are filed shall retain and dispose of the same as directed by the Supreme Court.

(Adopted by Order July 20, 1966, eff. Jan. 1, 1967. Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

Supreme Court Order Relating to Retention and Disposition of Exhibits

In compliance with the provisions of Rule 14b, the Supreme Court hereby directs that exhibits offered or admitted into evidence shall be retained and disposed of by the clerk of the court in which the exhibits are filed upon the following basis.

This order shall apply only to: (1) those cases in which judgment has been rendered on service of process by publication and in which no motion for new trial was filed within two years after judgment was signed; and, (2) all other cases in which judgment has been signed for one year and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by a final judgement as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court.

The party who offered an exhibit may withdraw it from the clerk's office within thirty days of the later of (1) a case becoming subject to this order, or (2) the effective date of this order. The clerk, unless otherwise directed by the court, may dispose of any exhibits remaining after such time period.

Misc. Docket No. 05-9026, Order Relating to Retention and Disposition of Deposition of Exhibits in Civil Case, Jan. 27, 2005, eff. June 1, 2005.

RULE 14C. DEPOSIT IN LIEU OF SURETY BOND.

Wherever these rules provide for the filing of a surety bond, the party may in lieu of filing the bond deposit cash or other negotiable obligation of the government of the United States of America or any agency thereof, or with leave of court, deposit a negotiable obligation of any bank or savings and loan association chartered by the government of the United States of America or any state thereof that is insured by the government of the United States of America or any agency thereof, in the amount fixed for the surety bond, conditioned in the same manner as would be a surety bond for the protection of other parties. Any interest thereon shall constitute a part of the deposit.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

PART II.
RULES OF PRACTICE IN DISTRICT AND COUNTY COURTS

SECTION 1.
GENERAL RULES

RULE 15. WRITS AND PROCESS.

The style of all writs and process shall be "The State of Texas;" and unless otherwise specially provided by law or these rules every such writ and process shall be directed to any sheriff or any constable within the State of Texas, shall be made returnable on the Monday next after expiration of twenty days from the date of service thereof, and shall be dated and attested by the clerk with the seal of the court impressed thereon; and the date of issuance shall be noted thereon.

RULE 16. SHALL ENDORSE ALL PROCESS.

Every officer or authorized person shall endorse on all process and precepts coming to his hand the day and hour on which he received them, the manner in which he executed them, and the time and place the process was served and shall sign the returns officially.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 17. OFFICER TO EXECUTE PROCESS.

Except where otherwise expressly provided by law or these rules, the officer receiving any process to be executed shall not be entitled in any case to demand his fee for executing the same in advance of such execution, but his fee shall be taxed and collected as other costs in the case.

RULE 18. WHEN JUDGE DIES DURING TERM, RESIGNS OR IS DISABLED.

If the judge dies, resigns, or becomes unable to hold court during the session of court duly convened for the term, and the time provided by law for the holding of said court has not expired, such death, resignation, or inability on the part of the judge shall not operate to adjourn said court for the term, but such court shall be deemed to continue in session. If a successor to such judge shall qualify and assume office during the term, or if a judge be transferred to said district from some other judicial district, he may continue to hold said court for the term provided, and all motions undisposed of shall be heard and determined by him, and statements of facts and bills of exception shall be approved by him. If the time for holding such court expires before a successor shall qualify, and before a judge can be transferred to said district from some other judicial district, then all motions pending, including those for new trial, shall stand as continued in force until such successor has qualified and assumed office, or a judge has been transferred to said district who can hold said court, and thereupon such judge shall have power to act thereon at the succeeding term, or on an earlier day in vacation, on notice to all parties to the motion, and such orders shall have the same effect as if rendered in term time. The time for allowing statement of facts and bills of exception from such orders shall date from the time the motion was decided.

(Amended by Order June 16, 1943, eff. Dec. 31, 1943.)

RULE 18A. RECUSAL AND DISQUALIFICATION OF JUDGES.

(a) *Motion; Form and Contents.* A party in a case in any trial court other than a statutory probate court or justice court may seek to recuse or disqualify a judge who is sitting in the case by filing a motion with the clerk of the court in which the case is pending. The motion:
   (1) must be verified;
   (2) must assert one or more of the grounds listed in Rule 18.2;
   (3) must not be based solely on the judge's rulings in the case; and
   (4) must state with detail and particularity facts that:

(A) are within the affiant's personal knowledge, except that facts may be stated on information and belief if the basis for that belief is specifically stated;

(B) would be admissible in evidence; and

(C) if proven, would be sufficient to justify recusal or disqualification.

(b) *Time for Filing Motion.*

(1) Motion to Recuse. A motion to recuse:

(A) must be filed as soon as practicable after the movant knows of the ground stated in the motion; and

(B) must not be filed after the tenth day before the date set for trial or other hearing unless, before that day, the movant neither knew nor reasonably should have known:

(i) that the judge whose recusal is sought would preside at the trial or hearing; or

(ii) that the ground stated in the motion existed.

(2) Motion to Disqualify. A motion to disqualify should be filed as soon as practicable after the movant knows of the ground stated in the motion.

(c) *Response to Motion.*

(1) By Another Party. Any other party in the case may, but need not, file a response to the motion. Any response must be filed before the motion is heard.

(2) By the Respondent Judge. The judge whose recusal or disqualification is sought should not file a response to the motion.

(d) Service of Motion or Response. A party who files a motion or response must serve a copy on every other party. The method of service must be the same as the method of filing, if possible.

(e) Duties of Clerk.

(1) Delivery of Motion or Response. When a motion or response is filed, the clerk of the court must immediately deliver a copy to the respondent judge and to the presiding judge of the administrative judicial region in which the court is located ("the regional presiding judge").

(2) Delivery of Order of Recusal or Referral. When a respondent judge signs and files an order of recusal or referral, the clerk of the court must immediately deliver a copy to the regional presiding judge.

(f) *Duties of Respondent Judge; Failure to Comply*.

(1) Responding to Motion. Regardless of whether the motion complies with this rule, the respondent judge, within three business days after the motion is filed, must either:

(A) sign and file with the clerk an order of recusal or disqualification; or

(B) sign and file with the clerk an order referring the motion to the regional presiding judge.

(2) Restrictions on Further Action.

(A) Motion Filed Before Evidence Offered at Trial. If a motion is filed before evidence has been offered at trial, the respondent judge must take no further action in the case until the motion has been decided, except for good cause stated in writing or on the record.

(B) Motion Filed After Evidence Offered at Trial. If a motion is filed after evidence has been offered at trial, the respondent judge may proceed, subject to stay by the regional presiding judge.

(3) Failure to Comply. If the respondent judge fails to comply with a duty imposed by this rule, the movant may notify the regional presiding judge.

(g) Duties of Regional Presiding Judge.

(1) Motion. The regional presiding judge must rule on a referred motion or assign a judge to rule. If a party files a motion to recuse or disqualify the regional presiding judge, the regional presiding judge may still assign a judge to rule on the original, referred motion. Alternatively, the regional presiding judge may sign and file with the clerk an order referring the second motion to the Chief Justice of the Supreme Court of Texas for consideration.

(2) Order. The ruling must be by written order.

(3) Summary Denial for Noncompliance.

(A) Motion to Recuse. A motion to recuse that does not comply with this rule may be denied without an oral hearing. The order must state the nature of the noncompliance. Even if the motion is amended to correct the stated noncompliance, the motion will count for purposes of determining whether a tertiary recusal motion has been filed under the Civil Practice and Remedies Code.

(B) Motion to Disqualify. A motion to disqualify may not be denied on the ground that it was not filed or served in compliance with this rule.

(4) Interim Orders. The regional presiding judge or judge assigned to decide the motion may issue interim or ancillary orders in the pending case as justice may require.

(5) Discovery. Except by order of the regional presiding judge or the judge assigned to decide the motion, a subpoena or discovery request may not issue to the respondent judge and may be disregarded unless accompanied by the order.

(6) Hearing.

(A) Time. The motion must be heard as soon as practicable and may be heard immediately after it is referred to the regional presiding judge or an assigned judge.

(B) Notice. Notice of the hearing must be given to all parties in the case.

(C) By Telephone. The hearing may be conducted by telephone on the record. Documents submitted by facsimile or email, otherwise admissible under the rules of evidence, may be considered.

(7) Reassignment of Case if Motion Granted. If the motion is granted, the regional presiding judge must transfer the case to another court or assign another judge to the case.

(h) *Sanctions.* After notice and hearing, the judge who hears the motion may order the party or attorney who filed the motion, or both, to pay the reasonable attorney fees and expenses incurred by other parties if the judge determines that the motion was:
  (1) groundless and filed in bad faith or for the purpose of harassment; or
  (2) clearly brought for unnecessary delay and without sufficient cause.

(i) *Chief Justice*. The Chief Justice of the Supreme Court of Texas may assign judges and issue any orders permitted by this rule or pursuant to statute.

(j) *Appellate Review*.
  (1) Order on Motion to Recuse.
    (A) Denying Motion. An order denying a motion to recuse may be reviewed only for abuse of discretion on appeal from the final judgment.
    (B) Granting Motion. An order granting a motion to recuse is final and cannot be reviewed by appeal, mandamus, or otherwise.
  (2) Order on Motion to Disqualify. An order granting or denying a motion to disqualify may be reviewed by mandamus and may be appealed in accordance with other law.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981. Amended by Order Dec. 5 1983, eff. April 1, 1984; April 10, 1986, eff. Sept. 1, 1986; July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990; July 5, 2011, eff. Aug. 1, 2011; July 22, 2011, eff. Aug. 1, 2011.)

RULE 18B. GROUNDS FOR DISQUALIFICATION AND RECUSAL OF JUDGES.

(a) *Grounds for Disqualification.* A judge must disqualify in any proceeding in which:
  (1) the judge has served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter;
  (2) the judge knows that, individually or as a fiduciary, the judge has an interest in the subject matter in controversy; or
  (3) either of the parties may be related to the judge by affinity or consanguinity within the third degree.

(b) *Grounds for Recusal*. A judge must recuse in any proceeding in which:
  (1) the judge's impartiality might reasonably be questioned;
  (2) the judge has a personal bias or prejudice concerning the subject matter or a party;
  (3) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;
  (4) the judge or a lawyer with whom the judge previously practiced law has been a material witness concerning the proceeding;
  (5) the judge participated as counsel, adviser, or material witness in the matter in controversy, or expressed an opinion concerning the merits of it, while acting as an attorney in government service;
  (6) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
  (7) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
    (A) is a party to the proceeding or an officer, director, or trustee of a party;
    (B) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
    (C) is to the judge's knowledge likely to be a material witness in the proceeding; or
  (8) the judge or the judge's spouse, or a person within the first degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.

(c) *Financial Interests*. A judge should inform himself or herself about personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children residing in the household.

(d) *Terminology and Standards*. In this rule:
  (1) "proceeding" includes pretrial, trial, or other stages of litigation;
  (2) the degree of relationship is calculated according to the civil law system;
  (3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
  (4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
    (A) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
    (B) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
    (C) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
    (D) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities; and
    (E) an interest as a taxpayer or utility ratepayer, or any similar interest, is not a "financial interest" unless the outcome of the proceeding could substantially affect the liability of the judge or a person related to the judge within the third degree more than other judges.

(e) *Waiving Ground for Recusal*. The parties to a proceeding may waive any ground for recusal after it is fully disclosed on the record.

(f) *Discovery and Divestiture*. If a judge does not discover that the judge is recused under subparagraph (b)(6) or (b)(7)(C) until after the judge has devoted substantial time to the matter, the judge is not required to recuse himself or herself if the judge or the person related to the judge divests himself or herself of the interest that would otherwise require recusal.

(Adopted by Order July 15, 1987, eff. Jan. 1, 1988. Amended by Order April 24, 1990, eff. Sept. 1, 1990; July 5, 2011, eff. Aug. 1, 2011.)

Comment to 2011 Change: Rule 18a governs the procedure for recusing or disqualifying a judge sitting in any trial court other than a statutory probate court or justice court. Chapter 25 of the Government Code governs statutory probate courts, Rule 528 governs justice courts, and Chapter 29 of the Government Code governs municipal courts. Under Rule 18.a, a judge's rulings may not be the sole basis for a motion to recuse or disqualify the judge. But when one or more sufficient other bases are raised, the judge hearing the motion may consider evidence of rulings when considering whether to grant the motion. For purposes of this rule, the term "rulings" is not meant to encompass a judge's statements or remarks about a case.

The amendments to Rule 18b are not intended to be substantive.

RULE 18C. RECORDING AND BROADCASTING OF COURT PROCEEDINGS.

A trial court may permit broadcasting televising, recording, or photographing of proceedings in the courtroom only in the following circumstances:

(a) in accordance with guidelines promulgated by the Supreme Court for civil cases, or

(b) when broadcasting, televising, recording, or photographing will not unduly distract participants or impair the dignity of the proceedings and the parties have consented, and consent to being depicted or recorded is obtained from each witness whose testimony will be broadcast, televised, or photographed, or

(c) the broadcasting, televising, recording, or photographing of investiture, or ceremonial proceedings.

(Adopted by Order April 24, 1990, eff. Sept. 1, 1990.)

RULE 19. NON-ADJOURNMENT OF TERM.

Every term of court shall commence and convene by operation of law at the time fixed by statute without any act, order, or formal opening by a judge or other official thereof, and shall continue to be open at all times until and including the last day of the term unless sooner adjourned by the judge thereof.

(Amended by Order June 16, 1943, eff. Dec. 31, 1943.)

RULE 20. MINUTES READ AND SIGNED.

On the last day of the session, the minutes shall be read, corrected and signed in open court by the judge. Each special judge shall sign the minutes of such proceedings as were had by him.

RULE 21. FILING AND SERVING PLEADINGS AND MOTIONS.

(a) *Filing and Service Required*. Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, must be filed with the clerk of the court in writing, must state the grounds therefore, must set forth the relief or order sought, and at the same time a true copy must be served on all other parties, and must be noted on the docket.

(b) *Service of Notice of Court Proceeding*. An application to the court for an order and notice of any court proceeding, as defined in Rule 21d(a), not presented during a court proceeding, must be served upon all other parties not less than three days before the time specified for the court proceeding, unless otherwise provided by these rules or shortened by the court. Notice of any court proceeding must contain the information needed for participants, as defined in Rule 21d(a), to participate in the proceeding, including the location of the proceeding or instructions for joining the proceeding electronically, the court's designated contact information, and instructions for submitting evidence. A court must publish the information needed for participants to participate in its proceedings.

(c) *Multiple Parties*. If there is more than one other party represented by different attorneys, one copy of each pleading must be served on each attorney in charge.

(d) *Certificate of Service*. The party or attorney of record, must certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion or application.

(e) *Additional Copies*. After one copy is served on a party that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.

(f) *Electronic Filing*.

(1) Requirement. Except in juvenile cases under Title 3 of the Family Code and truancy cases under Title 3A of the Family Code, attorneys must electronically file documents in courts where electronic filing has been mandated. Attorneys practicing in courts where electronic filing is available but not mandated and unrepresented parties may electronically file documents, but it is not required.

(2) Email Address. The email address of an attorney or unrepresented party who electronically files a document must be included on the document.

(3) Mechanism. Electronic filing must be done through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration.

(4) Exceptions.

(A) Wills are not required to be filed electronically.

(B) The following documents must not be filed electronically:

(i) documents filed under seal or presented to the court in camera; and

(ii) documents to which access is otherwise restricted by law or court order.

(C) For good cause, a court may permit a party to file other documents in paper form in a particular case.

(5) Timely Filing. Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight (in the court's time zone) on the filing deadline. An electronically filed document is deemed filed when transmitted to the filing party's electronic filing service provider, except:

(A) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday; and

(B) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date that the motion is granted.

(6) Technical Failure. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court. If the missed deadline is one imposed by these rules, the filing party must be given a reasonable extension of time to complete the filing.

(7) Electronic Signatures. A document that is electronically served, filed, or issued by a court or clerk is considered signed if the document includes:

(A) a "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(B) an electronic image or scanned image of the signature.

(8) Format. An electronically filed document must:

(A) be in text-searchable portable document format (PDF);

(B) be directly converted to PDF rather than scanned, if possible;

(C) not be locked; and

(D) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court.

(9) Paper Copies. Unless required by local rule, a party need not file a paper copy of an electronically filed document.

(10) Electronic Notices From the Court. The clerk may send notices, orders, or other communications about the case to the party electronically. A court seal may be electronic.

(11) Non-Conforming Documents. The clerk may not refuse to file a document that fails to conform with this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format.

(12) Original Wills. When a party electronically files an application to probate a document as an original will, the original will must be filed with the clerk within three business days after the application is filed.

(13) Official Record. The clerk may designate an electronically filed document or a scanned paper document as the official court record. The clerk is not required to keep both paper and electronic versions of the same document unless otherwise required by local rule. But the clerk must retain an original will filed for probate in a numbered file folder.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941; Aug. 18, 1947, eff. Dec. 31, 1947; July 11, 1977, eff. Jan. 1, 1978; June 10, 1980, eff. Jan. 1, 1981; April 24, 1990, eff. Sept. 1, 1990; Aug. 16, 2013, eff. Jan. 1, 2014; Dec. 13, 2013, eff. Jan. 1, 2014; Tex. Sup. Ct. Misc. Docket No. 15-9155 Aug. 28, 2015, eff. Sept. 1, 2015; Tex. Sup. Ct. Misc. Docket No. 22-9091, Oct. 14, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9004, Jan. 27, 2023, eff. Feb. 1, 2023.)

Comment to 2023 change: Rule 21(b) is amended to clarify requirements for notices.

Comment to 2013 Change: Rule 21 is revised to incorporate rules for electronic filing, in accordance with the Supreme Court's order—Misc. Docket No. 12-9206, amended by Misc. Docket Nos. 13-9092 and 13-9164—mandating electronic filing in civil cases beginning on January 1, 2014. The mandate will be implemented according to the schedule in the order and will be completed by July 1, 2016. The revisions reflect the fact that the mandate will only apply to a subset of Texas courts until that date.

Technology Standards (These standards apply to documents filed electronically under Texas Rule of Civil Procedure 21 and Texas Rule of Appellate Procedure 9.)

RULE 21A. METHODS OF SERVICE.

(a) Methods of Service. Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record in the manner specified below:

(1) Documents Filed Electronically. A document filed electronically under Rule 21 must be served electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager. If the email address of the party or attorney to be served is not on file with the electronic filing manager, the document may be served on that party or attorney under subparagraph (2).

(2) Documents Not Filed Electronically. A document not filed electronically may be served in person, by mail, by commercial delivery service, by fax, by email, or by such other manner as the court in its discretion may direct.

(b) When Complete.

(1) Service by mail or commercial delivery service shall be complete upon deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service.

(2) Service by fax is complete on receipt. Service completed after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

(3) Electronic service is complete on transmission of the document to the serving party's electronic filing service provider. The electronic filing manager will send confirmation of service to the serving party.

(c) Time for Action After Service. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.

(d) Who May Serve. Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify.

(e) Proof of Service. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or an attorney of record, or the return of the officer, or the affidavit of any other person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the document was not received, or, if service was by mail, that the document was not received within three days from the date that it was deposited in the mail, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just.

(f) Procedures Cumulative. These provisions are cumulative of all other methods of service prescribed by these rules.

(Adopted by Order Aug. 18, 1947, eff. Dec. 31, 1947. Amended by Order July 21, 1970, eff. Jan. 1, 1971; Oct. 3, 1972, eff. Feb. 1, 1973, July 11 1977, eff. Jan. 1, 1978; June 10, 1980, eff. Jan. 1, 1981; Dec. 5, 1983, eff. April 1, 1984; April 24, 1990, eff. Sept. 1, 1990; Aug. 16, 2013, eff. Jan. 1, 2014; Dec. 13, 2013, eff. Jan. 1, 2014.)

Comment to 2013 Change: Rule 21a is revised to incorporate rules for electronic service in accordance with the Supreme Court's order—Misc. Docket No. 12-9206, amended by Misc. Docket Nos. 13-9092 and 13-9164—mandating electronic filing in civil cases beginning on January 1, 2014.

Technology Standards (These standards apply to documents filed electronically under Texas Rule of Civil Procedure 21 and Texas Rule of Appellate Procedure 9.)

RULE 21B. SANCTIONS FOR FAILURE TO SERVE OR DELIVER COPY OF PLEADINGS AND MOTIONS.

If any party fails to serve on or deliver to the other parties a copy of any pleading, plea, motion, or other application to the court for an order in accordance with Rules 21 and 21a, the court may in its discretion, after notice and hearing, impose an appropriate sanction available under Rule 215-2b.

(Adopted by Order April 24, 1990, eff. Sept. 1, 1990.)

[RULE 21C. REPEALED EFFECTIVE SEPTEMBER 1, 1986.]

RULE 21C. PRIVACY PROTECTION FOR FILED DOCUMENTS.

(a) Sensitive Data Defined. Sensitive data consists of:

(1) a driver's license number, passport number, social security number, tax identification number, or similar government-issued personal identification number;

(2) a bank account number, credit card number, or other financial account number; and

(3) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed.

(b) Filing of Documents Containing Sensitive Data Prohibited. Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document, except for wills and documents filed under seal, containing sensitive data may not be filed with a court unless the sensitive data is redacted.

(c) Redaction of Sensitive Data; Retention Requirement. Sensitive data must be redacted by using the letter "X" in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the case and any related appellate proceedings filed within six months of the date the judgment is signed.

(d) Notice to Clerk. If a document must contain sensitive data, the filing party must notify the clerk by:

(1) designating the document as containing sensitive data when the document is electronically filed; or

(2) if the document is not electronically filed, by including, on the upper lefthand side of the first page, the phrase: "NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA."

(e) Non-Conforming Documents. The clerk may not refuse to file a document that contains sensitive data in violation of this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit a redacted, substitute document.

(f) Restriction on Remote Access. Documents that contain sensitive data in violation of this rule must not be posted on the Internet.

(Adopted by Order Aug. 16, 2013, eff. Jan. 1, 2014; Dec. 13, 2013, eff. Jan. 1, 2014.)

Comment to 2013 Change: Rule 21c is added to provide privacy protection for documents filed in civil cases.

RULE 21D. APPEARANCES AT COURT PROCEEDINGS.

(a) Definitions.

(b) Participant Method of Appearance.

(1) Unless the notice of court proceeding states otherwise, a person who participates in a court proceeding does so by physical presence in the courtroom. Upon appropriate notice by a party or the court, a court may allow or require a participant to appear at a court proceeding by videoconference, teleconference, or other available electronic means, except as otherwise provided in (2).

(2) A court must not require:

(A) a party or lawyer to appear electronically for a court proceeding in which oral testimony is heard, absent good cause or the agreement of the parties; or

(B) a lawyer, party, or juror to appear electronically for a jury trial, absent the agreement of the parties.

(c) Judge Method of Appearance; Location. A judge may appear at a court proceeding by videoconference, teleconference, or other available electronic means. However, even if appearing electronically, a judge must conduct the court proceeding from a location required by law.

(d) Objection. A party may object to any method of appearance, stating good cause for the objection. The objection must be made within a reasonable time after the party receives notice of the appearance. The court may, but is not required to, conduct a hearing on the objection. Before proceeding by the objected-to method of appearance, the court must rule on the objection and timely communicate the ruling to the parties in a written order or on the record.

(e) Factors. In determining good cause under this rule, the court should consider factors such as:

(1) case type;

(2) court proceeding type;

(3) the number of parties and witnesses;

(4) the complexity of the legal and factual issues;

(5) the type of evidence to be submitted, if any;

(6) technological restrictions such as lack of access to or proficiency in necessary technology;

(7) travel restrictions such as lack of transportation, distance, or inability to take off work;

(8) whether a method of appearance is best suited to provide necessary language access services for a person with limited English proficiency or accommodations for a person with a disability; and

(9) any previous abuse of a method of appearance.

(f) Open Courts. If a court conducts a court proceeding in which all participants appear electronically, the court must:

(1) provide reasonable notice to the public of how to observe the court proceeding; and

(2) provide the public the opportunity to observe the court proceeding, unless the court has determined that it must close the court proceeding to protect an overriding interest, considered all less-restrictive alternatives to closure, and made findings on the record adequate to support closure.

(Adopted by Tex. Sup. Ct. Misc. Docket No. 22-9091, Oct. 14, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9004, Jan. 27, 2023, eff. Feb. 1, 2023. Comment to 2023 change amended by Tex. Sup. Ct. Misc. Docket No. 23-9047, Aug. 1, 2023, eff. Aug. 1, 2023.)

Comment to 2023 change: New Rule 21d clarifies procedures for appearances at court proceedings. Paragraph (a) defines "court proceeding" and "participant." Paragraph (b) governs a participant's method of appearance. Certain statutes expressly prohibit or further permit electronic appearances, in which case the governing statute applies. Paragraph (c) provides that the judge may appear by electronic means, but it requires the judge to appear electronically from a location required by law. See, e.g., TEX. CONST. art. V, § 7(d); TEX. GOV'T CODE §§ 24.030(a), 26.002(c). Nothing in paragraph (c) permits the judge to conduct a proceeding away from a location required by law. Paragraph (d) addresses objections to any method of appearance, and paragraph (e) addresses good-cause factors. Paragraph (f) recognizes the public's right to reasonable notice of and access to a fully electronic proceeding unless there is an overriding interest. A court should rarely close a court proceeding from public observation, and in such an exceptional case, the court must use the least restrictive measure to protect the overriding interest.

SECTION 2.
INSTITUTION OF SUIT

RULE 22. COMMENCED BY PETITION.

A civil suit in the district or county court shall be commenced by a petition filed in the office of the clerk.

RULE 23. SUITS TO BE NUMBERED CONSECUTIVELY.

It shall be the duty of the clerk to designate the suits by regular consecutive numbers, called file numbers, and he shall mark on each paper in every case the file number of the cause.

RULE 24. DUTY OF CLERK.

When a petition is filed with the clerk he shall indorse thereon the file number, the day on which it was filed and the time of filing, and sign his name officially thereto.

RULE 25. CLERK'S FILE DOCKET.

Each clerk shall keep a file docket which shall show in convenient form the number of the suit, the names of the attorneys, the names of the parties to the suit, and the nature thereof, and, in brief form, the officer's return on the process, and all subsequent proceedings had in the case with the dates thereof.

RULE 26. CLERK'S COURT DOCKET.

Each clerk shall also keep a court docket in a permanent record that shall include the number of the case and the names of the parties, the names of the attorneys, the nature of the action, the pleas, the motions, and the ruling of the court as made.

(Amended by Order April 24, 1990, eff. Sept. 1, 1990.)

RULE 27. ORDER OF CASES.

The cases shall be placed on the docket as they are filed.

SECTION 3.
PARTIES TO SUITS

RULE 28. SUITS IN ASSUMED NAME.

Any partnership, unincorporated association, private corporation, or individual doing business under an assumed name may sue or be sued in its partnership, assumed or common name for the purpose of enforcing for or against it a substantive right, but on a motion by any party or on the court's own motion the true name may be substituted.

(Amended by Order July 21, 1970, eff. Jan. 1, 1971.)

RULE 29. SUIT ON CLAIM AGAINST DISSOLVED CORPORATION.

When no receiver has been appointed for a corporation which has dissolved, suit may be instituted on any claim against said corporation as though the same had not been dissolved, and service of process may be obtained on the president, directors, general manager, trustee, assignee, or other person in charge of the affairs of the corporation at the time it was dissolved, and judgment may be rendered as though the corporation had not been dissolved.

RULE 30. PARTIES TO SUITS.

Assignors, endorsers and other parties not primarily liable upon any instruments named in the chapter of the Business and Commerce Code, dealing with commercial paper, may be jointly sued with their principal obligors, or may be sued alone in the cases provided for by statute.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 31. SURETY NOT TO BE SUED ALONE.

No surety shall be sued unless his principal is joined with him, or unless a judgment has previously been rendered against his principal, except in cases otherwise provided for in the law and these rules.

RULE 32. MAY HAVE QUESTION OF SURETYSHIP TRIED.

When any suit is brought against two or more defendants upon any contract, any one or more of the defendants being surety for the other, the surety may cause the question of suretyship to be tried and determined upon the issue made for the parties defendant at the trial of the cause, or at any time before or after the trial or at a subsequent term. Such proceedings shall not delay the suit of the plaintiff.

RULE 33. SUITS OR AGAINST COUNTIES.

Suits by or against a county or incorporated city, town or village shall be in its corporate name.

RULE 34. AGAINST SHERIFF, ETC.

Whenever a sheriff, constable, or a deputy or either has been sued for damages for any act done in his official character, and has taken an indemnifying bond for the acts upon which the suit is based, he may make the principal and surety on such bond parties defendant in such suit, and the cause may be continued to obtain service on such parties.

RULE 35. ON OFFICIAL BONDS.

In suits brought by the State or any county, city, independent school district, irrigation district, or other political subdivision of the State, against any officer who has held an office for more than one term, or against any depository which has been such depository for more than one term, or has given

more than one official bond the sureties on each and all such bonds may be joined as defendants in the same suit whenever it is difficult to determine when the default sued for occurred and which set of sureties on such bonds is liable therefor.

(Amended by Order June 16, 1943, eff. Dec. 13, 1943.)

RULE 36. DIFFERENT OFFICIALS AND BONDSMEN.

In suits by the State upon the official bond of a State officer, any subordinate officer who has given bond, payable either to the State or such superior officer, to cover all or part of the default sued for together with the sureties on his official bond, may be joined as defendants with such superior officer and his bondsmen whenever it is alleged in the petition that both of such officers are liable for the money sued for.

RULE 37. ADDITIONAL PARTIES.

Before a case is called for trial, additional parties, necessary or proper parties to the suit, may be brought in, either by the plaintiff or the defendant, upon such terms as the court may prescribe; but not at a time nor in a manner to unreasonably delay the trial of the case.

RULE 38. THIRD-PARTY PRACTICE.

(a) **When Defendant May Bring in Third Party.** At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a citation and petition to be served upon a person not a party to the action who is or may be liable to him or to the plaintiff for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party petition not later than thirty (30) days after he serves his original answer. Otherwise, he must obtain leave on motion upon notice to all parties to the action. The person served, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim under the rules applicable to the defendant, and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 97. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses and his counterclaims and cross-claims. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or who may be liable to him or to the third-party plaintiff for all or part of the claim made in the action against the third-party defendant.

(b) **When Plaintiff May Bring in Third Party.** When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) This rule shall not be applied, in tort cases, so as to permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract liable to the person injured or damaged.

(d) This rule shall not be applied so as to violate any venue statute, as venue would exist absent this rule.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941; Dec. 5, 1983, eff. April 1, 1984.)

RULE 39. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION.

(a) Persons to Be Joined if Feasible. A person who is subject to service of process shall be joined as a party in the action if

(1) in his absence complete relief cannot be accorded among those already parties or

(2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may

(i) as a practical matter impair or impede his ability to protect that interest or

(ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.

(b) **Determination by Court Whenever Joinder Not Feasible.** If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures the prejudice can be lessened or avoided, third whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

(c) **Pleading Reasons for Nonjoinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) **Exception of Class Actions.** This rule is subject to the provisions of Rule 42.

(Amended by Order July 21, 1970, eff. Jan. 1, 1971.)

RULE 40. PERMISSIVE JOINDER OF PARTIES.

(a) **Permissive Joinder.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) **Separate Trials.** The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

RULE 41. MISJOINDER AND NONJOINDER OF PARTIES.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added, or suits filed separately may be consolidated, or actions which have been improperly joined may be severed and each ground of recovery improperly joined may be docketed as a separate suit between the same parties, by order of the court on motion of any party or on its own initiative at any stage of the action, before the time of submission to the jury or to the court if trial is without a jury, on such terms as are just. Any claim against a party may be severed and proceeded with separately.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941.)

RULE 42. CLASS ACTIONS.

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to these issues include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the difficulties likely to be encountered in the management of a class action.

(c) **Determination by Order Whether to Certify a Class Action; Notice and Membership in Class.**

(1) (A) When a person sues or is sued as a representative of a class, the court must—at an early practicable time—determine by order whether to certify the action as a class action.

(B) An order certifying a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 42(g).

(C) An order under Rule 42(c)(1) may be altered or amended before final judgment. The court may order the naming of additional parties in order to insure the adequacy of representation.

(D) An order granting or denying certification under Rule 42(b)(3) must state:

(i) he elements of each claim or defense asserted in the pleadings;

(ii) any issues of law or fact common to the class members;

(iii) any issues of law or fact affecting only individual class members;

(iv) the issues that will be the object of most of the efforts of the litigants and the court;

(v) other available methods of adjudication that exist for the controversy;

(vi) why the issues common to the members of the class do or do not predominate over individual issues;

(vii) why a class action is or is not superior to other available methods for the fair and efficient adjudication of the controversy; and

(viii)if a class is certified, how the class claims and any issues affecting only individual members, raised by the claims or defenses asserted in the pleadings, will be tried in a manageable, time efficient manner.

(2) (A) For any class certified under Rule 42(b)(1) or (2), the court may direct appropriate notice to the class.

(B) For any class certified under Rule 42(b)(3), the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through counsel if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and

(vi) the binding effect of a class judgment on class members under Rule 42(c)(3).

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2) whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(d) **Actions Conducted Partially as Class Actions; Multiple Classes and Subclasses.** When appropriate (1) an action may be brought or maintained as a class action with respect to particular issues, or (2) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(e) **Settlement, Dismissal or, Compromise.**

(1) (A) The court must approve any settlement, dismissal, or compromise of the claims, issues, or defenses of a certified class.

(B) Notice of the material terms of the proposed settlement, dismissal or compromise, together with an explanation of when and how the members may elect to be excluded from the class, shall be given to all members in such manner as the court directs.

(C) The court may approve a settlement, dismissal, or compromise that would bind class members only after a hearing and on finding that the settlement, dismissal, or compromise is fair, reasonable, and adequate.

(2) The parties seeking approval of a settlement, dismissal, or compromise under Rule 42(e)(1) must file a statement identifying any agreement made in connection with the proposed settlement, dismissal, or compromise.

(3) In an action previously certified as a class action under Rule 42(b)(3), the court may not approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(4)(A) Any class member may object to a proposed settlement, dismissal, or compromise that requires court approval under Rule 42(e)(1)(A).

(B) An objection made under Rule 42(e)(4)(A) may be withdrawn only with the court's approval.

(f) **Discovery.** Unnamed members of a class action are not to be considered as parties for purposes of discovery.

(g) **Class Counsel.**

(1) Appointing Class Counsel.

(A) Unless a statute provides otherwise, a court that certifies a class must appoint class counsel.

(B) An attorney appointed to serve as class counsel must fairly and adequately represent the interests of the class.

(C) In appointing class counsel, the court

(i) must consider:

- the work counsel has done in identifying or investigating potential claims in the action;
- counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action;
- counsel's knowledge of the applicable law; and
- the resources counsel will commit to representing the class;

(ii) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(iii) may direct potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney fees and nontaxable costs; and

(iv) may make further orders in connection with the appointment.

(2) Appointment Procedure.

(A) The court may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action.

(B) When there is one applicant for appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 42(g)(1)(B) and (C). If more than one adequate applicant seeks appointment as class counsel, the court must appoint the applicant or applicants best able to represent the interests of the class.

(C) The order appointing class counsel may include provisions about the award of attorney fees or nontaxable costs under Rule 42(h) and (i).

(h) **Procedure for determining Attorney Fees Award.** In an action certified as a class action, the court may award attorney fees in accordance with subdivision (i) and nontaxable costs authorized by law or by agreement of the parties as follows:

(1) Motion for Award of Attorney Fees. A claim for an award of attorney fees and nontaxable costs must be made by motion, subject to the provisions of this subdivision, at a time set by the court. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) Objections to Motion. A class member, or a party from whom payment is sought, may object to the motion.

(3) Hearing and Findings. The court must hold a hearing in open court and must find the facts and state its conclusions of law on the motion. The court must state its findings and conclusions in writing or orally on the record.

(i) **Attorney's Fees Award.**

(1) In awarding attorney fees, the court must first determine a lodestar figure by multiplying the number of hours reasonably worked times a reasonable hourly rate. The attorney fees award must be in the range of 25% to 400% of the lodestar figure. In making these determinations, the court must consider the factors specified in Rule 1.04(b), Tex. Disciplinary R. Prof. Conduct.

(2) If any portion of the benefits recovered for the class are in the form of coupons or other noncash common benefits, the attorney fees awarded in the action must be in cash and noncash amounts in the same proportion as the recovery for the class.

(j) **Effective Date.** Rule 42(i) applies only in actions filed after September 1, 2003.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941; May 9, 1977, eff. Sept. 1, 1977; Dec. 5, 1983, eff. April 1, 1984; Oct. 9, 2003, eff. Jan. 1, 2004, except that Rule 42(i) applies only in cases filed on or after Sept. 1, 2003.)

RULE 43. INTERPLEADER.

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in any other rules.

RULE 44. MAY APPEAR BY NEXT FRIEND.

Minors, lunatics, idiots, or persons non compos mentis who have no legal guardian may sue and be represented by "next friend" under the following rules:

(1) Such next friend shall have the same rights concerning such suits as guardians have, but shall give security for costs, or affidavits in lieu thereof, when required.

(2) Such next friend or his attorney of record may with the approval of the court compromise suits and agree to judgments, and such judgments, agreements and compromises, when approved by the court, shall be forever binding and conclusive upon the party plaintiff in such suit.

SECTION 4.
PLEADING

A.
GENERAL

RULE 45. DEFINITION AND SYSTEM.

Pleadings in the district and county court shall

(a) be by petition and answer;

(b) consist of a statement in plain and concise language of the plaintiff's cause of action or the defendant's grounds of defense. That an allegation be evidentiary or be of legal conclusion shall not be grounds for an objection when fair notice to the opponent is given by the allegations as a whole; and

(c) contain any other matter which may be required by any law or rule authorizing or regulating any particular action or defense.

Pleadings that are not filed electronically must be in writing, on paper measuring approximately 8 ½ inches by 11 inches, and signed by the party or his attorney. The use of recycled paper is strongly encouraged.

All pleadings shall be construed so as to do substantial justice.

(Amended by Order July 15, 1987. eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990; Sept. 4, 1990; Dec. 13, 2013, eff. Jan. 1, 2014.)

RULE 46. PETITION AND ANSWER; EACH ONE INSTRUMENT OF WRITING.

The original petition, first supplemental petition, second supplemental petition, and every other, shall each be contained in one instrument of writing, and so with the original answer and each of the supplemental answers.

RULE 47. CLAIMS FOR RELIEF.

An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain:

(a) a short statement of the cause of action sufficient to give fair notice of the claim involved;

(b) a statement that the damages sought are within the jurisdictional limits of the court;

(c) except in suits governed by the Family Code, a statement that the party seeks:

(1) only monetary relief of $250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney fees and costs;

(2) monetary relief of $250.000 or less and non-monetary relief;

(3) monetary relief over $250.000 but not more than $ 1.000.000;

(4) monetary relief over $ 1.000.000; or

(5) only non-monetary relief; and

(d) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

(Amended by Order July 11, 1977, eff. Jan. 1, 1978; April 24, 1990, eff. Sept. 1. 1990; Nov. 13, 2012, eff. March 1, 2013; Feb 12, 2013, eff. March 1, 2013. (Applies to cases filed on or after March 1, 2013, except those filed in justice court.); Tex. Sup. Ct. Misc. Docket No. 20-9070, May 26, 2020, eff. Sept. 1, 2020; Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

Comment to 2013 change: Rule 47 is amended to require a more specific statement of the relief sought by a party. The amendment requires parties to plead into or out of the expedited actions process governed by Rule 169, added to implement section 22.004(h) of the Texas Government Code. Except in a in a suit governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code, a suit in which the original petition contains the statement in paragraph (c)(l) is governed by the expedited actions process. The further specificity in paragraphs (c)(2)-(5) is to provide information regarding the nature of cases filed and does not affect a party's substantive rights.

Comment to 2021 change: Rule 47 is amended to implement section 22.004(h-1) of the Texas Government Code. A suit in which the original petition contains the statement in paragraph (c)(1) is governed by the expedited actions process in Rule 169.

RULE 48. ALTERNATIVE CLAIMS FOR RELIEF.

A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based upon legal or equitable grounds or both.

RULE 49. WHERE SEVERAL COUNTS.

Where there are several counts in the petition, and entire damages are given, the verdict or judgment, as the case may be, shall be good, notwithstanding one or more of such counts may be defective.

RULE 50. PARAGRAPHS, SEPARATE STATEMENTS.

All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings, so long as the pleading containing such paragraph has not been superseded by an amendment as provided by Rule 65. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

RULE 51. JOINDER OF CLAIMS AND REMEDIES

(a) **Joinder of Claims.** The plaintiff in his petition or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties if the requirements of Rules 39, 40, and 43 are satisfied. There may be a like joinder of cross claims or third-party claims if the requirements of Rules 38 and 97, respectively, are satisfied.

(b) **Joinder of Remedies.** Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. This rule shall not be applied in tort cases so as to permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract directly liable to the person injured or damaged.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941; July 26, 1960, eff. Jan. 1, 1961.)

RULE 52. ALLEGING A CORPORATION.

An allegation that a corporation is incorporated shall be taken as true, unless denied by the affidavit of the adverse party, his agent or attorney, whether such corporation is a public or private corporation and however created.

RULE 53. SPECIAL ACT OR LAW.

A pleading founded wholly or in part on any private or special act or law of this State or of the Republic of Texas need only recite the title thereof, the date of its approval, and set out in substance so much of such act or laws as may be pertinent to the cause of action or defense.

RULE 54. CONDITIONS PRECEDENT.

In pleading the performance or occurrence of conditions precedent, it shall be sufficient to aver generally that all conditions precedent have been performed or have occurred. When such performances or occurrences have been so plead, the party so pleading same shall be required to prove only such of them as are specifically denied by the opposite party.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941.)

RULE 55. JUDGMENT.

In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it shall be sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

RULE 56. SPECIAL DAMAGE.

When items of special damage are claimed, they shall be specifically stated.

RULE 57. SIGNING OF PLEADINGS.

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, with his State Bar of Texas identification number, address, telephone number, email address, and if available, fax number. A party not represented by an attorney shall sign his pleadings, state his address, telephone number, email address, and, if available, fax number.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981; April 24, 1990, eff. Sept. 1, 1990; Dec. 13, 2013, eff. Jan. 1, 2014.)

RULE 58. ADOPTION BY REFERENCE.

Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion, so long as the pleading containing such statements has not been superseded by an amendment as provided by Rule 65.

RULE 59. EXHIBITS AND PLEADING.

Notes, accounts, bonds, mortgages, records, and all other written instruments, constituting, in whole or in part, the claim sued on, or the matter set up in defense, may be made a part of the pleadings by copies thereof, or the originals, being attached or filed and referred to as such, or by copying the same in the body of the pleading in aid and explanation of the allegations in the petition or answer made in reference to said instruments and shall be deemed a part thereof for all purposes. Such pleadings shall not be deemed defective because of the lack of any allegations which can be supplied from said exhibit. No other instrument of writing shall be made an exhibit in the pleading.

RULE 60. INTERVENOR'S PLEADINGS.

Any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.

(Amended by Order April 24, 1990, eff. Sept. 1, 1990.)

RULE 61. TRIAL: INTERVENORS: RULES APPLY TO ALL PARTIES.

These rules of pleading shall apply equally, so far as it may be practicable to intervenors and to parties, when more than one, who may plead separately.

RULE 62. AMENDMENT DEFINED.

The object of an amendment, as contra-distinguished from a supplemental petition or answer, is to add something to, or withdraw something from, that which has been previously pleaded so as to perfect that which is or may be deficient, or to correct that which has been incorrectly stated by the party making the amendment, or to plead new matter, additional to that formerly pleaded by the amending party, which constitutes an additional claim or defense permissible to the suit.

RULE 63. AMENDMENTS AND RESPONSIVE PLEADINGS.

Parties may amend their pleadings, respond to pleadings on file of other parties, file suggestions of death and make representative parties and file such other pleas as they may desire by filing such pleas with the clerk at such time as not to operate as a surprise to the opposite party; provided that any pleadings, responses or pleas offered for filing within seven days of the date of trial or thereafter, or after such time as may be ordered by the judge under Rule 166, shall be filed only after leave of the judge is obtained, which leave shall be granted by the judge unless there is a showing that such filing will operate as a surprise to the opposite party.

(Amended by Order July 26, 1960, eff. Jan. 1, 1961; April 24, 1990, eff. Sept. 1, 1990.)

RULE 64. AMENDED INSTRUMENT.

The party amending shall point out the instrument amended, as "original petition," or "plaintiff's first supplemental petition," or as "original answer," or "defendant's first supplemental answer" or other instrument filed by the party and shall amend by filing a substitute therefor, entire and complete in itself, indorsed "amended original petition," or "amended first supplemental petition," or "amended original answer," or "amended first supplemental answer," accordingly as said instruments of pleading are designated.

RULE 65. SUBSTITUTED INSTRUMENT TAKES PLACE OF ORIGINAL.

Unless the substituted instrument shall be set aside on exceptions, the instrument for which it is substituted shall no longer be regarded as a part of the pleading in the record of the cause, unless some error of the court in deciding upon the necessity of the amendment, or otherwise in superseding it, be complained of, and exception be taken to the action of the court, or unless it be necessary to look to the superseded pleading upon a question of limitation.

RULE 66. TRIAL AMENDMENT.

If evidence is objected to at the trial on the ground that it is not within the issues made by the pleading, or if during the trial any defect, fault or omission in a pleading, either of form or substance, is called to the attention of the court, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the allowance of such amendment would prejudice him in maintaining his action or defense upon the merits. The court may grant a postponement to enable the objecting party to meet such evidence.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941.)

RULE 67. AMENDMENTS TO CONFORM TO ISSUES TRIED WITHOUT OBJECTION.

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. In such case such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made by leave of court upon motion of any party at any time up to the submission of the case to the Court or jury, but failure so to amend shall not affect the result of the trial of these issues; provided that written pleadings, before the time of submission, shall be necessary to the submission of questions, as is provided in Rules 277 and 279.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941; April 24, 1990, eff. Sept. 1, 1990.)

RULE 68. COURT MAY ORDER REPLEADER.

The court, when deemed necessary in any case, may order a repleader on the part of one or both of the parties, in order to make their pleadings substantially conform to the rules.

RULE 69. SUPPLEMENTAL PETITION OR ANSWER.

Each supplemental petition or answer, made by either party, shall be a response to the last preceding pleading by the other party, and shall not repeat allegations formerly pleaded further than is necessary as an introduction to that which is stated in the pleading then being drawn up. These instruments, to wit, the original petition and its several supplements, and the original answer and its several supplements, shall respectively, constitute separate and distinct parts of the pleadings of each party; and the position and identity, by number and name, with the indorsement of each instrument, shall be preserved throughout the pleadings of either party.

RULE 70. PLEADING: SURPRISE: COST.

When either a supplemental or amended pleading is of such character and is presented at such time as to take the opposite party by surprise, the court may charge the continuance of the cause, if granted, to the party causing the surprise if the other party satisfactorily shows that he is not ready for trial because of the allowance of the filing of such supplemental or amended pleading, and the court may, in such event, in its discretion require the party filing such pleading to pay to the surprised party the amount of reasonable costs and expenses incurred by the other party as a result of the continuance, including attorney fees, or make such other order with respect thereto as may be just.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 71. MISNOMER OF PLEADING.

When a party has mistakenly designated any plea or pleading, the court, if justice so requires, shall treat the plea or pleading as if it had been properly designated. Pleadings shall be docketed as originally designated and shall remain identified as designated, unless the court orders redesignation. Upon court order filed with the clerk, the clerk shall modify the docket and all other clerk records to reflect redesignation.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 72. [REPEALED]

(Repealed by Order April 24, 1990, eff. Sept. 1, 1990.)

RULE 73. [REPEALED]

(Repealed by Order April 24, 1990, eff. Sept. 1, 1990.)

RULE 74. FILING WITH THE COURT DEFINED.

The filing of pleadings, other papers and exhibits as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and time and forthwith transmit them to the office of the clerk.

(Amended by Order July 20, 1966, eff. Jan. 1, 1967.)

RULE 75. FILED PLEADINGS; WITHDRAWAL.

All filed pleadings shall remain at all times in the clerk's office or in the court or in custody of the clerk, except that the court may by order entered on the minutes allow a filed pleading to be withdrawn for a limited time whenever necessary, on leaving a certified copy on file. The party withdrawing such pleading shall pay the costs of such order and certified copy.

RULE 75A. FILING EXHIBITS: COURT REPORTER TO FILE WITH CLERK.

The court reporter or stenographer shall file with the clerk of the court all exhibits which were admitted in evidence or tendered on bill of exception during the course of any hearing, proceeding, or trial.

(Adopted July 20, 1966, eff. Jan. 1, 1967.)

RULE 75B. FILED EXHIBITS: WITHDRAWAL.

All filed exhibits admitted in evidence or tendered on bill of exception shall, until returned or otherwise disposed of as authorized by Rule 14b, remain at all times in the clerk's office or in the court or in the custody of the clerk except as follows:

(a) The court may by order entered on the minutes allow a filed exhibit to be withdrawn by any party only upon such party's leaving on file a certified, photo, or other reproduced copy of such exhibit. The party withdrawing such exhibit shall pay the costs of such order and copy.

(b) The court reporter or stenographer of the court conducting the hearing, proceedings, or trial in which exhibits are admitted or offered in evidence, shall have the right to withdraw filed exhibits, upon giving the clerk proper receipt therefor, whenever necessary for the court reporter or stenographer to transmit such original exhibits to an appellate court under the provisions of Rule 379 or to otherwise discharge the duties imposed by law upon said court reporter or stenographer.

(Adopted by Order July 20, 1966, eff. Jan. 1, 1967.)

RULE 76. MAY INSPECT PAPERS.

Each attorney at law practicing in any court shall be allowed at all reasonable times to inspect the papers and records relating to any suit or other matter in which he may be interested.

RULE 76A. SEALING COURT RECORDS.

1. **Standard for Sealing Court Records.** Court records may not be removed from court files except as permitted by statute or rule. No court order or opinion issued in the adjudication of a case may be sealed. Other court records, as defined in this rule, are presumed to be open to the general public and may be sealed only upon a showing of all of the following:

(a) a specific, serious and substantial interest which clearly outweighs:
  (1) this presumption of openness;
  (2) any probable adverse effect that sealing will have upon the general public health or safety;
(b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.

2. **Court Records.** For purposes of this rule, court records means:
  (a) all documents of any nature filed in connection with any matter before any civil court, except:
    (1) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;
    (2) documents in court files to which access is otherwise restricted by law;
    (3) documents filed in an action originally arising under the Family Code.
  (b) settlement agreements not filed of record, excluding all reference to any monetary consideration, that seek to restrict disclosure of information concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government.
  (c) discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.
3. **Notice.** Court records may be sealed only upon a party's written motion, which shall be open to public inspection. The movant shall post a public notice at the place where notices for meetings of county governmental bodies are required to be posted, stating: that a hearing will be held in open court on a motion to seal court records in the specific case, that any person may intervene and be heard concerning the sealing of court records; the specific time and place of the hearing; the style and number of the case, a brief but specific description of both the nature of the case and the records which are sought to be sealed; and the identity of the movant. Immediately after posting such notice, the movant shall file a verified copy of the posted notice with the clerk of the court in which the case is pending and with the Clerk of the Supreme Court of Texas.
4. **Hearing.** A hearing, open to the public, on a motion to seal court records shall be held in open court as soon as practicable, but not less than fourteen days after the motion is filed and notice is posted. Any party may participate in the hearing. Nonparties may intervene as a matter of right for the limited purpose of participating in the proceedings, upon payment of the fee required for filing a plea in intervention. The court may inspect records in camera when necessary. The court may determine a motion relating to sealing or unsealing court records in accordance with the procedures prescribed by Rule 120a.
5. **Temporary Sealing Order.** A temporary sealing order may issue upon motion and notice to any parties who have answered in the case pursuant to Rules 21 and 21a upon a showing of compelling need for specific facts shown by affidavit or by verified petition that immediate and irreparable injury will result to a specific interest of the applicant before notice can be posted and a hearing held as otherwise provided herein. The temporary order shall set the time for the hearing required by paragraph 4 and shall direct that the movant immediately give the public notice required by paragraph 3. The court may modify or withdraw any temporary order upon motion by any party or intervenor, notice to the parties, and hearing conducted as soon as practicable. Issuance of a temporary order shall not reduce in any way the burden of proof of a party requesting sealing at the hearing required by paragraph 4.
6. **Order on Motion to Seal Court Records.** A motion relating to sealing or unsealing court records shall be decided by written order, open to the public, which shall state: the style and number of the case; the specific reasons for finding and concluding whether the showing required by paragraph 1 has been made; the specific portions of court records which are to be sealed; and the time period for which the sealed portions of the court records are to be sealed. The order shall not be included in any judgment or other order but shall be a separate document in the case; however, the failure to comply with this requirement shall not affect its appealability.
7. **Continuing Jurisdiction.** Any person may intervene as a matter of right at any time before or after judgment to seal or unseal court records. A court that issues a sealing order retains continuing jurisdiction to enforce, alter, or vacate that order. An order sealing or unsealing court records shall not be reconsidered on motion of any party or intervenor who had actual notice of the hearing preceding issuance of the order, without first showing changed circumstances materially affecting the order. Such circumstances need not be related to the case in which the order was issued. However, the burden of making the showing required by paragraph 1 shall always be on the party seeking to seal records.
8. **Appeal.** Any order (or portion of an order or judgment) relating to sealing or unsealing court records shall be deemed to be severed from the case and a final judgment which may be appealed by any party or intervenor who participated in the hearing preceding issuance of such order. The appellate court may abate the appeal and order the trial court to direct that further public notice be given, or to hold further hearings, or to make additional findings.
9. **Application.** Access to documents in court files not defined as court records by this rule remains governed by existing law. This rule does not apply to any court records sealed in an action in which a final judgment has been entered before its effective date. This rule applies to cases already pending on its effective date only with regard to:
  (a) all court records filed or exchanged after the effective date;
  (b) any motion to alter or vacate an order restricting access to court records, issued before the effective date.

(Adopted by Order April 24, 1990, eff. Sept. 1, 1990.)

RULE 77. LOST RECORDS AND PAPERS.

When any papers or records are lost or destroyed during the pendency of a suit, the parties may, with the approval of the judge, agree in writing on a brief statement of the matters contained therein; or either party may supply such lost records or papers as follows:

a. After three days' notice to the adverse party or his attorney, make written sworn motion before the court stating the loss or destruction of such record or papers, accompanied by certified copies of the originals if obtainable, or by substantial copies thereof.

b. If, upon hearing, the court be satisfied that they are substantial copies of the original, an order shall be made substituting such copies or brief statement for the originals.

c. Such substituted copies or brief statement shall be filed with the clerk, constitute a part of the cause, and have the force and effect of the originals.

(Amended by Order June 16, 1943, eff. Dec. 31, 1943.)

B.
PLEADINGS OF PLAINTIFF

RULE 78. PETITION; ORIGINAL AND SUPPLEMENTAL; INDORSEMENT.

The pleading of plaintiff shall consist of an original petition, and such supplemental petitions as may be necessary in the course of pleading by the parties to the suit. The original petition and the supplemental petitions shall be indorsed, so as to show their respective positions in the process of pleading, as "original petition," "plaintiff's first supplemental petition," "plaintiff's second supplemental petition," and so on, to be successively numbered, named, and indorsed.

RULE 78A. REPEALED BY ORDER DEC. 11, 2018, EFF. DEC. 11, 2018.

[Civil Case Information Sheet as provided in Misc. Docket No. 13-9022, Feb. 12, 2013, eff. March 1, 2013 repealed by Order Dec. 11, 2018, eff. Dec. 11, 2018.

RULE 79. THE PETITION.

The petition shall state the names of the parties and their residences, if known, together with the contents prescribed in Rule 47 above.

RULE 80. PLAINTIFF'S SUPPLEMENTAL PETITION.

The plaintiff's supplemental petitions may contain special exceptions, general denials, and the allegations of new matter not before alleged by him, in reply to those which have been alleged by the defendant.

RULE 81. DEFENSIVE MATTERS.

When the defendant sets up a counter claim, the plaintiff may plead thereto under rules prescribed for pleadings of defensive matter by the defendant, so far as applicable. Whenever the defendant is required to plead any matter of defense under oath, the plaintiff shall be required to plead such matters under oath when relied on by him.

RULE 82. SPECIAL DEFENSES.

The plaintiff need not deny any special matter of defense pleaded by the defendant, but the same shall be regarded as denied unless expressly admitted.

C.
PLEADINGS OF DEFENDANT

RULE 83. ANSWER; ORIGINAL AND SUPPLEMENTAL; INDORSEMENT.

The answer of defendant shall consist of an original answer, and such supplemental answers as may be necessary, in the course of pleading by the parties to the suit. The original answer and the supplemental answers shall be indorsed, so as to show their respective positions in the process of pleading, as "original answer," "defendant's first supplemental answer," "defendant's second supplemental answer," and so on, to be successively numbered, named and indorsed.

RULE 84. ANSWER MAY INCLUDE SEVERAL MATTERS.

The defendant in his answer may plead as many several matters, whether of law or fact, as he may think necessary for his defense, and which may be pertinent to the cause, and such matters shall be heard in such order as may be directed by the court, special appearance and motion to transfer venue, and the practice thereunder being excepted herefrom.

(Amended by Order Oct. 12, 1949, eff. March 1, 1950; April 12, 1962, eff. Sept. 1, 1962; June 15, 1983, eff. Sept. 1, 1983.)

RULE 85. ORIGINAL ANSWER; CONTENTS.

The original answer may consist of motions to transfer venue, pleas to the jurisdiction, in abatement, or any other dilatory pleas; of special exceptions, of general denial, and any defense by way of avoidance or estoppel, and it may present a cross-action, which to that extent will place defendant in the attitude of a plaintiff. Matters in avoidance and estoppel may be stated together, or in several special pleas, each presenting a distinct defense, and numbered so as to admit of separate issues to be formed on them.

(Amended by Order June 16, 1983, eff. Sept. 1, 1983.)

RULE 86. MOTION TO TRANSFER VENUE.

1. **Time to File.** An objection to improper venue is waived if not made by written motion filed prior to or concurrently with any other plea, pleading or motion except a special appearance motion provided for in Rule 120a. A written consent of the parties to transfer the case to another county may be filed with the clerk of the court at any time. A motion to transfer venue because an impartial trial cannot be had in the county where the action is pending is governed by the provisions of Rule 257.
2. **How to File.** The motion objecting to improper venue may be contained in a separate instrument filed concurrently with or prior to the filing of the movant's first responsive pleading or the motion may be combined with other objections and defenses and included in the movant's first responsive pleading.
3. **Requisites of Motion.** The motion, and any amendments to it, shall state that the action should be transferred to another specified county of proper venue because:
   (a) The county where the action is pending is not a proper county; or
   (b) Mandatory venue of the action in another county is prescribed by one or more specific statutory provisions which shall be clearly designated or indicated.

   The motion shall state the legal and factual basis for the transfer of the action and request transfer of the action to a specific county of mandatory or proper venue. Verification of the motion is not required. The motion may be accompanied by supporting affidavits as provided in Rule 87.
4. **Response and Reply.** Except as provided in paragraph 3(a) of Rule 87, a response to the motion to transfer is not required. Verification of a response is not required.
5. **Service.** A copy of any instrument filed pursuant to Rule 86 shall be served in accordance with Rule 21a.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941; June 16, 1943 eff. Dec. 31, 1943; July 20, 1954, eff. Jan. 1, 1955; April 12, 1962, eff. Sept. 1, 1962; June 15, 1983, eff. Sept. 1, 1983.)

RULE 87. DETERMINATION OF MOTION TO TRANSFER.

1. **Consideration of Motion.** The determination of a motion to transfer venue shall be made promptly by the court and such determination must be made in a reasonable time prior to commencement of the trial on the merits. The movant has the duty to request a setting on the motion to transfer. Except on leave of court each party is entitled to at least 45 days notice of a hearing on the motion to transfer.

   Except on leave of court, any response or opposing affidavits shall be filed at least 30 days prior to the hearing of the motion to transfer. The movant is not required to file a reply to the response but any reply and any additional affidavits supporting the motion to transfer must, except on leave of court, be filed not later than 7 days prior to the hearing date.
2. **Burden of Establishing Venue.**
   (a) **In General.** A party who seeks to maintain venue of the action in a particular county in reliance upon Section 15.001 (General Rule), Sections 15.011-15.017 (Mandatory Venue), Sections 15.031-15.040 (Permissive Venue), or Sections 15.061 and 15.062 (Multiple Claims), Civil Practice and Remedies Code, has the burden to make proof, as provided in paragraph 3 of this rule, that venue is maintainable in the county of suit. A party who seeks to transfer venue of the action to another specified county under Section 15.001 (General Rule), Sections 15.011 & REM.-15.017 (Mandatory Venue), Sections 15.031-15.040 (Permissive Venue), or Sections 15.061 and 15.062 (Multiple Claims), Civil Practice and Remedies Code, has the burden to make proof, as provided in paragraph 3 of this rule, that venue is maintainable in the county to which transfer is sought. A party who seeks to transfer venue of the action to another specified county under Sections 15.011-15.017, Civil Practice and Remedies Code on the basis that a mandatory venue provision is applicable and controlling has the burden to make proof, as provided in paragraph 3 of this rule, that venue is maintainable in the county to which transfer is sought by virtue of one or more mandatory venue exceptions.
   (b) **Cause of Action.** It shall not be necessary for a claimant to prove the merits of a cause of action, but the existence of a cause of action, when pleaded properly, shall be taken as established as alleged by the pleadings. When the defendant specifically denies the venue allegations, the claimant is required, by prima facie proof as provided in paragraph 3 of this rule, to support such pleading that the cause of action taken as established by the pleadings, or a part of such cause of action, accrued in the county of suit. If a defendant seeks transfer to a county where the cause of action or a part thereof accrued, it shall be sufficient for the defendant to plead that if a cause of action exists, then the cause of action or part thereof accrued in the specific county to which transfer is sought, and such allegation shall not constitute an admission that a cause of action in fact exists. But the defendant shall be required to support his pleading by prima facie proof as provided in paragraph 3 of this rule, that, if a cause of action exists, it or a part thereof accrued in the county to which transfer is sought.
   (c) **Other Rules.** A motion to transfer venue based on the written consent of the parties shall be determined in accordance with Rule 255. A motion to transfer venue on the basis that an impartial trial cannot be had in the courts where the action is pending shall be determined in accordance with Rules 258 and 259.
3. **Proof.**

(a) **Affidavit and Attachments.** All venue facts, when properly pleaded, shall be taken as true unless specifically denied by the adverse party. When a venue fact is specifically denied, the party pleading the venue fact must make prima facie proof of that venue fact; provided, however, that no party shall ever be required for venue purposes to support by prima facie proof the existence of a cause of action or part thereof, and at the hearing the pleadings of the parties shall be taken as conclusive on the issues of existence of a cause of action. Prima facie proof is made when the venue facts are properly pleaded and an affidavit, and any duly proved attachments to the affidavit, are filed fully and specifically setting forth the facts supporting such pleading. Affidavits shall be made on personal knowledge, shall set forth specific facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify.

(b) **The Hearing.** The court shall determine the motion to transfer venue on the basis of the pleadings, any stipulations made by and between the parties and such affidavits and attachments as may be filed by the parties in accordance with the preceding subdivision of this paragraph 3 or of Rule 88.

(c) If a claimant has adequately pleaded and made prima facie proof that venue is proper in the county of suit as provided in subdivision (a) of paragraph 3, then the cause shall not be transferred but shall be retained in the county of suit, unless the motion to transfer is based on the grounds that an impartial trial cannot be had in the county where the action is pending as provided in Rules 257-259 or on an established ground of mandatory venue. A ground of mandatory venue is established when the party relying upon a mandatory exception to the general rule makes prima facie proof as provided in subdivision (a) of paragraph 3 of this rule.

(d) In the event that the parties shall fail to make prima facie proof that the county of suit or the specific county to which transfer is sought is a county of proper venue, then the court may direct the parties to make further proof.

4. **No Jury.** All venue challenges shall be determined by the court without the aid of a jury.

5. **Motion for Rehearing.** If venue has been sustained as against a motion to transfer, or if an action has been transferred to a proper county in response to a motion to transfer, then no further motions to transfer shall be considered regardless of whether the movant was a party to the prior proceedings or was added as a party subsequent to the venue proceedings, unless the motion to transfer is based on the grounds that an impartial trial cannot be had under Rules 257-259 or on the ground of mandatory venue, provided that such claim was not available to the other movant or movants.

   Parties who are added subsequently to an action and are precluded by this rule from having a motion to transfer considered may raise the propriety of venue on appeal, provided that the party has timely filed a motion to transfer.

6. There shall be no interlocutory appeals from such determination.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941; June 16, 1943, eff. Dec. 31, 1943; Aug. 18, 1947, eff. Dec. 13, 1947; June 15, 1983, eff. Sept. 1, 1983, July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990.)

RULE 88. DISCOVERY AND VENUE.

Discovery shall not be abated or otherwise affected by pendency of a motion to transfer venue. Issuing process for witnesses and taking depositions shall not constitute a waiver of a motion to transfer venue, but depositions taken in such case may be read in evidence in any subsequent suit between the same parties concerning the same subject matter in like manner as if taken in such subsequent suit. Deposition transcripts, responses to requests for admission, answers to interrogatories and other discovery products containing information relevant to a determination of proper venue may be considered by the court in making the venue determination when they are attached to, or incorporated by reference in, an affidavit of a party, a witness or an attorney who has knowledge of such discovery.

(Amended by Order June 15, 1983, eff. Sept. 1, 1983; July 15, 1987, eff. Jan. 1, 1988.)

RULE 89. TRANSFERRED IF MOTION IS SUSTAINED.

If a motion to transfer venue is sustained, the cause shall not be dismissed, but the court shall transfer said cause to the proper court; and the costs incurred prior to the time such suit is filed in the court to which said cause is transferred shall be taxed against the plaintiff. The clerk shall make up a transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and send it with the original papers in the cause to the clerk of the court to which the venue has been changed. Provided, however, if the cause be severable as to parties defendant and shall be ordered transferred as to one or more defendants but not as to all, the clerk, instead of sending the original papers, shall make certified copies of such filed papers as directed by the court and forward the same to the clerk of the court to which the venue has been changed. After the cause has been transferred, as above provided for the clerk of the court to which the cause has been transferred shall mail notification to the plaintiff or his attorney that transfer of the cause has been completed, that the filing fee in the proper court is due and payable within thirty days from the mailing of such notification, and that the case may be dismissed if the filing fee is not timely paid; and if such filing fee is timely paid, the cause will be subject to trial at the expiration of thirty days after the mailing of notification to the parties or their attorneys by the clerk that the papers have been filed in the court to which the cause has been transferred; and if the filing fee is not timely paid, any court of the transferee county to which the case might have been assigned, upon its own motion or the motion of a party, may dismiss the cause without prejudice to the refiling of same.

(Amended by Order June 16, 1943 eff. Dec. 31, 1943; June 15, 1983 eff. Sept. 1, 1983.)

RULE 90. WAIVER OF DEFECTS IN PLEADING.

General demurrers shall not be used. Every defect omission or fault in a pleading either of form or of substance, which is not specifically pointed out by exception in writing and brought to the attention of the judge in the trial court before the instruction or charge to the jury or, in a non-jury case, before the judgment is signed, shall be deemed to have been waived by the party seeking reversal on such account; provided that this rule shall not apply as to any party against whom default judgment is rendered.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 91. SPECIAL EXCEPTIONS.

A special exception shall not only point out the particular pleading excepted to, but it shall also point out intelligibly and with particularity the defect, omission, obscurity, duplicity, generality, or other insufficiency in the allegations in the pleading excepted to.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941.)

Rule 91A. Dismissal of Baseless Causes of Action.

91A.1. MOTION AND GROUNDS.

Except in a case brought under the Family Code or a case governed by Chapter 14 of the Texas Civil Practice and Remedies Code, a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded.

91A.2. CONTENTS OF MOTION.

A motion to dismiss must state that it is made pursuant to this rule, must identify each cause of action to which it is addressed, and must state specifically the reasons the cause of action has no basis in law, no basis in fact, or both.

91A.3. TIME FOR MOTION AND RULING.

A motion to dismiss must be:

(a) filed within 60 days after the first pleading containing the challenged cause of action is served on the movant;

(b) filed at least 21 days before the motion is heard; and

(c) granted or denied within 45 days after the motion is filed.

91A.4. TIME FOR RESPONSE.

Any response to the motion must be filed no later than 7 days before the date of the hearing.

91A.5. EFFECT OF NONSUIT OR AMENDMENT; WITHDRAWAL OF MOTION.

(a) The court may not rule on a motion to dismiss if, at least 3 days before the date of the hearing, the respondent files a nonsuit of the challenged cause of action, or the movant files a withdrawal of the motion.

(b) If the respondent amends the challenged cause of action at least 3 days before the date of the hearing, the movant may, before the date of the hearing, file a withdrawal of the motion or an amended motion directed to the amended cause of action.

(c) Except by agreement of the parties, the court must rule on a motion unless it has been withdrawn or the cause of action has been nonsuited in accordance with (a) or (b). In ruling on the motion, the court must not consider a nonsuit or amendment not filed as permitted by paragraphs (a) or (b).

(d) An amended motion filed in accordance with (b) restarts the time periods in this rule.

91A.6. HEARING; NO EVIDENCE CONSIDERED.

Each party is entitled to at least 14 days' notice of the hearing on the motion to dismiss. The court may, but is not required to, conduct an oral hearing on the motion. Except as required by 91 a. 7, the court may not consider evidence in ruling on the motion and must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59.

91A.7. AWARD OF COSTS AND ATTORNEY FEES.

Except in an action by or against a governmental entity or a public official acting in his or her official capacity or under color of law, the court may award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court. Any award of costs or fees must be based on evidence.

(Amended by Tex. Sup. Ct. Misc. Docket No. 19-9052, July 11, 2019 and Tex. Sup. Ct. Misc. Docket No. 19-9108, Nov. 12, 2019, eff. Sept. 1, 2019.)

Comment to 2019 change: Rule 91a.7 is amended to implement changes to section 30.021 of the Texas Civil Practice and Remedies Code. The amendments to Rule 91a.7 apply only to civil actions commenced on or after September 1, 2019. A civil action commenced before September 1, 2019 is governed by the rule as adopted in Misc. Docket No. 13-9022.

91A.8. EFFECT ON VENUE AND PERSONAL JURISDICTION.

This rule is not an exception to the pleading requirements of Rules 86 and 120a, but a party does not, by filing a motion to dismiss pursuant to this rule or obtaining a ruling on it, waive a special appearance or a motion to transfer venue. By filing a motion to dismiss, a party submits to the court's jurisdiction only in proceedings on the motion and is bound by the court's ruling, including an award of attorney fees and costs against the party.

91A.9. DISMISSAL PROCEDURE CUMULATIVE.

This rule is in addition to, and does not supersede or affect, other procedures that authorize dismissal.

(Adopted by Order Nov. 13, 2012, eff. March 1, 2013; Order Feb. 12, 2013, eff. March 1, 2013. (Applies to all cases, including those pending on March 1, 2013.))

Comment to 2013 change: Rule 91a is a new rule implementing section 22.004(g) of the Texas Government Code, which was added in 2011 and calls for rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence. A motion to dismiss filed under this rule must be ruled on by the court within 45 days unless the motion, pleading, or cause of action is withdrawn, amended, or nonsuited as specified in 9 la. 5. If an amended motion is filed in response to an amended cause of action in accordance with 91a.5(b), the court must rule on the motion within 45 days of the filing of the amended motion and the respondent must be given an opportunity to respond to the amended motion. The term "hearing" in the rule includes both submission and an oral hearing. Attorney fees awarded under 91a.7 are limited to those associated with challenged cause of action, including fees for preparing or responding to the motion to dismiss.

RULE 92. GENERAL DENIAL.

A general denial of matters pleaded by the adverse party which are not required to be denied under oath, shall be sufficient to put the same in issue. When the defendant has pleaded a general denial, and the plaintiff shall afterward amend his pleading, such original denial shall be presumed to extend to all matters subsequently set up by the plaintiff.

When a counterclaim or cross-claim is served upon a party who has made an appearance in the action, the party so served, in the absence of a responsive pleading, shall be deemed to have pleaded a general denial of the counterclaim or cross-claim, but the party shall not be deemed to have waived any special appearance or motion to transfer venue. In all other respects the rules prescribed for pleadings of defensive matter are applicable to answers to counterclaims and cross-claims.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; Dec. 19, 1984, eff. April 1, 1985.)

RULE 93. CERTAIN PLEAS TO BE VERIFIED.

A pleading setting up any of the following matters, unless the truth of such matters appear of record, shall be verified by affidavit.

1. That the plaintiff has not legal capacity to sue or that the defendant has not legal capacity to be sued.
2. That the plaintiff is not entitled to recover in the capacity in which he sues, or that the defendant is not liable in the capacity in which he is sued.
3. That there is another suit pending in this State between the same parties involving the same claim.
4. That there is a defect of parties, plaintiff or defendant.
5. A denial of partnership as alleged in any pleading as to any party to the suit.
6. That any party alleged in any pleading to be a corporation is not incorporated as alleged.
7. Denial of the execution by himself or by his authority of any instrument in writing, upon which any pleading is founded, in whole or in part and charged to have been executed by him or by his authority, and not alleged to be lost or destroyed. Where such instrument in writing is charged to have been executed by a person then deceased, the affidavit shall be sufficient if it states that the affiant has reason to believe and does believe that such instrument was not executed by the decedent or by his authority. In the absence of such a sworn plea, the instrument shall be received in evidence as fully proved.
8. A denial of the genuineness of the indorsement or assignment of a written instrument upon which suit is brought by an indorsee or assignee and in the absence of such a sworn plea, the indorsement or assignment thereof shall be held as fully proved. The denial required by this subdivision of the rule may be made upon information and belief.
9. That a written instrument upon which a pleading is founded is without consideration, or that the consideration of the same has failed in whole or in part.
10. A denial of an account which is the foundation of the plaintiff's action, and supported by affidavit.
11. That a contract sued upon is usurious. Unless such plea is filed, no evidence of usurious interest as a defense shall be received.
12. That notice and proof of loss or claim for damage has not been given as alleged. Unless such plea is filed such notice and proof shall be presumed and no evidence to the contrary shall be admitted. A denial of such notice or such proof shall be made specifically and with particularity.
13. In the trial of any case appealed to the court from the Industrial Accident Board the following, if pleaded, shall be presumed to be true as pleaded and have been done and filed in legal time and manner unless denied by verified pleadings:
    (a) Notice of injury.

(b) Claim for compensation.
(c) Award of the Board.
(d) Notice of intention not to abide by the award of the Board.
(e) Filing of suit to set aside the award.
(f) That the insurance company alleged to have been the carrier of the workers' compensation insurance at the time of the alleged injury was in fact the carrier thereof.
(g) That there was good cause for not filing claim with the Industrial Accident Board within the one year period provided by statute.
(h) Wage rate. A denial of any of the matters set forth in subdivisions (a) or (g) of paragraph 13 may be made on information and belief. Any such denial may be made in original or amended pleadings; but if in amended pleadings the same must be filed not less than seven days before the case proceeds to trial. In case of such denial the things so denied shall not be presumed to be true, and if essential to the case of the party alleging them, must be proved.

14. That a party plaintiff or defendant is not doing business under an assumed name or trade name as alleged.
15. In the trial of any case brought against an automobile insurance company by an insured under the provisions of an insurance policy in force providing protection against uninsured motorists, an allegation that the insured has complied with all the terms of the policy as a condition precedent to bringing the suit shall be presumed to be true unless denied by verified pleadings which may be upon information and belief.
16. Any other matter required by statute to be pleaded under oath.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941; Sept. 20, 1941 eff. Dec. 31, 1941; June 16, 1943, eff. Dec. 31, 1943; Oct. 12, 1949, eff. March 1, 1950; July 21, 1970, eff. Jan. 1, 1971; July 22, 1975, eff. Jan. 1, 1976; June 15, 1983, eff. Sept. 1, 1983; Dec. 5, 1983, eff. April 1, 1984.)

RULE 94. AFFIRMATIVE DEFENSES.

In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. Where the suit is on an insurance contract which insures against certain general hazards, but contains other provisions limiting such general liability, the party suing on such contract shall never be required to allege that the loss was not due to a risk or cause coming within any of the exceptions specified in the contract, nor shall the insurer be allowed to raise such issue unless it shall specifically allege that the loss was due to a risk or cause coming within a particular exception to the general liability; provided that nothing herein shall be construed to change the burden of proof on such issue as it now exists.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941.)

RULE 95. PLEAS OF PAYMENT.

When a defendant shall desire to prove payment, he shall file with his plea an account stating distinctly the nature of such payment, and the several items thereof; failing to do so, he shall not be allowed to prove the same, unless it be so plainly and particularly described in the plea as to give the plaintiff full notice of the character thereof.

RULE 96. NO DISCONTINUANCE.

Where the defendant has filed a counterclaim seeking affirmative relief, the plaintiff shall not be permitted by a discontinuance of his suit, to prejudice the right of the defendant to be heard on such counter-claim.

RULE 97. COUNTERCLAIM AND CROSS-CLAIM.

(a) **Compulsory Counterclaims.** A pleading shall state as a counterclaim any claim within the jurisdiction of the court, not the subject of a pending action, which at the time of filing the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction; provided, however, that a judgment based upon a settlement or compromise of a claim of one party to the transaction or occurrence prior to a disposition on the merits shall not operate as a bar to the continuation or assertion of the claims of any other party to the transaction or occurrence unless the latter has consented in writing that said judgment shall operate as a bar.

(b) **Permissive Counterclaims.** A pleading may state as a counterclaim any claim against an opposing party whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) **Counterclaim Exceeding Opposing Claim.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party, so long as the subject matter is within the jurisdiction of the court.

(d) **Counterclaim Maturing or Acquired After Pleading.** A claim which either matured or was acquired by the pleader after filing his pleading may be presented as a counterclaim by amended pleading.

(e) **Cross-Claim Against Co-party.** A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(f) **Additional Parties.** Persons other than those made parties to the original action may be made parties to a third party action, counterclaim or crossclaim in accordance with the provisions of Rules 38, 39 and 40.

(g) Tort shall not be the subject of set-off or counterclaim against a contractual demand nor a contractual demand against tort unless it arises out of or is incident to or is connected with same.

(h) **Separate Trials; Separate Judgments.** If the court orders separate trials as provided in Rule 174, judgment on a counterclaim or cross-claim may be rendered when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941; July 21, 1970, eff. Jan. 1, 1971; Dec. 5, 1983, eff. April 1, 1984.)

RULE 98. SUPPLEMENTAL ANSWERS.

The defendant's supplemental answers may contain special exceptions, general denial, and the allegations of new matter not before alleged by him, in reply to that which has been alleged by the plaintiff.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941.)

SECTION 5.
CITATION

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.

b. **Form.** The citation shall (1) be styled "The State of Texas," (2) be signed by the clerk under seal of court, (3) contain name and location of the court, (4) show date of filing of the petition, (5) show date of issuance of citation, (6) show file number, (7) show names of parties, (8) be directed to the defendant, (9) show the name and address of attorney for plaintiff, otherwise the address of plaintiff, (10) contain the time within which these rules require the defendant to file a written answer with the clerk who issued citation, (11) contain address of the clerk, (12) notify the defendant that in case of failure of defendant to file an answer, judgment by default may be rendered for the relief demanded in the petition, and (13) notify the defendant that the defendant may be required to make initial disclosures. The citation shall direct the defendant to file a written answer to the plaintiff's petition on or before 10:00 a.m. on the Monday next after the expiration of twenty days after the date of service thereof. The requirement of subsections 10, 12, and 13 of this section shall be in the form set forth in section c of this rule.

c. **Notice.** The citation shall include the following notice to the defendant: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org."

d. **Copies.** The party filing any pleading upon which citation is to be issued and served shall furnish the clerk with a sufficient number of copies thereof for use in serving the parties to be served, and when copies are so furnished the clerk shall make no charge for the copies.

(Amended by Order Oct. 10, 1945, eff. Feb. 1, 1946; July 16, 1987, eff. Jan. 1, 1988; Oct. 17, 2011, eff. Jan. 1, 2012; Order Dec. 12, 2011, eff. Jan. 1, 2012; Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

RULE 100 TO 102. [REPEALED]

(Repealed by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 103. WHO MAY SERVE.

Process—including citation and other notices, writs, orders, and other papers issued by the court—may be served anywhere by (1) any sheriff or constable or other person authorized by law or, (2) any person authorized by law or by written order of the court who is not less than eighteen years of age, or (3) any person certified under order of the Supreme Court. Service by registered or certified mail and citation by publication shall, if requested, be made by the clerk of the court in which the case is pending. But no person who is a party to or interested in the outcome of a suit may serve any process. The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981; July 15, 1987, eff. Jan. 1, 1988; Oct. 7, 2004, eff. Feb. 1, 2005, extended by Order Jan. 27, 2005 to July. 1, 2005, in all pending cases; June 29, 2005, eff. July 1, 2005, in all pending cases.)

Comment – 2005: Subsection (a) is amended to include among the persons authorized to effect service those who meet certification requirements promulgated by the Supreme Court and to prohibit private individuals from serving certain types of process unless, in rare circumstances, a court authorizes an individual to do so.

Certification of Persons
Authorized to Serve Process Under
Rules 103 and 536(a), Texas Rules of Civil Procedure

Rules 103 and 536(a), Texas Rules of Civil Procedure, allow process to be served by any person who is not a party to or interested in the outcome of a suit and who is certified under order of the Supreme Court of Texas. To improve the standards for persons authorized to serve process and to reduce the disparity among Texas civil courts for approving persons to serve process,

IT IS ORDERED:

1. To be certified to serve process under Rules 103 and 536(a), Texas Rules of Civil Procedure, a person must file with the Clerk of the Supreme Court a sworn application in the form prescribed by the Court. The application must contain a statement that the applicant has not been convicted of a felony or of a misdemeanor involving moral turpitude. Form applications may be obtained in the Clerk's office or on the Supreme Court website. The application must include a criminal history record obtained within the preceding 90 days from the Texas Department of Public Safety in Austin, Texas, and a certificate from the director of a civil process service course approved as provided by this Order that the applicant has completed the approved course within the prior year.

2. Applications will be reviewed and approved or rejected for good cause by the Texas Process Service Review Board, appointed by the Court. The Board will notify each applicant of its action, and for each person certified, will post on a list maintained on the Supreme Court website the person's name and an assigned identification number. The Office of Court Administration will provide clerical assistance to the Board.

3. Certification is effective for three years from the last day of the month it issues.

4. Certification may be revoked for good cause, including a conviction of a felony or of a misdemeanor involving moral turpitude. A person suffering such a conviction must immediately notify the Clerk of the Supreme Court and cease to serve process.

5. A person must not represent that he or she is certified under this Order if certification has not been approved, has expired, or has been revoked.

6. The following civil process service courses are approved:

a. the course now offered by the Houston Young Lawyer's Association, for certification for every state court;

b. the course now offered by the Texas Process Server's Association, for certification except for courts in Harris County;

c. a course offered by an academy or other provider licensed or approved by the Texas Commission on Law Enforcement, for certification for every state court.

7. A civil process service course that meets the following requirements, similar to the courses approved in paragraph 6, may apply to the Board for approval by the Court:

a. a minimum of 7 hours of monitored instruction;

b. instruction on applicable laws, including the historical development of the law, with emphasis on practical training of proper service and return of service (for example, using sample returns depicting both correct and incorrect returns of service);

c. instruction on a process server's exposure to criminal liability;

d. instruction on unique issues involving family law cases; and

e. basic competence testing upon completion of the course.

8. No organization that offers an approved civil process service course may make membership in the organization a prerequisite to taking the course.

9. The effective date of this Order is July 1, 2005. A person who on that date is shown to have met the requirements for an approved private process server already in place in Dallas County, Denton County, or Harris County, having provided a criminal history record there and having completed a course listed in paragraph 6, is considered to have been certified under this Order, to the extent permitted by paragraph 6, as if the person had complied with this Order on that date.

(Adopted by Order Oct. 7, 2004, eff. Feb. 1, 2005, extended by Order Jan. 27, 2005 to July. 1, 2005; June 29, 2005, eff. July 1, 2005.)

RULE 104. [REPEALED]

(Repealed by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 105. DUTY OF OFFICER OR PERSON RECEIVING.

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.

(Amended by Order July 11, 1977, eff. Jan. 1, 1978; July 15, 1987, eff. Jan. 1, 1988.)

RULE 106. METHOD OF SERVICE

(a) Unless the citation or court order otherwise directs, the citation must be served by:

(1) delivering to the defendant, in person, a copy of the citation, showing the delivery date , and of the petition; or

(2) mailing to the defendant by registered or certified mail, return receipt requested, a copy of the citation and petition.

(b) Upon motion supported by a statement—sworn to before a notary or made under penalty of perjury—listing the location where the defendant can probably be found and stating specifically the facts showing that service has been attempted under (a)(1) or (a)(2) at the location named in the statement but has not been successful, the court may authorize service

(1) by leaving a copy of the citation and of the petition with anyone older than sixteen at the location specified in the statement, or

(2) in any other manner, including electronically by social media, email, or other technology, that the statement or other evidence shows will be reasonably effective to give the defendant notice of the suit.

(Amended by Order Aug. 18, 1947, eff. Dec. 31, 1947; July 22, 1975, eff. Jan. 1, 1976; July 11, 1977, eff. Jan. 1, 1978; June 10, 1980, eff. Jan. 1, 1981; July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990; Order of Tex. Sup. Ct. Misc. Docket No. 20-9103, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9181, Dec. 18, 2020, eff. Dec.. 31, 2020.)

Comment to 2020 Change: Rule 106 is revised in response to section 17.033 of the Civil Practice and Remedies Code, which calls for rules to provide for substituted service of citation by social media. Amended Rule 106(b)(2) clarifies that a court may, in proper circumstances, permit service of citation electronically by social media, email, or other technology. In determining whether to permit electronic service of process, a court should consider whether the technology actually belongs to the defendant and whether the defendant regularly uses or recently used the technology. Other clarifying and stylistic changes have been made.

RULE 107. RETURN OF SERVICE

(a) The officer or authorized person executing the citation must complete a return of service. The return may, but need not, be endorsed on or attached to the citation.

(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 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 _____, ___, ____, _____, and
(Street) (City)(State)(Zip Code)
_____, I declare under penalty of perjury that the foregoing is
(Country)
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 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 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.

(Amended by Order July 11, 1977, eff. Jan. 1, 1978; June 10, 1980, eff. Jan. 1, 1981; July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990; Oct. 17, 2011, eff. Jan. 1, 2012; Order Dec. 12, 2011, eff. Jan. 1, 2012; Tex. Sup. Ct. Misc. Docket No. 21-9082, eff. Sept. 1, 2021.)

2021 Comment: Certain default orders, like those in suits for protection from family violence, may be exempt by statute from the ten-day requirement in paragraph (h). *See, e.g.*, TEX. FAM. CODE § 85.006.

RULE 108. 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, in the same manner as provided in Rule 106 hereof The return of service in such cases shall be in accordance with Rule 107. 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.

(Amended by Order July 22, 1975, eff. Jan. 1, 1976; Oct. 17, 2011, eff. Jan. 1, 2012; Order Dec. 12, 2011, eff. Jan. 1, 2012.)

RULE 108A. SERVICE OF PROCESS IN FOREIGN COUNTRIES.

(a) *Method.* Service of process may be effected on a party in a foreign country if the citation and petition is served:

(1) in the prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(2) as the foreign authority directs in response to a letter rogatory or letter of request;

(3) as provided by Rule 106(a);

(4) pursuant to the terms and provisions of any applicable international agreement; or

(5) by diplomatic or consular officials when authorized by the United States Department of State; or

(6) by other means not prohibited by international agreement or the foreign country's law as the court orders.

The method for service of process in a foreign country must be reasonably calculated, under all of the circumstances, to give actual notice of the proceedings to the defendant in time to answer and defend. A defendant served with process under this rule must appear and answer in the same manner and time and under the same penalties as if the defendant had been personally served with citation within this state to the full extent that the defendant may be required to appear and answer under the Constitution of the United States or under any applicable international agreement in an action either in rem or in personam.

(b) *Return*. Proof of service may be made as prescribed by the foreign country's law, by court order, by Rule 107, or by a method provided in any applicable international agreement.

(Adopted Dec. 5, 1983, eff. April 1, 1984. Amended by Order of Tex. Sup. Ct. Misc. Docket No. 20-9103, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9148, Dec. 18, 2020, eff. Dec. 31, 2020.)

Comment to 2020 Change: Rule 108a is revised to provide that "other means" of service ordered under (a)(6) must not be prohibited by international agreement. Other clarifying and stylistic changes have been made.

RULE 109. CITATION BY PUBLICATION.

When a party to a suit, his agent or attorney, shall make oath that the residence of any party defendant is unknown to affiant, and to such party when the affidavit is made by his agent or attorney, or that such defendant is a transient person, and that after due diligence such party and the affiant have been unable to locate the whereabouts of such defendant, or that such defendant is absent from or is a nonresident of the State, and that the party applying for the citation has attempted to obtain personal service of nonresident notice as provided for in Rule 108, but has been unable to do so, the clerk shall issue citation for such defendant for service by publication. In such cases it shall be the duty of the court trying the case to inquire into the sufficiency of the 1 exercised in attempting to ascertain the residence or whereabouts of the defendant or to obtain service of nonresident notice, as the case may be, before granting any judgment on such service.

(Amended by Order Oct. 10, 1945, eff. Feb. 1, 1946; July 22, 1975, eff. Jan. 1, 1976; Dec. 5, 1983, eff. April 1, 1984.)

RULE 109a. OTHER SUBSTITUTED SERVICE.

Whenever citation by publication is authorized, the court may, on motion, prescribe a different method of substituted service, if the court finds, and so recites in its order, that the method so prescribed would be as likely as publication to give defendant actual notice. When such method of substituted service is authorized, the return of the officer executing the citation shall state particularly the manner in which service is accomplished, and shall attach any return receipt, returned mail, or other evidence showing the result of such service. Failure of defendant to respond to such citation shall not render the service invalid. When such substituted service has been obtained and the defendant has not appeared, the provisions of Rules 244 and 329 shall apply as if citation had been served by publication.

(Adopted July 22, 1975, eff. Jan. 1, 1976.)

RULE 110. EFFECT OF RULES ON OTHER STATUTES.

Where by statute or these rules citation by publication is authorized and the statute or rules do not specify the requisites of such citation or the method of service thereof, or where they direct that such citation be issued or served as in other civil actions, the provisions of these rules shall govern. Where, however, the statute authorizing citation by publication provides expressly for requisites of such citation or service thereof, or both, differing from the provisions of Rules 114, 115, and 116, these rules shall not govern, but the special statutory procedure shall continue in force; provided, however, that Rule 117a shall control with respect to citation in tax suits.

(Amended by Order Aug. 18, 1947, eff. Dec. 31, 1947.)

RULE 111. CITATION BY PUBLICATION IN ACTION AGAINST UNKNOWN HEIRS OR STOCKHOLDERS OF DEFUNCT CORPORATIONS.

If the plaintiff, his agent, or attorney, shall make oath that the names of the heirs or stockholders against whom an action is authorized by Section 17.004, Civil Practice and Remedies Code, are unknown to the affiant, the clerk shall issue a citation for service by publication. Such citation shall be addressed to the defendants by a concise description of their classification, as "the Unknown Heirs of A.B. deceased," or "Unknown Stockholders of _____ Corporation," as the case may be, and shall contain the other requisites prescribed in Rules 114 and 115 and shall be served as provided by Rule 116.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 112. PARTIES TO ACTIONS AGAINST UNKNOWN OWNERS OR CLAIMANTS OF INTEREST IN LAND.

In suits authorized by Section 17.005, Civil Practice and Remedies Code, all persons claiming under such conveyance whose names are known to plaintiff shall be made parties by name and cited to appear, in the manner now provided by law as in other suits; all other persons claiming any interest in such land under such conveyance may be made parties to the suit and cited by publication under the designation "all persons claiming any title or interest in land under deed heretofore given to _____ of _____ as grantee" (inserting in the blanks the name and residence of grantee as given in such conveyance). It shall be permissible to join in one suit all persons claiming under two or more conveyances affecting title to the same tract of land.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 113. CITATION BY PUBLICATION IN ACTIONS AGAINST UNKNOWN OWNERS OR CLAIMANTS OF INTEREST IN LAND.

In suits authorized by Section 17.005, Civil Practice and Remedies Code, plaintiff, his agent or attorney shall make and file with the clerk of the court an affidavit, stating

(a) the name of the grantee as set out in the conveyance constituting source of title of defendants, and

(b) stating that affiant does not know the names of any persons claiming title or interest under such conveyance other than as stated in plaintiff's petition and

(c) if the conveyance is to a company or association name as grantee, further stating whether grantee is incorporated or unincorporated, if such fact is known and if such fact is unknown, so stating.

Said clerk shall thereupon issue a citation for service upon all persons claiming any title or interest in such land under such conveyance. The citation in such cases shall contain the requisites and be served in the manner provided by Rules 114, 115 and 116.

(Amended by Order July 20, 1954, eff. Jan. 1, 1955; July 15, 1987, eff. Jan. 1, 1988; April 24, 1990 eff. Sept. 1, 1990.)

RULE 114. CITATION BY PUBLICATION; REQUISITES.

Where citation by publication is authorized by these rules, the citation shall contain the requisites prescribed by Rules 1., and 99, in so far as they are not inconsistent herewith, provided that no copy of the plaintiff's petition shall accompany this citation, and the citation shall be styled "The State of Texas" and shall be directed to the defendant or defendants by name, if their names are known, or to the defendant or defendants as designated in the petition, if unknown or such other classification as may be fixed by any statute or by these rules. Where there are two or more defendants or classes of defendants to be served by publication, the citation may be directed to all of them by name and classification, so that service may be completed by publication of the one citation for the required number of times. The citation shall contain the names of the parties, a brief statement of the nature of the suit (which need not contain the details and particulars of the claim) a description of any property involved and of the interest of the named or unknown defendant or defendants, and, where the suit involves land, the requisites of Rule 115. If issued from the district or county court, the citation shall command such parties to appear and answer at or before 10 o'clock a.m. of the first Monday after the expiration of 42 days from the date of issuance thereof, specifying the day of the week, the day of the month, and the time of day the defendant is required to answer. If issued from the justice of the peace court, such citation shall command such parties to appear and answer on or before the first day of the first term of court which convenes after the expiration of 42 days from the date of issue thereof, specifying the day of the week, and the day of the month, that such term will meet.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941.)

RULE 115. FORM OF PUBLISHED CITATION IN ACTIONS INVOLVING LAND.

In citations by publication involving land, it shall be sufficient in making the brief statement of the claim in such citation to state the kind of suit, the number of acres of land involved in the suit, or the number of the lot and block, or any other plat description that may be of record if the land is situated in a city or town the survey on which and the county in which the land is situated, and any special pleas which are relied upon in such suit.

RULE 116. SERVICE OF CITATION BY PUBLICATION.

(a) *Public Information Internet Website Defined*. "Public Information Internet Website" means the website developed and maintained under section 72.034 of the Government Code.

(b) *Where to Publish*.

(1) Generally. Except as otherwise provided in (2), the citation must be served by publication in a newspaper under (c) and on the Public Information Internet Website under (d).

(2) When Newspaper Publication Not Required. The citation need not be published in a newspaper if:

(A) the party requesting citation files a Statement of Inability to Afford Payment of Court Costs under Rule 145;

(B) the total cost of the required publication exceeds $200 each week or an amount set by the Supreme Court, whichever is greater; or

(C) the county in which the publication is required does not have any newspaper published, printed, or generally circulated in the county.

(c) *Newspaper Publication*.

(1) Who Must Serve. The citation must be served by any sheriff or constable or by the clerk of the court in which the case is pending.

(2) Time for Publication. The citation must be published once each week for4consecutive weeks, and the first publication must be at least 28 days before the return is filed.

(3) Suits Not Involving Land Title or Real Estate Partition. In all suits that do not involve the title to land or the partition of real estate, the citation must be published in a newspaper in the county where the suit is pending.

(4) Suits Involving Land Title or Real Estate Partition. In all suits that involve the title to land or partition of real estate, the citation must be published in a newspaper in the county where the land, or a portion thereof, is situated.

(d) *Public Information Internet Website Publication*.

(1) Who Must Serve. The citation must be served by the clerk of the court in which the case is pending.

(2) Time for Publication. The citation must be published for at least 28 days before the return is filed.

(3) Other Guidelines. The citation must be published in accordance with any other guidelines established by the Office of Court Administration.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; Tex. Sup. Ct. Misc. Docket No. 20-9009, Jan. 14, 2020, eff. June 1, 2020; Tex. Sup. Ct. Misc. Docket No. 20-9068, May 26, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9081, June 30, 2020, eff. July 1, 2020.)

Comment to 2020 change: Rule 116 is amended to implement section 72.034(d) of the Government Code.

RULE 117. RETURN OF CITATION BY PUBLICATION.

(a) *Return of Citation by Newspaper Publication*. If the citation was served by newspaper publication, the return must state how the citation was published, specify the dates of publication, be signed by the officer who served the citation, and be accompanied by an image of the publication.

(b) *Return of Citation by Public Information Internet Website Publication*. If the citation was served by publication on the Public Information Internet Website, the return must specify the dates of publication and be generated by the Office of Court Administration.

(Amended by Order Oct. 17, 2011, eff. Jan. 1, 2012; Order Dec. 12, 2011, eff. Jan. 1, 2012; Tex. Sup. Ct. Misc. Docket No. 20-9009, Jan. 14, 2020, eff. June 1, 2020; Tex. Sup. Ct. Misc. Docket No. 20-9068, May 26, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9081, June 30, 2020, eff. July 1, 2020.)

RULE 117A. CITATION IN SUITS FOR DELINQUENT AD VALOREM TAXES.

In all suits for collection of delinquent ad valorem taxes, the rules of civil procedure governing issuance and service of citation shall control the issuance and service of citation therein, except as herein otherwise specially provided.

1. **Personal Service: Owner and Residence Known, Within State.** Where any defendant in a tax suit is a resident of the State of Texas and is not subject to citation by publication under subdivision 3 below, the process shall conform substantially to the form hereinafter set out for personal service and shall contain the essential elements and be served and returned and otherwise regulated by the provisions of Rules 99 to 107, inclusive.
2. **Personal Service: Owner and Residence Known, Out of State.** Where any such defendant is absent from the State or is a nonresident of the State and is not subject to citation by publication under subdivision 3 below, the process shall conform substantially to the form hereinafter set out for personal service and shall contain the essential elements and be served and returned and otherwise regulated by the provisions of Rule 108.
3. **Service by Publication: Nonresident, Absent from State, Transient, Name Unknown, Residence Unknown, Owner Unknown, Heirs Unknown, Corporate Officers, Trustees, Receivers or Stockholders Unknown, Any Other Unknown Persons Owing or Claiming or Having an Interest.** Where any defendant in a tax suit is a nonresident of the State, or is absent from the State, or is a transient person, or the name or the residence of any owner of any interest in any property upon which a tax lien is sought to be foreclosed, is unknown to the attorney requesting the issuance of process or filing the suit for the taxing unit, and such attorney shall make affidavit that such defendant is a nonresident of the State, or is absent from the State, or is a transient person, or that the name or residence of such owner is unknown and cannot be ascertained after diligent inquiry, each such person in every such class above mentioned, together with any and all other persons, including adverse claimants, owning or claiming or having any legal or equitable interest in or lien upon such property, may be cited by publication. All unknown owners of any interest in any property upon which any taxing unit seeks to foreclose a lien for taxes, including stockholders of corporations—defunct or otherwise—their successors, heirs, and assigns, may be joined in such suit under the designation of "unknown owners" and citation be had upon them as such; provided, however, that record owners of such property or of any apparent interest therein, including, without limitation, record lien holders, shall not be included in the designation of "unknown owners"; and provided further that where any record owner has rendered the property involved within five years before the tax suit is filed, citation on such record owner may not be had by publication or posting unless citation for personal service has been issued as to such record owner, with a notation thereon setting forth the same address as is contained on the rendition sheet made within such five years, and the sheriff or other person to whom citation has been delivered makes his return thereon that he is unable to locate the defendant. Where any attorney filing a tax suit for a taxing unit, or requesting the issuance of process in such suit, shall make affidavit that a corporation is the record owner of any interest in any property upon which a tax lien is sought to be foreclosed, and that he does not know, and after diligent inquiry has been unable to ascertain, the location of the place of business, if any, of such corporation, or the name or place of

residence of any officer of such corporation upon whom personal service may be had, such corporation may be cited by publication as herein provided. All defendants of the classes enumerated above may be joined in the same citation by publication.

An affidavit which complies with the foregoing requirements therefor shall be sufficient basis for the citation above mentioned in connection with it but shall be held to be made upon the criminal responsibility of affiant.

Such citation by publication shall be directed to the defendants by names or by designation as hereinabove provided, and shall be issued and signed by the clerk of the court in which such tax suit is pending. It shall be sufficient if it states the file number and style of the case, the date of the filing of the petition, the names of all parties by name or by designation as hereinabove provided, and the court in which the suit is pending; shall command such parties to appear and defend such suit at or before 10 o'clock a.m. of the first Monday after the expiration of forty-two days from the date of the issuance thereof, specifying such date when such parties are required to answer; shall state the place of holding the court, the nature of the suit, and the date of the issuance of the citation; and shall be signed and sealed by the clerk.

The citation shall be published in the English language one time a week for two weeks in some newspaper published in the county in which the property is located, which newspaper must have been in general circulation for at least one year immediately prior to the first publication and shall in every respect answer the requirements of the law applicable to newspapers which are employed for such a purpose, the first publication to be not less than twenty-eight days prior to the return day fixed in the citation; and the affidavit of the editor or publisher of the newspaper giving the date of publication, together with a printed copy of the citation as published, shall constitute sufficient proof of due publication when returned and filed in court. If there is no newspaper published in the county, then the publication may be made in a newspaper in an adjoining county, which newspaper shall in every respect answer the requirements of the law applicable to newspapers which are employed for such a purpose. The maximum fee for publishing the citation shall be the lowest published word or line rate of that newspaper for classified advertising. If the publication of the citation cannot be had for this fee, chargeable as costs and payable upon sale of the property, as provided by law, and this fact is supported by the affidavit of the attorney for the plaintiff or the attorney requesting the issuance of the process, then service of the citation may be made by posting a copy at the courthouse door of the county in which the suit is pending, the citation to be posted at least twenty-eight days prior to the return day fixed in the citation. Proof of the posting of the citation shall be made by affidavit of the attorney for the plaintiff, or of the person posting it. When citation is served as here provided it shall be sufficient, and no other form of citation or notice to the named defendants therein shall be necessary.

4. **Citation in Tax Suits: General Provisions.**. Any process authorized by this rule may issue jointly in behalf of all taxing units who are plaintiffs or intervenors in any tax suit. The statement of the nature of the suit, to be set out in the citation, shall be sufficient if it contains a brief general description of the property upon which the taxes are due and the amount of such taxes, exclusive of interest, penalties, and costs, and shall state, in substance, that in such suit the plaintiff and all other taxing units who may set up their claims therein seek recovery of the delinquent ad valorem taxes due on said property, and the (establishment and foreclosure) of liens, if any, securing the payment of same, as provided by law; that in addition to the taxes all interest, penalties, and costs allowed by law up to and including the day of judgment are included in the suit; and that all parties to the suit, including plaintiff, defendants, and intervenors, shall take notice that claims for any taxes on said property becoming delinquent subsequent to the filing of the suit and up to the day of judgment, together with all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered therein without further citation or notice to any parties thereto. Such citation need not be accompanied by a copy of plaintiff's petition and no such copy need be served. Such citation shall also show the names of all taxing units which assess and collect taxes on said property not made parties to such suit, and shall contain, in substance, a recitation that each party to such suit shall take notice of, and plead and answer to, all claims and pleadings then on file or thereafter filed in said cause by all other parties therein, or who may intervene therein and set up their respective tax claims against said property. After citation or notice has been given on behalf of any plaintiff or intervenor taxing unit, the court shall have jurisdiction to hear and determine the tax claims of all taxing units who are parties plaintiff, intervenor or defendant at the time such process is issued and of all taxing units intervening after such process is issued, not only for the taxes, interest, penalties, and costs which may be due on said property at the time the suit is filed, but those becoming delinquent thereon at any time thereafter up to and including the day of judgment, without the necessity of further citation or notice to any party to said suit; and any taxing unit having a tax claim against said property may, by answer or intervention, set up and have determined its tax claim without the necessity of further citation or notice to any parties to such suit.

5. **Form of Citation by Publication or Posting.** The form of citation by publication or posting shall be sufficient if it is in substantially the following form with proper changes to make the same applicable to personal property, where necessary, and if the suit includes or is for the recovery of taxes assessed on personal property, a general description of such personal property shall be sufficient:

THE STATE OF TEXAS)

COUNTY OF _____)

In the name and by the authority of the State of Texas

Notice is hereby given as follows:

To _____ and any and all other persons, including adverse claimants, owning or having or claiming any legal or equitable interest in or lien upon the following described property delinquent to Plaintiff herein, for taxes, to-wit:

_____

_____

Which said property is delinquent to Plaintiff for taxes in the following amounts:

$ _____, exclusive of interest, penalties, and costs, and there is included in this suit in addition to the taxes all said interest, penalties, and costs thereon allowed by law up to and including the day of judgment herein.

You are hereby notified that suit has been brought by _____ as Plaintiffs, against _____ as Defendants, by petition filed on the _____ day of _____, 19__, in a certain suit styled _____ v. _____ for collection of the taxes on said property and that said suit is now pending in the District Court of _____ County, Texas, _____ Judicial District, and the file number of said suit is

_____, that the names of all taxing units which assess and collect taxes on the property hereinabove described not made parties to this suit, are _____.

Plaintiff and all other taxing units who may set up their tax claims herein seek recovery of delinquent ad valorem taxes on the property hereinabove described, and in addition to the taxes all interest, penalties, and costs allowed by law thereon up to and including the day of judgment herein, and the establishment and foreclosure of liens, if any, securing the payment of same, as provided by law.

All parties to this suit, including plaintiff, defendants, and intervenors, shall take notice that claims not only for any taxes which were delinquent on said property at the time this suit was filed but all taxes becoming delinquent thereon at any time thereafter up to the day of judgment, including all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered herein without further citation or notice to any parties herein, and all said parties shall take notice of and plead and answer to all claims and pleadings now on file and which may hereafter be filed in said cause by all other parties herein, and all of those taxing units above named who may intervene herein and set up their respective tax claims against said property.

You are hereby commanded to appear and defend such suit on the first Monday after the expiration of forty-two (42) days from and after the date of issuance hereof, the same being the _____ day of _____ A.D., 19__ (which is the return day of such citation), before the honorable District Court of _____ County, Texas, to be held at the courthouse thereof, then and there to show cause why judgment shall not be rendered for such taxes, penalties, interest, and costs, and condemning said property and ordering foreclosure of the constitutional and statutory tax liens thereon for taxes due the plaintiff and the taxing units parties hereto, and those who may intervene herein, together with all interest, penalties, and costs allowed by law up to and including the day of judgment herein, and all costs of this suit.

Issued and given under my hand and seal of said court in the City of _____,_____County, Texas, this ____ day of _____, A.D., 19__.

_____
Clerk of the District Court.
_____ County, Texas,
_____ Judicial District.

6. **Form of Citation by Personal Service In or Out of State.** The form of citation for personal service shall be sufficient if it is in substantially the following form, with proper changes to make the same applicable to personal property, where necessary, and if the suit includes or is for the recovery of taxes assessed on personal property, a general description of such personal property shall be sufficient:

THE STATE OF TEXAS

To _____, Defendant,

GREETING:

YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court, _____ Judicial District, _____ County, Texas, at the Courthouse of said county in _____, Texas, at or before 10 o'clock a.m. of the Monday next after the expiration of 20 days from the date of service of this citation, then and there to answer the petition of _____ Plaintiff, filed in said Court on the _____ day of _____, A.D., 19__, against _____, Defendant, said suit being number _____ on the docket of said Court, the nature of which demand is a suit to collect delinquent ad valorem taxes on the property hereinafter described.

The amount of taxes due Plaintiff, exclusive of interest, penalties, and costs, is the sum of $ _____, said property being described as follows, to-wit: _____.

The names of all taxing units which assess and collect taxes on said property, not made parties to this suit, are:

_____

Plaintiff and all other taxing units who may set up their tax claims herein seek recovery of delinquent ad valorem taxes on the property hereinabove described, and in addition to the taxes all interest, penalties, and costs allowed by law thereon up to and including the day of judgment herein, and the establishment and foreclosure of liens securing the payment of same, as provided by law.

All parties to this suit, including plaintiff, defendants, and intervenors, shall take notice that claims not only for any taxes which were delinquent on said property at the time this suit was filed but all taxes becoming delinquent thereon at any time thereafter up to the day of judgment, including all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered herein without further citation or notice to any parties herein, and all said parties shall take notice of and plead and answer to all claims and pleadings now on file and which may hereafter be filed in this cause by all other parties hereto, and by all of those taxing units above named, who may intervene herein and set up their respective tax claims against said property.

If this citation is not served within 90 days after the date of its issuance, it shall be returned unserved.

The officer executing this return shall promptly serve the same according to the requirements of law and the mandates hereof and make due return as the law directs.

Issued and given under my hand and seal of said Court at _____, Texas, this the _____ day of _____, A.D., 19__.

_____
Clerk of the District Court of
_____ County, Texas.
By _____, Deputy.

(Adopted Aug. 18, 1947, eff. Dec. 31, 1947. Amended by Order May 4, 1948, eff. Oct. 1, 1948; July 17, 1950, eff. Dec. 1, 1950; July 15, 1987, eff. Jan. 1, 1988.)

RULE 118. AMENDMENT.

At any time in its discretion and upon such notice and on such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

RULE 119. ACCEPTANCE OF SERVICE.

The defendant may accept service of process, or waive the issuance or service thereof by a written memorandum signed by him, or by his duly authorized agent or attorney, after suit is brought, sworn to before a proper officer other than an attorney in the case, and filed among the papers of the cause, and such waiver or acceptance shall have the same force and effect as if the citation had been issued and served as provided by law. The party signing such memorandum shall be delivered a copy of plaintiff's petition, and the receipt of the same shall be acknowledged in such memorandum. In every divorce action such memorandum shall also include the defendant's mailing address.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941; July 20, 1954, eff. Jan. 1, 1955; July 26, 1960, eff. Jan. 1, 1961.)

RULE 119a. COPY OF DECREE.

The district clerk shall forthwith mail a certified copy of the final divorce decree or order of dismissal to the party signing a memorandum waiving issuance or service of process. Such divorce decree or order of dismissal shall be mailed to the signer of the memorandum at the address stated in such memorandum or to the office of his attorney of record.

(Adopted July 20, 1954, eff. Jan. 1, 1955.)

RULE 120. ENTERING APPEARANCE.

The defendant may, in person, or by attorney, or by his duly authorized agent, enter an appearance in open court. Such appearance shall be noted by the judge upon his docket and entered in the minutes, and shall have the same force and effect as if the citation had been duly issued and served as provided by law.

RULE 120a. SPECIAL APPEARANCE.

1. Notwithstanding the provisions of Rules 121, 122 and 123, a special appearance may be made by any party either in person or by attorney for the purpose of objecting to the jurisdiction of the court over the person or property of the defendant on the ground that such party or property is not amenable to process issued by the courts of this State. A special appearance may be made as to an entire proceeding or as to any severable claim involved therein. Such special appearance shall be made by sworn motion filed prior to motion to transfer venue or any other plea, pleading or motion; provided however, that a motion to transfer venue and any other plea, pleading, or motion may be contained in the same instrument or filed subsequent thereto without waiver of such special appearance; and may be amended to cure defects. The issuance of process for witnesses, the taking of depositions, the serving of requests for admissions, and the use of discovery processes, shall not constitute a waiver of such special appearance. Every appearance, prior to judgment, not in compliance with this rule is a general appearance.
2. Any motion to challenge the jurisdiction provided for herein shall be heard and determined before a motion to transfer venue or any other plea or pleading may be heard. No determination of any issue of fact in connection with the objection to jurisdiction is a determination of the merits of the case or any aspect thereof.
3. The court shall determine the special appearance on the basis of the pleadings, any stipulations made by and between the parties, such affidavits and attachments as may be filed by the parties, the results of discovery processes, and any oral testimony. The affidavits, if any, shall be served at least seven days before the hearing, shall be made on personal knowledge, shall set forth specific facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify.

   Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

   Should it appear to the satisfaction of the court at any time that any of such affidavits are presented in violation of Rule 13, the court shall impose sanctions in accordance with that rule.
4. If the court sustains the objection to jurisdiction, an appropriate order shall be entered. If the objection to jurisdiction is overruled, the objecting party may thereafter appear generally for any purpose. Any such special appearance or such general appearance shall not be deemed a waiver of the objection to jurisdiction when the objecting party or subject matter is not amenable to process issued by the courts of this State.

(Adopted April 12, 1962, eff. Sept. 1, 1962. Amended by Order July 22, 1975, eff. Jan. 1, 1976; June 15, 1983, eff. Sept. 1, 1983; April 24, 1990, eff. Sept. 1, 1990.)

RULE 121. ANSWER IS APPEARANCE.

An answer shall constitute an appearance of the defendant so as to dispense with the necessity for the issuance or service of citation upon him.

RULE 122. CONSTRUCTIVE APPEARANCE.

If the citation or service thereof is quashed on motion of the defendant, such defendant shall be deemed to have entered his appearance at ten o'clock a.m. on the Monday next after the expiration of twenty (20) days after the day on which the citation or service is quashed, and such defendant shall be deemed to have been duly served so as to require him to appear and answer at that time, and if he fails to do so, judgment by default may be rendered against him.

RULE 123. REVERSAL OF JUDGMENT.

Where the judgment is reversed on appeal or writ of error for the want of service, or because of defective service of process, no new citation shall be issued or served, but the defendant shall be presumed to have entered his appearance to the term of the court at which the mandate shall be filed.

RULE 124. NO JUDGMENT WITHOUT SERVICE.

In no case shall judgment be rendered against any defendant unless upon service, or acceptance or waiver of process, or upon an appearance by the defendant, as prescribed in these rules, except where otherwise expressly provided by law or these rules.

When a party asserts a counterclaim or a cross-claim against another party who has entered an appearance, the claim may be served in any manner prescribed for service of citation or as provided in Rule 21(a).

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

SECTION 6.
COSTS AND SECURITY THEREFOR

RULE 125. PARTIES RESPONSIBLE.

Each party to a suit shall be liable to the officers of the court for all costs incurred by himself.

RULE 126. FEE FOR SERVICE OF PROCESS IN A COUNTY OTHER THAN IN THE COUNTY OF SUIT.

(a) *General Rule: Fee Due Before Service*. A sheriff or constable may require payment before serving process in a case pending in a county other than the county in which the sheriff or constable is an officer.

(b) *Exception: Statement of Inability to Afford Payment of Court Costs Filed*. If a Statement of Inability to Afford Payment of Court Costs has been filed in a case in which the declarant requests service of process in a county other than in the county of suit, the clerk must indicate on the document to be served that a Statement of Inability to Afford Payment of Court Costs has been filed. The sheriff or constable must execute the service without demanding payment.

(Amended by Tex. Sup. Ct. Misc. Docket No. 16-9056, eff. Sept. 1, 2016; Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016.)

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

RULE 127. PARTIES LIABLE FOR OTHER COSTS.

Each party to a suit shall be liable for all costs incurred by him. If the costs cannot be collected from the party against whom they have been adjudged, execution may issue against any party in such suit for the amount of costs incurred by such party, but no more.

RULE 128. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 129. HOW COSTS COLLECTED.

If any party responsible for costs fails or refuses to pay the same within ten days after demand for payment, the clerk or justice of the peace may make certified copy of the bill of costs then due, and place the same in the hands of the sheriff or constable for collection. All taxes imposed on law proceedings shall be included in the bill of costs. Such certified bill of costs shall have the force and effect of an execution. The removal of a case by appeal shall not prevent the issuance of an execution for costs.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 130. OFFICER TO LEVY.

The sheriff or constable upon demand and failure to pay said bill of costs, may levy upon a sufficient amount of property of the person from whom said costs are due to satisfy the same, and sell such property as under execution. Where such party is not a resident of the county where such suit is pending, the payment of such costs may be demanded of his attorney of record; and neither the clerk nor justice of the peace shall be allowed to charge any fee for making out such certified bill of costs, unless he is compelled to make a levy.

RULE 131. SUCCESSFUL PARTY TO RECOVER.

The successful party to a suit shall recover of his adversary all costs incurred therein, except where otherwise provided.

RULE 132. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 133. COSTS OF MOTION.

The court may give or refuse costs on motions at its discretion, except where otherwise provided by law or these rules.

RULES 134 AND 135. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 136. DEMAND REDUCED BY PAYMENTS.

Where the plaintiff's demand is reduced by payment to an amount which would not have been within the jurisdiction of the court, the defendant shall recover his costs.

RULE 137. IN ASSAULT AND BATTERY, ETC.

In civil actions for assault and battery, slander and defamation of character, if the verdict or judgment shall be for the plaintiff, but for less than twenty dollars, the plaintiff shall not recover his costs, but each party shall be taxed with the costs incurred by him in such suit.

RULE 138. COST OF NEW TRIALS.

The costs of new trials may either abide the result of the suit or may be taxed against the party to whom the new trial is granted, as the court may adjudge when he grants such new trial.

RULE 139. ON APPEAL AND CERTIORARI.

When a case is appealed, if the judgment of the higher court be against the appellant, but for less amount than the original judgment, such party shall recover the costs of the higher court but shall be adjudged to pay the costs of the court below; if the judgment be against him for the same or a greater amount than in the court below, the adverse party shall recover the costs of both courts. If the judgment of the court above be in favor of the party appealing and for more than the original judgment, such party shall recover the costs of both courts; if the judgment be in his favor, but for the same or a less amount than in the court below, he shall recover the costs of the court below, and pay the costs of the court above.

RULE 140. NO FEE FOR COPY.

No fee for a copy of a paper not required by law or these rules to be copied shall be taxed in the bill of costs.

RULE 141. COURT MAY OTHERWISE ADJUDGE COSTS.

The court may, for good cause, to be stated on the record, adjudge the costs otherwise than as provided by law or these rules.

RULE 142. SECURITY FOR COSTS.

The clerk shall require from the plaintiff fees for services rendered before issuing any process unless filing is requested pursuant to Rule 145 of these rules.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941; July 15, 1987, eff. Jan. 1, 1988.)

RULE 143. RULE FOR COSTS.

A party seeking affirmative relief may be ruled to give security for costs at any time before final judgment, upon motion of any party, or any officer of the court interested in the costs accruing in such suit, or by the court upon its own motion. If such rule be entered against any party and he failed to comply therewith on or before twenty (20) days after notice that such rule has been entered, the claim for affirmative relief of such party shall be dismissed.

(Amended by Order July 21, 1970, eff. Jan. 1, 1971.)

RULE 143a. COSTS ON APPEAL TO COUNTY COURT.

If the appellant fails to pay the costs on appeal from a judgment of a justice of the peace or small claims court within twenty (20) days after being notified to do so by the county clerk, the appeal shall be deemed not perfected and the county clerk shall return all papers in said cause to the justice of the peace having original jurisdiction and the justice of the peace shall proceed as though no appeal had been attempted.

(Adopted July 22, 1975, eff. Jan. 1, 1976.)

RULE 144. JUDGMENT ON COST BOND.

All bonds given as security for costs shall authorize judgment against all the obligors in such bond for the said costs, to be entered in the final judgment of the cause.

RULE 145. PAYMENT OF COSTS NOT REQUIRED.

(a) *Costs Defined.* "Costs" mean any fee charged by the court or an officer of the court, including, but not limited to, filing fees, fees for issuance and service of process, fees for copies, fees for a court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record.

(b) *Sworn Statement Required.* A party who cannot afford payment of court costs must file the Statement of Inability to Afford Payment of Court Costs approved by the Supreme Court or another sworn document containing the same information. A "sworn" Statement is one that is signed before a notary or made under penalty of perjury. In this rule, "declarant" means the party filing the Statement.

(c) Duties of the Clerk. The clerk:

(1) must make the Statement available to any person for free without request;

(2) may return a Statement for correction only if it is not sworn—not for failure to attach evidence or any other reason; and

(3) must, on the filing of a sworn Statement, docket the case, issue citation, and provide any other service that is ordinarily provided to a party.

(d) *Prima Facie Evidence of Inability to Afford Payment of Costs.* The declarant should submit with the Statement any available evidence of the declarant's inability to afford payment of costs. An attachment demonstrating any of the following is prima facie evidence:

(1) the declarant or the declarant's dependent receives benefits from a means-tested government entitlement program;

(2) the declarant is being represented in the case by an attorney who is providing legal services to the declarant through:

(A) a provider funded by the Texas Access to Justice Foundation;

(B) a provider funded by the Legal Services Corporation; or

(C) a nonprofit that provides civil legal services to persons living at or below 200% of the federal poverty guidelines published annually by the United States Department of Health and Human Services; or

(3) the declarant has applied for free legal services for the case through a provider listed in (2) and was determined to be financially eligible but was declined representation.

(e) *Motion to Require Payment of Costs*. A motion to require the declarant to pay costs must comply with this paragraph.

(1) *By the Clerk, the Reporter, or a Party.* A motion filed by the clerk, the court reporter, or a party must contain sworn evidence—not merely allegations—either that the Statement was materially false when made or that because of changed circumstances, it is no longer true.

(2) *By the Court*. The court on its own may require the declarant to prove the inability to afford costs when evidence comes before the court that the declarant may be able to afford costs or when an officer or professional must be appointed in the case.

(f) *Notice; Hearing; Requirements of Order*. When a Statement has been filed, the declarant must not be ordered to pay costs unless these procedural requirements have been satisfied:

(1) *Notice and Hearing.* The declarant must not be required to pay costs without an oral evidentiary hearing. The declarant must be given 10 days' notice of the hearing. Notice must either be in writing and served in accordance with Rule 21a or given in open court. At the hearing, the burden is on the declarant to prove the inability to afford costs.

(2) *Findings Required*. An order requiring the declarant to pay costs must be supported by detailed findings that the declarant can afford to pay costs.

(3) *Partial and Delayed Payment.* The court may order that the declarant pay the part of the costs the declarant can afford or that payment be made in installments. But the court must not delay the case if payment is made in installments.

(4) *Order Must State Notice of Right to Appeal.* An order requiring the declarant to pay costs must state in conspicuous type: "You may challenge this order by filing a motion in the court of appeals within 10 days after the date this order is signed. See Texas Rule of Civil Procedure 145."

(g) Review of Trial Court Order.

(1) *Only Declarant May Challenge; Motion.* Only the declarant may challenge an order issued by the trial court under this rule. The declarant may challenge the order by motion filed in the court of appeals with jurisdiction over an appeal from the judgment in the case. The declarant is not required to pay any filing fees related to the motion in the court of appeals.

(2) *Time for Filing; Extension.* The motion must be filed within 10 days after the trial court's order is signed. The court of appeals may extend the deadline by 15 days if the declarant demonstrates good cause for the extension in writing.

(3) *Record.* After a motion is filed, the court of appeals must promptly send notice to the trial court clerk and the court reporter requesting preparation of the record of all trial court proceedings on the declarant's claim of indigence. The court may set a deadline for filing the record. The record must be provided without charge.

(4) *Court of Appeals to Rule Promptly.* The court of appeals must rule on the motion at the earliest practicable time.

(h) *Judgment.* The judgment must not require the declarant to pay costs, and a provision in the judgment purporting to do so is void, unless the court has issued an order that complies with (f), or the declarant has obtained a monetary recovery, and the court orders the recovery to be applied toward payment of costs.

(i) *Court to Designate Record.* When the declarant requests preparation of the reporter's record, the court must designate the portions to be transcribed.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988; Tex. Sup. Ct. Misc. Docket No. 16-9056, eff. Sept. 1, 2016; Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016; Tex. Sup. Ct. Misc. Docket No. 20-9154 and Tex. Sup. Ct. Misc. Docket No. 21-9077, eff. Sept. 1, 2021.)

Comment to 2016 Change: The rule has been rewritten. Access to the civil justice system cannot be denied because a person cannot afford to pay court costs. Whether a particular fee is a court cost is governed by this rule, Civil Practice and Remedies Code Section 31.007, and case law.

The issue is not merely whether a person can pay costs, but whether the person can afford to pay costs. A person may have sufficient cash on hand to pay filing fees, but the person cannot afford the fees if paying them would preclude the person from paying for basic essentials, like housing or food. Experience indicates that almost all filers described in (e)(1)-(3), and most filers described in (e)(4), cannot in fact afford to pay costs.

Because costs to access the system—filing fees, fees for issuance of process and notices, and fees for service and return—are kept relatively small, the expense involved in challenging a claim of inability to afford costs often exceeds the costs themselves. Thus, the rule does not allow the clerk or a party to challenge a litigant's claim of inability to afford costs without sworn evidence that the claim is false. The filing of a Statement of Inability to Afford Payment of Court Costs—which may either be sworn to before a notary or made under penalty of perjury, as permitted by Civil Practice and Remedies Code Section 132.001—is all that is needed to require the clerk to provide ordinary services without payment of fees and costs. But evidence may come to light that the claim was false when made. And the declarant's circumstances may change, so that the claim is no longer true. Importantly, costs may increase with the appointment of officers or professionals in the case, or when a reporter's record must be prepared. The reporter is always allowed to challenge a claim of inability to afford costs before incurring the substantial expense of record preparation. The trial court always retains discretion to require evidence of an inability to afford costs.

Comment to 2021 Change: The rule has been amended to clarify that proof of any criterion in paragraph (d) is prima facie evidence of the declarant's inability to afford court costs. Paragraph (e) has been amended to require that a contest by the court reporter satisfy the same conditions as a contest by the clerk or a party. These amendments are intended to reduce frivolous challenges to a Statement, which cost time and resources.

The rule has also been amended to require in paragraph (f)(3) that an order requiring payment of costs include conspicuous notice of the declarant's right to appeal.

To accommodate these substantive changes, some paragraphs have been rearranged and relettered or renumbered. Other clarifying and stylistic changes have been made.

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

RULE 146. DEPOSIT FOR COSTS.

In lieu of a bond for costs, the party required to give the same may deposit with the clerk of court or the justice of the peace such sum as the court or justice from time to time may designate as sufficient to pay the accrued costs.

RULE 147. APPLIES TO ANY PARTY.

The foregoing rules as to security and rule for costs shall apply to any party who seeks a judgment against any other party.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 148. SECURED BY OTHER BOND.

No further security shall be required if the costs are secured by the provisions of an attachment or other bond filed by the party required to give security for costs.

RULE 149. EXECUTION FOR COSTS.

When costs have been adjudged against a party and are not paid, the clerk or justice of the court in which the suit was determined may issue execution, accompanied by an itemized bill of costs, against such party to be levied and collected as in other cases; and said officer, on demand of any party to whom any such costs are due, shall issue execution for costs at once. This rule shall not apply to executors, administrators or guardians in cases where costs are adjudged against the estate of a deceased person or of a ward. No execution shall issue in any case for costs until after judgment rendered therefor by the court.

SECTION 7.
ABATEMENT AND DISCONTINUANCE OF SUIT

RULE 150. DEATH OF PARTY.

Where the cause of action is one which survives, no suit shall abate because of the death of any party thereto before the verdict or decision of the court is rendered, but such suit may proceed to judgment as hereinafter provided.

RULE 151. DEATH OF PLAINTIFF.

If the plaintiff dies, the heirs, or the administrator or executor of such decedent may appear and upon suggestion of such death being entered of record in open court, may be made plaintiff, and the suit shall proceed in his or their name. If no such appearance and suggestion be made within a reasonable time after the death of the plaintiff, the clerk upon the application of defendant, his agent or attorney, shall issue a scire facias for the heirs or the administrator or executor of such decedent, requiring him to appear and prosecute such suit. After service of such scire facias, should such heir or administrator or executor fail to enter appearance within the time provided, the defendant may have the suit dismissed.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 152. DEATH OF DEFENDANT.

Where the defendant shall die, upon the suggestion of death being entered of record in open court, or upon petition of the plaintiff, the clerk shall issue a scire facias for the administrator or executor or heir requiring him to appear and defend the suit and upon the return of such service, the suit shall proceed against such administrator or executor or heir.

RULE 153. WHEN EXECUTOR, ETC., DIES.

When an executor or administrator shall be a party to any suit, whether as plaintiff or as defendant, and shall die or cease to be such executor or administrator, the suit may be continued by or against the person succeeding him in the administration, or by or against the heirs, upon like proceedings being had as provided in the two preceding rules, or the suit may be dismissed, as provided in Rule 151.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 154. REQUISITES OF SCIRE FACIAS.

The scire facias and returns thereon, provided for in this section, shall conform to the requisites of citations and the returns thereon, under the provisions of these rules.

RULE 155. SURVIVING PARTIES.

Where there are two or more plaintiffs or defendants, and one or more of them die, upon suggestion of such death being entered upon the record, the suit shall at the instance of either party proceed in the name of the surviving plaintiffs or against the surviving defendants, as the case may be.

RULE 156. DEATH AFTER VERDICT OR CLOSE OF EVIDENCE.

When a party in a jury case dies between verdict and judgment, or a party in a non-jury case dies after the evidence is closed and before judgment is pronounced, judgment shall be rendered and entered as if all parties were living.

(Amended by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 157. [REPEALED]

(Repealed by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 158. SUIT FOR THE USE OF ANOTHER.

When a plaintiff suing for the use of another shall die before verdict, the person for whose use such suit was brought, upon such death being suggested on the record in open court, may prosecute the suit in his own name, and shall be as responsible for costs as if he brought the suit.

RULE 159. SUIT FOR INJURIES RESULTING IN DEATH.

In cases arising under the provisions of the title relating to injuries resulting in death, the suit shall not abate by the death of either party pending the suit, but in such case, if the plaintiff dies, where there is only one plaintiff, some one or more of the parties entitled to the money recovered may be substituted and the suit prosecuted to judgment in the name of such party or parties, for the benefit of the person entitled, if the defendant dies, his executor, administrator or heir may be made a party, and the suit prosecuted to judgment.

RULE 160. DISSOLUTION OF CORPORATION.

The dissolution of a corporation shall not operate to abate any pending suit in which such corporation is a defendant, but such suit shall continue against such corporation and judgment shall be rendered as though the same were not dissolved.

RULE 161. WHERE SOME DEFENDANTS NOT SERVED.

When some of the several defendants in a suit are served with process in due time and others are not so served, the plaintiff may either dismiss as to those not so served and proceed against those who are, or he may take new process against those not served, or may obtain severance of the case as between those served and those not served, but no dismissal shall be allowed as to a principal obligor without also dismissing the parties secondarily liable except in cases provided by statute. No defendant against whom any suit may be so dismissed shall be thereby exonerated from any liability, but may at any time be proceeded against as if no such suit had been brought and no such dismissal ordered.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; April 24, 1984, eff. Oct. 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

RULE 162. DISMISSAL OR NON-SUIT.

At any time before the plaintiff has introduced all of his evidence other than rebuttal evidence, the plaintiff may dismiss a case, or take a non-suit, which shall be entered in the minutes. Notice of the dismissal or non-suit shall be served in accordance with Rule 21a on any party who has answered or has been served with process without necessity of court order.

Any dismissal pursuant to this rule shall not prejudice the right of an adverse party to be heard on a pending claim for affirmative relief or excuse the payment of all costs taxed by the clerk. A dismissal under this rule shall have no effect on any motion for sanctions, attorney's fees or other costs, pending at the time of dismissal, as determined by the court. Any dismissal pursuant to this rule which terminates the case shall authorize the clerk to tax court costs against dismissing party unless otherwise ordered by the court.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

RULE 163. DISMISSAL AS TO PARTIES SERVED, ETC.

When it will not prejudice another party, the plaintiff may dismiss his suit as to one or more of several parties who were served with process, or who have answered, but no such dismissal shall in any case, be allowed as to a principal obligor, except in the cases provided for by statute.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

RULE 164. [REPEALED]

(Repealed by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 165. ABANDONMENT.

A party who abandons any part of his claim or defense, as contained in the pleadings, may have that fact entered of record, so as to show that the matters therein were not tried.

RULE 165A. DISMISSAL FOR WANT OF PROSECUTION.

1. **Failure to Appear.** A case may be dismissed for want of prosecution on failure of any party seeking affirmative relief to appear for any hearing or trial of which the party had notice. Notice of the court's intention to dismiss and the date and place of the dismissal hearing shall be sent by the clerk to each attorney of record, and to each party not represented by an attorney and whose address is shown on the docket or in the papers on file, by posting same in the United States Postal Service. At the dismissal hearing, the court shall dismiss for want of prosecution unless there is good cause for the case to be maintained on the docket. If the court determines to maintain the case on the docket, it shall render a pretrial order assigning a trial date for the case and setting deadlines for the joining of new parties, all discovery, filing of all pleadings, the making of a response or supplemental responses to discovery and other pretrial matters. The case may be continued thereafter only for valid and compelling reasons specifically determined by court order. Notice of the signing of the order of dismissal shall be given as provided in Rule 306a. Failure to mail notices as required by this rule shall not affect any of the periods mentioned in Rule 306a except as provided in that rule.
2. **Non-compliance With Time Standards.** Any case not disposed of within time standards promulgated by the Supreme Court under its Administrative Rules may be placed on a dismissal docket.

3. **Reinstatement.** A motion to reinstate shall set forth the grounds therefor and be verified by the movant or his attorney. It shall be filed with the clerk within 30 days after the order of dismissal is signed or within the period provided by Rule 306a. A copy of the motion to reinstate shall be served on each attorney of record and each party not represented by an attorney whose address is shown on the docket or in the papers on file. The clerk shall deliver a copy of the motion to the judge, who shall set a hearing on the motion as soon as practicable. The court shall notify all parties or their attorneys of record of the date, time and place of the hearing.

   The court shall reinstate the case upon finding after a hearing that the failure of the party or his attorney was not intentional or the result of conscious indifference but was due to an accident or mistake or that the failure has been otherwise reasonably explained.

   In the event for any reason a motion for reinstatement is not decided by signed written order within seventy-five days after the judgment is signed, or, within such other time as may be allowed by Rule 306a, the motion shall be deemed overruled by operation of law. If a motion to reinstate is timely filed by any party, the trial court, regardless of whether an appeal has been perfected, has plenary power to reinstate the case until 30 days after all such timely filed motions are overruled, either by a written and signed order or by operation of law, whichever occurs first.

4. **Cumulative Remedies.** This dismissal and reinstatement procedure shall be cumulative of the rules and laws governing any other procedures available to the parties in such cases. The same reinstatement procedures and timetable are applicable to all dismissals for want of prosecution including cases which are dismissed pursuant to the court's inherent power, whether or not a motion to dismiss has been filed.

(Adopted Oct. 3, 1972, eff. Feb. 1, 1973. Amended July 22, 1975, eff. Jan. 1, 1976; Dec. 5, 1983; July 15, 1987, eff. Jan. 1, 1988.)

SECTION 8.
PRE-TRIAL PROCEDURE

RULE 166. PRETRIAL CONFERENCE.

In an appropriate action, to assist in the disposition of the case without undue expense or burden to the parties, the court may in its discretion direct the attorneys for the parties and the parties or their duly authorized agents to appear before it for a conference to consider:

(a) All pending dilatory pleas, motions and exceptions;
(b) The necessity or desirability of amendments to the pleadings;
(c) A discovery schedule;
(d) Requiring written statements of the parties' contentions;
(e) Contested issues of fact and simplification of the issues;
(f) The possibility of obtaining stipulations of fact;
(g) The identification of legal matters to be ruled on or decided by the court;
(h) The exchange of a list of direct fact witnesses, other than rebuttal or impeaching witnesses the necessity of whose testimony cannot reasonably be anticipated before the time of trial, who will be called to testify at trial, stating their address and telephone number, and the subject of the testimony of each such witness;
(i) The exchange of a list of expert witnesses who will be called to testify at trial, stating their address and telephone number, and the subject of the testimony and opinions that will be proffered by each expert witness;
(j) Agreed applicable propositions of law and contested issues of law;
(k) Proposed jury charge questions, instructions, and definitions for a jury case or proposed findings of fact and conclusions of law for a nonjury case;
(l) The marking and exchanging of all exhibits that any party may use at trial and stipulation to the authenticity and admissibility of exhibits to be used at trial;
(m) Written trial objections to the opposite party's exhibits, stating the basis for each objection;
(n) The advisability of a preliminary reference of issues to a master or auditor for findings to be used as evidence when the trial is to be by jury;
(o) The settlement of the case, and to aid such consideration, the court may encourage settlement;
(p) Such other matters as may aid in the disposition of the action.

The court shall make an order that recites the action taken at the pretrial conference, the amendments allowed to the pleadings, the time within which same may be filed, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions, agreements of counsel, or rulings of the court; and such order when issued shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or extend it to all actions.

Pretrial proceedings in multidistrict litigation may also be governed by Rules 11 and 13 of the Rules of Judicial Administration.

(Amended by Order July 26, 1960, eff. Jan. 1, 1961; April 24, 1990, eff. Sept. 1, 1990; Aug. 29, 2003, eff. Sept. 1, 2003.)

RULE 166A. SUMMARY JUDGMENT.

(a) **For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the adverse party has appeared or answered, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.

(b) **For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) **Motion and Proceedings Thereon.** The motion for summary judgment shall state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response. No oral testimony shall be received at the hearing. The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(d) **Appendices, References and Other Use of Discovery Not Otherwise on File.** Discovery products not on file with the clerk may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary judgment proofs: (i) at least twenty-one days before the hearing if such proofs are to be used to support the summary judgment; or (ii) at least seven days before the hearing if such proofs are to be used to oppose the summary judgment.

(e) **Case Not Fully Adjudicated on Motion.** If summary judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the judge may at the healing examine the pleadings and the evidence on file, interrogate counsel, ascertain what material fact issues exist and make an order specifying the facts that are established as a matter of law, and directing such further proceedings in the action as are just.

(f) **Form of Affidavits; Further Testimony.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. Defects in the form of affidavits or attachments will not be grounds for reversal unless specifically pointed out by objection by an opposing party with opportunity, but refusal, to amend.

(g) **When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(h) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(i) **No-Evidence Motion.** After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

(Adopted Oct. 12, 1949. eff. March 1, 1950. Amended by Order Oct. 1, 1951, eff. March 1, 1952; July 20, 1966, eff. Jan. 1, 1967; July 21, 1970, eff. Jan. 1, 1971; July 11, 1977, eff. Jan. 1, 1978; June 10, 1980, eff. Jan. 1, 1981; Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990; April 16, 1997 and August 15, 1997, effective September 1, 1997.)

RULE 167. OFFER OF SETTLEMENT; AWARD OF LITIGATION COSTS.

167.1. Generally.

Certain litigation costs may be awarded against a party who rejects an offer made substantially in accordance with this rule to settle a claim for monetary damages—including a counterclaim, crossclaim, or third-party claim — except in:

(a) a class action;

(b) a shareholder's derivative action;

(c) an action by or against the State, a unit of state government, or a political subdivision of the State;

(d) an action brought under the Family Code;

(e) an action to collect workers' compensation benefits under title 5, subtitle A of the Labor Code; or

(f) an action filed in a justice of the peace court or small claims court.

167.2. Settlement Offer.

(a) *Defendant's declaration a prerequisite; deadline*. A settlement offer under this rule may not be made until a defendant — a party against whom a claim for monetary damages is made — files a declaration invoking this rule. When a defendant files such a declaration, an offer or offers may be made under this rule to settle only those claims by and against that defendant. The declaration must be filed no later than 45 days before the case is set for conventional trial on the merits.

(b) *Requirements of an offer*. A settlement offer must:

(1) be in writing;
(2) state that it is made under Rule 167 and Chapter 42 of the Texas Civil Practice and Remedies Code;
(3) identify the party or parties making the offer and the party or parties to whom the offer is made;
(4) state the terms by which all monetary claims — including any attorney fees, interest, and costs that would be recoverable up to the time of the offer — between the offeror or offerors on the one hand and the offeree or offerees on the other may be settled;
(5) state a deadline — no sooner than 14 days after the offer is served — by which the offer must be accepted;
(6) be served on all parties to whom the offer is made.

(c) *Conditions of offer*. An offer may be made subject to reasonable conditions, including the execution of appropriate releases, indemnities, and other documents. An offeree may object to a condition by written notice served on the offeror before the deadline stated in the offer. A condition to which no such objection is made is presumed to have been reasonable. Rejection of an offer made subject to a condition determined by the trial court to have been unreasonable cannot be the basis for an award of litigation costs under this rule.

(d) *Non-monetary and excepted claims not included*. An offer must not include non-monetary claims and other claims to which this rule does not apply.

(e) *Time limitations*. An offer may not be made:
(1) before a defendant's declaration is filed;
(2) within 60 days after the appearance in the case of the offeror or offeree, whichever is later;
(3) within 14 days before the date the case is set for a conventional trial on the merits, except that an offer may be made within that period if it is in response to, and within seven days of, a prior offer.

(f) *Successive offers*. A party may make an offer after having made or rejected a prior offer. A rejection of an offer is subject to imposition of litigation costs under this rule only if the offer is more favorable to the offeree than any prior offer.

167.3. Withdrawal, Acceptance, and Rejection of Offer.

(a) *Withdrawal of offer*. An offer can be withdrawn before it is accepted. Withdrawal is effective when written notice of the withdrawal is served on the offeree. Once an unaccepted offer has been withdrawn, it cannot be accepted or be the basis for awarding litigation costs under this rule.

(b) *Acceptance of offer*. An offer that has not been withdrawn can be accepted only by written notice served on the offeror by the deadline stated in the offer. When an offer is accepted, the offeror or offeree may file the offer and acceptance and may move the court to enforce the settlement.

(c) *Rejection of offer*. An offer that is not withdrawn or accepted is rejected. An offer may also be rejected by written notice served on the offeror by the deadline stated in the offer.

(d) *Objection to offer made before an offeror's joinder or designation of responsible third party*. An offer made before an offeror joins another party or designates a responsible third party may not be the basis for awarding litigation costs under this rule against an offeree who files an objection to the offer within 15 days after service of the offeror's pleading or designation.

167.4. Awarding Litigation Costs.

(a) *Generally*. If a settlement offer made under this rule is rejected, and the judgment to be awarded on the monetary claims covered by the offer is significantly less favorable to the offeree than was the offer, the court must award the offeror litigation costs against the offeree from the time the offer was rejected to the time of judgment.

(b) *"Significantly less favorable" defined*. A judgment award on monetary claims is significantly less favorable than an offer to settle those claims if:
(1) the offeree is a claimant and the judgment would be less than 80 percent of the offer; or
(2) the offeree is a defendant and the judgment would be more than 120 percent of the offer.

(c) *Litigation costs*. Litigation costs are the expenditures actually made and the obligations actually incurred — directly in relation to the claims covered by a settlement offer under this rule — for the following:
(1) court costs;
(2) reasonable deposition costs, in cases filed on or after September1, 2011;
(3) reasonable fees for not more than two testifying expert witnesses; and
(3) reasonable fees for not more than two testifying witnesses; and
(4) reasonable attorney fees.

(d) *Limits on litigation costs*.
(1) In cases filed before September 1, 2011, the litigation costs that may be awarded under this rule must not exceed the following amount:
(A) the sum of the noneconomic damages, the exemplary or additional damages, and one-half of the economic damages to be awarded to the claimant in the judgment; minus
(B) the amount of any statutory or contractual liens in connection with the occurrences or incidents giving rise to the claim.
(2) In cases filed on or after September I, 2011, the litigation costs that may be awarded to any party under this rule must not exceed the total amount that the claimant recovers or would recover before adding an award of litigation costs under this rule in favor of the claimant or subtracting as an offset an award of litigation costs under this rule in favor of the defendant.

(e) *No double recovery permitted*. A party who is entitled to recover attorney fees and costs under another law may not recover those same attorney fees and costs as litigation costs under this rule.

(f) *Limitation on attorney fees and costs recovered by a party against whom litigation costs are awarded*. A party against whom litigation costs are awarded may not recover attorney fees and costs under another law incurred after the date the party rejected the settlement offer made the basis of the award.

(g) *Litigation costs to be awarded to defendant as a setoff*. Litigation costs awarded to a defendant must be made a setoff to the claimant's judgment against the defendant.

167.5. Procedures.

(a) *Modification of time limits*. On motion, and for good cause shown, the court may — by written order made before commencement of trial on the merits — modify the time limits for filing a declaration under Rule 167.2(a) or for making an offer.

(b) *Discovery permitted*. On motion, and for good cause shown, a party against whom litigation costs are to be awarded may conduct discovery to ascertain the reasonableness of the costs requested. If the court determines the costs to be reasonable, it must order the party requesting discovery to pay all attorney fees and expenses incurred by other parties in responding to such discovery.

(c) *Hearing required*. The court must, upon request, conduct a hearing on a request for an award of litigation costs, at which the affected parties may present evidence.

167.6. Evidence Not Admissible.

Evidence relating to an offer made under this rule is not admissible except for purposes of enforcing a settlement agreement or obtaining litigation costs. The provisions of this rule may not be made known to the jury by any means.

167.7. Other Settlement Offers Not Affected.

This rule does not apply to any offer made in a mediation or arbitration proceeding. A settlement offer not made in compliance with this rule, or a settlement offer not made under this rule, or made in an action to which this rule does not apply, cannot be the basis for awarding litigation costs under this rule as to any party. This rule does not limit or affect a party's right to make a settlement offer that does not comply with this rule, or in an action to which this rule does not apply.

(Adopted Oct. 9, 2003, eff. Jan. 1, 2004, only in cases filed on or after effective date. Amended by Order Aug. 31, 2011, eff. Sept. 1, 2011; Sept. 9, 2011, eff. Sept. 9, 2011.)

RULE 168. PERMISSION TO APPEAL.

On a party's motion or on its own initiative, a trial court may permit an appeal from an interlocutory order that is not otherwise appealable, as provided by statute. Permission must be stated in the order to be appealed. An order previously issued may be amended to include such permission. The permission must identify the controlling question of law as to which there is a substantial ground for difference of opinion, and must state why an immediate appeal may materially advance the ultimate termination of the litigation.

(Adopted by Order Aug. 31, 2011, eff. Sept. 1, 2011. Amended by Order Sept. 9, 2011, eff. Sept. 9, 2011.)

Comment to 2011 change: Rule 168 is a new rule, added to implement amendments to section 51.0 14(d)-(f) of the Texas Civil Practice and Remedies Code. Rule 168 applies only to cases filed on or after September 1, 2011. Rule 168 clarifies that the trial court's permission to appeal should be included in the order to be appealed rather than in a separate order. Rule of Appellate Procedure 28.3 sets out the corollary requirements for permissive appeals in the courts of appeals.

RULE 166B to 169. [REPEALED]

(Repealed by Order Aug. 5, 1998, and Nov. 9, 1998, eff. Jan. 1, 1999.)

RULE 169. EXPEDITED ACTIONS.

(a) *Application*. The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating $250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney fees and costs.

(b) *Recovery*. In no event may a party who prosecutes a suit under this rule recover a judgment in excess of $250,000, excluding interest, statutory or punitive damages and penalties, and attorney fees and costs.

(c) *Removal from Process*.

(1) A court must remove a suit from the expedited actions process:

(A) on motion and a showing of good cause by any party; or

(B) if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by (a).

(2) A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited actions process may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial. Leave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.

(3) If a suit is removed from the expedited actions process, the court must reopen discovery under Rule 190.2(c).

(d) *Expedited Actions Process*.

(1) Discovery. Discovery is governed by Rule 190.2.

(2) Trial Setting; Continuances. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(l) ends. The court may continue the case twice, not to exceed a total of 60 days.

(3) Time Limits for Trial. Each side is allowed no more than eight hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. On motion and a showing of good cause by any party, the court may extend the time limit to no more than twelve hours per side.

(A) The term "side" has the same definition set out in Rule 233.

(B) Time spent on objections, bench conferences, bills of exception, and challenges for cause to a juror under Rule 228 are not included in the time limit.

(4) Alternative Dispute Resolution.

(A) Unless the parties have agreed not to engage in alternative dispute resolution, the court may refer the case to an alternative dispute resolution procedure once, and the procedure must:

(i) not exceed a half-day in duration, excluding scheduling time;

(ii) not exceed a total cost of twice the amount of applicable civil filing fees; and

(iii) be completed no later than 60 days before the initial trial setting.

(B) The court must consider objections to the referral unless prohibited by statute.

(C) The parties may agree to engage in alternative dispute resolution other than that provided for in (A).

(5) Expert Testimony. Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation.

(Adopted by Order Nov. 13, 2012, eff. March 1, 2013. Amended by Order Feb 12, 2013, eff. March 1, 2013. (Applies to cases filed on or after March 1, 2013, except those filed in justice court.); Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

Comments to 2013 change:

1. Rule 169 is a new rule implementing section 22.004(h) of the Texas Government Code, which was added in 2011 and calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed $100,000.

2. The expedited actions process created by Rule 169 is mandatory; any suit that falls within the definition of 169(a)(l) is subject to the provisions of the rule.

3. In determining whether there is good cause to remove the case from the process or extend the time limit for trial, the court should consider factors such as whether the damages sought by multiple claimants against the same defendant exceed in the aggregate the relief allowed under 169(a)(l), whether a defendant has filed a compulsory counterclaim in good faith that seeks relief other than that allowed under 169(a)(l), the number of parties and witnesses, the complexity of the legal and factual issues, and whether an interpreter is necessary.

4. Rule 169(b) specifies that a party who prosecutes a suit under this rule cannot recover a judgment in excess of $100,000. Thus, the rule in *Greenhalgh v. Service Lloyds Ins. Co.*, 787 S.W.2d 938 (Tex. 1990), does not apply if a jury awards damages in excess of $100,000 to the party. The limitation in 169(b) does not apply to a counter-claimant that seeks relief other than that allowed under 5. The discovery limitations for expedited actions are set out in Rule 190.2, which is also amended to implement section 22.004(h) of the Texas Government Code.

Comment to 2021 change:

Rule 169 is amended to implement section 22.004(h-1) of the Texas Government Code— which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed $250,000—and changes to section 22.004(h) of the Texas Government Code. To ensure uniformity, and pursuant to section 22.004(b) of the Texas Government Code, Rule 169's application is not limited to suits filed in county courts at law; any suit that falls within the definition of subsection (a) is subject to the provisions of the rule. However, certain suits are exempt from Rule 169's application by statute. See, e.g., TEX. ESTATES CODE §§ 53.107, 1053.105. The discovery limitations for expedited actions are set out in Rule 190.2, which is also amended to implement section 22.004(h1) of the Texas Government Code.

RULE 170. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 171. MASTER IN CHANCERY.

The court may, in exceptional cases, for good cause appoint a master in chancery, who shall be a citizen of this State, and not an attorney for either party to the action, nor related to either party, who shall perform all of the duties required of him by the court, and shall be under orders of the court, and have such power as the master of chancery has in a court of equity.

The order of reference to the master may specify or limit his powers, and may direct him to report only upon particular issues, or to do or perform particular acts, or to receive and report evidence only and may fix the time and place for beginning and closing the hearings, and for the filing of the master's report. Subject to the limitations and specifications stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of books, papers, vouchers, documents and other writings applicable thereto. He may rule upon the admissibility of evidence, unless otherwise directed by the order of reference and has the authority to put witnesses on oath, and may, himself, examine them, and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner as provided for a court sitting in the trial of a case.

The clerk of the court shall forthwith furnish the master with a copy of the order of reference.

The parties may procure the attendance of witnesses before the master by the issuance and service of process as provided by law and these rules.

The court may confirm, modify, correct, reject, reverse or recommit the report, after it is filed, as the court may deem proper and necessary in the particular circumstances of the case. The court shall award reasonable compensation to such master to be taxed as costs of suit.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941.)

RULE 172. AUDIT.

When an investigation of accounts or examination of vouchers appears necessary for the purpose of justice between the parties to any suit, the court shall appoint an auditor or auditors to state the accounts between the parties and to make report thereof to the court as soon as possible. The auditor shall verify his report by his affidavit stating that he has carefully examined the state of the account between the parties, and that his report contains a true statement thereof, so far as the same has come within his knowledge. Exceptions to such report or of any item thereof must be filed within 30 days of the filing of such report. The court shall award reasonable compensation to such auditor to be taxed as costs of suit.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 173. GUARDIAN AD LITEM.

173.1. Appointment Governed by Statute or Other Rules.

This rule does not apply to an appointment of a guardian ad litem governed by statute or other rules.

173.2. Appointment of Guardian Ad Litem.

(a) *When Appointment Required or Prohibited*. The court must appoint a guardian ad litem for a party represented by a next friend or guardian only if:
   (1) the next friend or guardian appears to the court to have an interest adverse to the party, or
   (2) the parties agree.

(b) *Appointment of the Same Person for Different Parties*. The court must appoint the same guardian ad litem for similarly situated parties unless the court finds that the appointment of different guardians ad litem is necessary.

173.3. Procedure.

(a) *Motion Permitted But Not Required*. The court may appoint a guardian ad litem on the motion of any party or on its own initiative.

(b) *Written Order Required*. An appointment must be made by written order.

(c) *Objection*. Any party may object to the appointment of a guardian ad litem.

173.4. Role of Guardian Ad Litem.

(a) *Court Officer and Advisor*. A guardian ad litem acts as an officer and advisor to the court.

(b) *Determination of Adverse Interest*. A guardian ad litem must determine and advise the court whether a party's next friend or guardian has an interest adverse to the party.

(c) *When Settlement Proposed*. When an offer has been made to settle the claim of a party represented by a next friend or guardian, a guardian ad litem has the limited duty to determine and advise the court whether the settlement is in the party's best interest.

(d) *Participation in Litigation Limited*. A guardian ad litem:
   (1) may participate in mediation or a similar proceeding to attempt to reach a settlement;
   (2) must participate in any proceeding before the court whose purpose is to determine whether a party's next friend or guardian has an interest adverse to the party, or whether a settlement of the party's claim is in the party's best interest;
   (3) must not participate in discovery, trial, or any other part of the litigation unless:
      (A) further participation is necessary to protect the party's interest that is adverse to the next friend's or guardian's, and
      (B) the participation is directed by the court in a written order stating sufficient reasons.

173.5. Communications Privileged.

Communications between the guardian ad litem and the party, the next friend or guardian, or their attorney are privileged as if the guardian ad litem were the attorney for the party.

173.6. Compensation.

(a) *Amount*. If a guardian ad litem requests compensation, he or she may be reimbursed for reasonable and necessary expenses incurred and may be paid a reasonable hourly fee for necessary services performed.

(b) *Procedure*. At the conclusion of the appointment, a guardian ad litem may file an application for compensation. The application must be verified and must detail the basis for the compensation requested. Unless all parties agree to the application, the court must conduct an evidentiary hearing to determine the total amount of fees and expenses that are reasonable and necessary. In making this determination, the court must not consider compensation as a percentage of any judgment or settlement.

(c) *Taxation as Costs*. The court may tax a guardian ad litem's compensation as costs of court.

(d) *Other Benefit Prohibited*. A guardian ad litem may not receive, directly or indirectly, anything of value in consideration of the appointment other than as provided by this rule.

173.7. Review.

(a) *Right of Appeal*. Any party may seek mandamus review of an order appointing a guardian ad litem or directing a guardian ad litem's participation in the litigation. Any party and a guardian ad litem may appeal an order awarding the guardian ad litem compensation.

(b) *Severance*. On motion of the guardian ad litem or any party, the court must sever any order awarding a guardian ad litem compensation to create a final, appealable order.

(c) *No Effect on Finality of Settlement or Judgment*. Appellate proceedings to review an order pertaining to a guardian ad litem do not affect the finality of a settlement or judgment.

(Amended by Order June 16, 1943, eff. Dec. 31, 1943; Jan. 27, 2005, eff. Feb. 1, 2005 in all pending cases.)

Comment - 2005

1. The rule is completely revised.

2. This rule does not apply when the procedures and purposes for appointment of guardians ad litem (as well as attorneys ad litem) are prescribed by statutes, such as the Family Code and the Probate Code, or by other rules, such as the Parental Notification Rules.

3. The rule contemplates that a guardian ad litem will be appointed when a party's next friend or guardian appears to have an interest adverse to the party because of the division of settlement proceeds. In those situations, the responsibility of the guardian ad litem as prescribed by the rule is very limited, and no reason exists for the guardian ad litem to participate in the conduct of the litigation in any other way or to review the discovery or the litigation file except to the limited extent that it may bear on the division of settlement proceeds. *See Jocson v. Crabb*, 133 S.W.3d 268 (Tex. 2004)(per curiam). A guardian ad litem may, of course, choose to review the file or attend proceedings when it is unnecessary, but the guardian ad litem may not be compensated for unnecessary expenses or services.

4. Only in extraordinary circumstances does the rule contemplate that a guardian ad litem will have a broader role. Even then, the role is limited to determining whether a party's next friend or guardian has an interest adverse to the party that should be considered by the court under Rule 44. In no event may a guardian ad litem supervise or supplant the next friend or undertake to represent the party while serving as guardian ad litem.

5. As an officer and advisor to the court, a guardian ad litem should have qualified judicial immunity.

6. Though an officer and adviser to the court, a guardian ad litem must not have *ex parte* communications with the court. *See* TEX. CODE JUD. CONDUCT, Canon 3.

7. Because the role of guardian ad litem is limited in all but extraordinary situations, and any risk that might result from services performed is also limited, compensation, if any is sought, should ordinarily be limited.

8. A violation of this rule is subject to appropriate sanction.

RULE 174. CONSOLIDATION; SEPARATE TRIALS.

(a) *Consolidation*. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) *Separate Trials*. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

RULE 175. ISSUE OF LAW AND DILATORY PLEAS.

When a case is called for trial in which there has been no pretrial hearing as provided by Rule 166, the issues of law arising on the pleadings, all pleas in abatement and other dilatory pleas remaining undisposed of shall be determined; and it shall be no cause for postponement of a trial of the issues of law that a party is not prepared to try the issues of fact.

SECTION 9.
EVIDENCE AND DISCOVERY

EXPLANATORY STATEMENT ACCOMPANYING THE 1999 AMENDMENTS TO THE RULES OF CIVIL PROCEDURE GOVERNING DISCOVERY.

The rules pertaining to discovery have been substantively revised and reorganized to clarify and streamline discovery procedures and to reduce costs and delays associated with discovery practice. The notes and comments appended to the rules, unlike most other notes and comments in the Rules of Civil Procedure, are intended to inform their construction and application by both courts and practitioners.

Discovery in civil cases is founded on the principle that justice is best served when litigants may obtain information not in their possession to prosecute and defend claims. Discovery provides access to that information, but at a price. Recent years' experience has shown that discovery may be misused to deny justice to parties by driving up the costs of litigation until it is unaffordable and stalling resolution of cases. As any litigant on a budget knows, the benefits to be gained by discovery in a particular case must be weighed against its costs. The rules of procedure must provide both adequate access to information and effective means of curbing discovery when appropriate to preserve litigation as a viable, affordable, and expeditious dispute resolution mechanism.

These revisions recognize the importance of discovery as well as the necessity for reasonable limits. The scope of discovery, always broad, is unchanged. All the forms of discovery under the prior rules are retained, and a new one—disclosure—is added. Disclosure is not required unless requested and thus does not burden cases in which it is not sought. When requested, it provides ready access to basic information without objection.

At the same time, the necessity of a discovery control plan in each case, whether by rule or by order, is intended to focus courts and parties on both the need for discovery and its costs in each case. The Level 1 plan allows a party seeking recovery of no more than $60,000 to insist that discovery be minimal. The Level 2 plan will provide adequate discovery in most cases, and Level 3 is available for cases needing special attention. No single set of rules can address so diverse and changing a practice as discovery, and thus the rules maintain the ability of parties by agreement and courts by order to tailor discovery to individual cases.

Presentation of objections and assertions of privilege are streamlined under these rules. A party who objects to only part of a discovery request must usually comply with the rest of the request. Assertions of privilege are not to be made prophylactically against the threat of waiver, but only when information is actually withheld. Documents produced in discovery are now presumed to be authentic for use against the party producing them, thus avoiding the cost of proving authentication when there is no dispute. Procedures for oral depositions are revised to encourage focused examination by imposing time limits and to discourage colloquy between counsel.

An important aspect of these revisions has been the regrouping of provisions in a more logical sequence and the elimination of archaic and confusing language.

A.
EVIDENCE

RULE 176. SUBPOENAS

176.1. Form.

Every subpoena must be issued in the name of "The State of Texas" and must:

(a) state the style of the suit and its cause number;
(b) state the court in which the suit is pending;
(c) state the date on which the subpoena is issued;
(d) identify the person to whom the subpoena is directed;
(e) state the time, place, and nature of the action required by the person to whom the subpoena is directed, as provided in Rule 176.2;
(f) identify the party at whose instance the subpoena is issued, and the party's attorney of record, if any;
(g) state the text of Rule 176.8(a); and
(h) be signed by the person issuing the subpoena.

176.2. Required Actions.

A subpoena must command the person to whom it is directed to do either or both of the following:

(a) attend and give testimony at a deposition, hearing, or trial;
(b) produce and permit inspection and copying of designated documents or tangible things in the possession, custody, or control of that person.

176.3. Limitations.

(a) **Range**. A person may not be required by subpoena to appear or produce documents or other things in a county that is more than 150 miles from where the person resides or is served. However, a person whose appearance or production at a deposition may be compelled by notice alone under Rules 199.3 or 200.2 may be required to appear and produce documents or other things at any location permitted under Rules 199.2(b)(2).

(b) **Use for discovery.** A subpoena may not be used for discovery to an extent, in a manner, or at a time other than as provided by the rules governing discovery.

176.4. Who May Issue.

A subpoena may be issued by:

(a) the clerk of the appropriate district, county, or justice court, who must provide the party requesting the subpoena with an original and a copy for each witness to be completed by the party;
(b) an attorney authorized to practice in the State of Texas, as an officer of the court; or
(c) an officer authorized to take depositions in this State, who must issue the subpoena immediately on a request accompanied by a notice to take a deposition under Rules 199 or 200, or a notice under Rule 205.3, and who may also serve the notice with the subpoena.

176.5. Service.

(a) **Manner of service.** A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney of record.

(b) **Proof of service.** Proof of service must be made by filing either:

(1) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or
(2) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

176.6. Response.

(a) **Compliance required**. Except as provided in this subdivision, a person served with a subpoena must comply with the command stated therein unless discharged by the court or by the party summoning such witness. A person commanded to appear and give testimony must remain at the place of deposition hearing, or trial from day to day until discharged by the court or by the party summoning the witness.

(b) **Organizations**. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(c) **Production of documents or tangible things**. A person commanded to produce documents or tangible things need not appear in person at the time and place of production unless the person is also commanded to attend and give testimony, either in the same subpoena or a separate one. A person must produce documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand. A person may withhold material or information claimed to be privileged but must comply with Rule 193.3. A nonparty's production of a document authenticates the document for use against the nonparty to the same extent as a party's production of a document is authenticated for use against the party under Rule 193.7.

(d) **Objections**. A person commanded to produce and permit inspection or copying of designated documents and things may serve on the party requesting issuance of the subpoena—before the time specified for compliance—written objections to producing any or all of the designated materials. A person need not comply with the part of a subpoena to which objection is made as provided in this paragraph unless ordered to do so by the court. The party requesting the subpoena may move for such an order at any time after an objection is made.

(e) **Protective orders**. A person commanded to appear at a deposition, hearing, or trial, or to produce and permit inspection and copying of designated documents and things, and any other person affected by the subpoena, may move for a protective order under Rule 192.6(b)—before the time specified for compliance—either in the court in which the action is pending or in a district court in the county where the subpoena was served. The person must serve the motion on all parties in accordance with Rule 21a. A person need not comply with the part of a subpoena from which protection is sought under this paragraph unless ordered to do so by the court. The party requesting the subpoena may seek such an order at any time after the motion for protection is filed.

(f) **Trial subpoenas**. A person commanded to attend and give testimony, or to produce documents or things, at a hearing or trial, may object or move for protective order before the court at the time and place specified for compliance, rather than under paragraphs (d) and (e).

176.7. Protection of Person from Undue Burden and Expense.

A party causing a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on objections or motions for protection, the court must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

176.8. Enforcement of Subpoena.

(a) **Contempt**. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.

(b) **Proof of payment of fees required for fine or attachment**. A fine may not be imposed, nor a person served with a subpoena attached, for failure to comply with a subpoena without proof by affidavit of the party requesting the subpoena or the party's attorney of record that all fees due the witness by law were paid or tendered.

(Adopted Aug. 5, 1998. Amended Nov. 9, 1998, eff. Jan. 1, 1999.)

Comments to 1999 change:

1. This rule combines the former rules governing subpoenas for trial and discovery. When a subpoena is used for discovery, the protections from undue burden and expense apply, just as with any discovery.

2. Rule 176.3(b) prohibits the use of a subpoena to circumvent the discovery rules. Thus, for example, a deposition subpoena to a party is subject to the procedures of Rules 196, 199, and 200, and a deposition subpoena to a nonparty is subject to the procedures of Rule 205.

[No change in Rules 180-185.]

RULES 177, 178, AND 179. [REPEALED]

(Repealed by Order Aug. 5, 1998, and Nov. 9, 1998, eff. Jan. 1, 1999.)

RULE 180. REFUSAL TO TESTIFY.

Any witness refusing to give evidence may be committed to jail, there to remain without bail until such witness shall consent to give evidence.

RULE 181. PARTY AS WITNESS.

Either party to a suit may examine the opposing party as a witness, and shall have the same process to compel his attendance as in the case of any other witness.

RULE 182 AND 182A. [REPEALED]

(Repealed by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 183. INTERPRETERS.

The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

(Amended by Order April 24, 1990, eff. Sept. 1, 1990.)

RULE 184 AND 184A. [REPEALED]

(Repealed by Order April 24, 1990, eff. Sept. 1, 1990.)

RULE 185. SUIT ON ACCOUNT.

When any action or defense is founded upon an open account or other claim for goods, wares and merchandise, including any claim for a liquidated money demand based upon written contract or founded on business dealings between the parties, or is for personal service rendered, or labor done or labor or materials furnished, on which a systematic record has been kept, and is supported by the affidavit of the party, his agent or attorney taken before some officer authorized to administer oaths, to the effect that such claim is, within the knowledge of affiant, just and true, that it is due, and that all just and lawful offsets, payments and credits have been allowed, the same shall be taken as prima facie evidence thereof, unless the party resisting such claim shall file a written denial, under oath. A party resisting such a sworn claim shall comply with the rules of pleading as are required in any other kind of suit, provided, however, that if he does not timely file a written denial, under oath, he shall not be permitted to deny the claim, or any item therein, as the case may be. No particularization or description of the nature of the component parts of the account or claim is necessary unless the trial court sustains special exceptions to the pleadings.

(Amended by Order Oct. 12, 1949, eff. March 1, 1950; July 21, 1970, eff. Jan. 1, 1971; Dec. 5, 1983, eff. April 1, 1984.)

B.
DISCOVERY

RULES 186, 187, 188, AND 189. [REPEALED]

(Rules 186 and 189 repealed Dec. 5, 1983, eff. April 1, 1984; Rules 187 and 188 repealed Aug. 5, 1998, and Nov. 9, 1998, eff. Jan. 1, 1999.)

RULE 190. DISCOVERY LIMITATIONS

190.1. Discovery Control Plan Required.

Every case must be governed by a discovery control plan as provided in this Rule. A plaintiff must allege in the first numbered paragraph of the original petition whether discovery is intended to be conducted under Level 1, 2, or 3 of this Rule.

190.2. Discovery Control Plan—Expedited Actions and Divorces Involving $250,000 or Less (Level 1).

(a) **Application**. This subdivision applies to:

(1) any suit that is governed by the expedited actions process in Rule 169; and

(2) unless the parties agree that Rule 190.3 should apply or the court orders a discovery control plan under Rule 190.4, any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than $250,000.

(b) **Limitations**. Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

(1) **Discovery Period**.

(A) In a suit not governed by the Family Code all discovery must be conducted during the discovery period, which begins when the first initial disclosures are due and continues for 180 days.

(b) In a suit governed by the Family Code, all discovery must be conducted during the discovery period, which begins when the suit is filed and continues until 180 days after the date the first request for discovery of any kind is served on the part.

(2) **Total Time for Oral Depositions**. Each party may have no more than 20 hours in total to examine and cross-examine all witnesses in oral depositions. The court may modify the deposition hours so that no party is given unfair advantage.

(3) **Interrogatories**. Any party may serve on any other party no more than 15 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

(4) **Requests for Production**. Any party may serve on any other party no more than 15 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.

(5) **Requests for Admissions**. Any party may serve on any other party no more than 15 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.

(c) **Reopening Discovery**. If a suit is removed from the expedited actions process in Rule 169 or. in a divorce, the filing of a pleading renders this subdivision no longer applicable, the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

(Amended by Order Nov. 13, 2012, eff. March 1, 2013; Feb 12, 2013, eff. March 1, 2013 (Applies to cases filed on or after March 1, 2013, except those filed in justice court.); Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021; Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023.)

190.3. Discovery Control Plan—By Rule (Level 2).

(a) **Application**. Unless a suit is governed by a discovery control plan under Rules 190.2 or 190.4 discovery must be conducted in accordance with this subdivision.

(b) **Limitations**. Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

(1) **Discovery period**.

(A) In a suit not governed by the Family Code, all discovery must be conducted during the discovery period, which begins when the first initial disclosures are due and continues until the earlier of:

(i) 30 days before the date set for trial; or

(ii) nine months after the first initial disclosures are due.

(B) In a suite governed by the Family Code, all discovery must be conducted during the discovery period, which begins when the suit is filed and continues until 30 days before the date set for trial.

(2) **Total time for oral depositions**. Each side may have no more than 50 hours in oral depositions to examine and cross-examine parties on the opposing side, experts designated by those parties, and persons who are subject to those parties' control. "Side" refers to all the litigants with generally common interests in the litigation. If one side designates more than two experts, the opposing side may have an additional six hours of total deposition time for each additional expert designated. The court may modify the deposition hours and must do so when a side or party would be given unfair advantage.

(3) **Interrogatories**. Any party may serve on any other party no more than 25 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021; Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023.)

190.4. Discovery Control Plan—By Order (Level 3).

(a) **Application**. The court must, on a party's motion, and may, on its own initiative, order that discovery be conducted in accordance with a discovery control plan tailored to the circumstances of the specific suit. The parties may submit an agreed order to the court for its consideration. The court should act on a party's motion or agreed order under this subdivision as promptly as reasonably possible.

(b) **Limitations**. The discovery control plan ordered by the court may address any issue concerning discovery or the matters listed in Rule 166, and may change any limitation on the time for or amount of discovery set forth in these rules. The discovery limitations of Rule 190.2, if applicable, or otherwise of Rule 190.3 apply unless specifically changed in the discovery control plan ordered by the court. The plan must include:

(1) a date for trial or for a conference to determine a trial setting;

(2) a discovery period during which either all discovery must be conducted or all discovery requests must be sent, for the entire case or an appropriate phase of it;

(3) appropriate limits on the amount of discovery; and

(4) deadlines for joining additional parties, amending or supplementing pleadings, and designating expert witnesses.

190.5. Modification of Discovery Control Plan.

The court may modify a discovery control plan at any time and must do so when the interest of justice requires. Unless a suit is governed by the expedited actions process in Rule 169, the court must allow additional discovery:

(a) related to new, amended or supplemental pleadings, or new information disclosed in a discovery response or in an amended or supplemental response, if:

(1) the pleadings or responses were made after the deadline for completion of discovery or so nearly before that deadline that an adverse party does not have an adequate opportunity to conduct discovery related to the new matters, and

(2) the adverse party would be unfairly prejudiced without such additional discovery;

(b) regarding matters that have changed materially after the discovery cutoff if trial is set or postponed so that the trial date is more than three months after the discovery period ends.

(Amended by Order Nov. 13, 2012, eff. March 1, 2013; Feb 12, 2013, eff. March 1, 2013.)

190.6. Certain Types of Discovery Excepted.

This rule's limitations on discovery do not apply to or include discovery conducted under Rule 202 ("Depositions Before Suit or to Investigate Claims"), or Rule 621a ("Discovery and Enforcement of Judgment"). But Rule 202 cannot be used to circumvent the limitations of this rule.

(Adopted Aug. 5, 1998, and amended Nov. 9, 1998 and Dec. 31, 1998, to apply to all cases filed on or after Jan. 1, 1999, but a court may adopt an appropriate discovery control plan in previously filed cases.)

Comments to 1999 change:

1. This rule establishes three tiers of discovery plans and requires that every case be in one at all times. A case is in Level 1 if it is pleaded by the plaintiff so as to invoke application of Level 1, as provided by Rule 190.2(a). If a plaintiff does not or cannot plead the case in compliance with Rule 190.2(a) so as to invoke the application of Level 1, the case is automatically in Level 2. A case remains in Level 1 or Level 2, as determined by the pleadings, unless and until it is moved to Level 3. To be in Level 3, the court must order a specific plan for the case, either on a party's motion or on the court's own initiative. The plan may be one agreed to by the parties and submitted as an agreed order. A Level 3 plan may simply adopt Level 1 or Level 2 restrictions. Separate Level 3 plans for phases of the case may be appropriate. The initial pleading required by Rule 190.1 is merely to notify the court and other parties of the plaintiff's intention; it does not determine the applicable discovery level or bind the court or other parties. Thus, a plaintiff's failure to state in the initial pleading that the case should be in Level 1, as provided in Rule 190.1, does not alone make the case subject to Level 2 because the discovery level is determined by Rule 190.2. Likewise, a plaintiff's statement in the initial paragraph of the petition that the case is to be governed by Level 3 does not make Level 3 applicable, as a case can be in Level 3 only by court order. A plaintiff's failure to plead as required by Rule 190.1 is subject to special exception.

2. Rule 190.2 does not apply to suits for injunctive relief or divorces involving children. The requirement of an affirmative pleading of limited relief (*e.g.*: "Plaintiff affirmatively pleads that he seeks only monetary relief aggregating $50,000 or less, excluding costs, pre-judgment interest and attorneys' fees") does not conflict with other pleading requirements, such as Rule 47 and TEX. REV. CIV. STAT. ANN. art. 4590i, § 5.01. In a suit to which Rule 190.2 applies, the relief awarded cannot exceed the limitations of Level 1 because the purpose of the rule, unlike Rule 47, is to bind the pleader to a maximum claim. To this extent, the rule in *Greenhalgh v. Service Lloyds Ins. Co.*, 787 S.W.2d 938 (Tex. 1990), does not apply.

3. "Discrete subparts" of interrogatories are counted as single interrogatories, but not every separate factual inquiry is a discrete subpart. *See* FED. R. CIV. P. 33(a). While not susceptible of precise definition, *see Braden v. Downey*, 811 S.W.2d 922, 927-928 (Tex. 1991), a "discrete subpart" is, in general, one that calls for information that is not logically or factually related to the primary interrogatory. The number of sets of interrogatories is no longer limited to two.

4. As other rules make clear, unless otherwise ordered or agreed, parties seeking discovery must serve requests sufficiently far in advance of the end of the discovery period that the deadline for responding will be within the discovery period. The court may order a deadline for sending discovery requests in lieu of or in addition to a deadline for completing discovery.

5. Use of forms of discovery other than depositions and interrogatories, such as requests for disclosure, admissions, or production of documents, are not restricted in Levels 1 and 2. But depositions on written questions cannot be used to circumvent the limits on interrogatories.

6. The concept of "side" in Rule 190.3(b)(2) borrows from Rule 233, which governs the allocation of peremptory strikes, and from FED. R. CIV. P. 30(a)(2). In most cases there are only two sides—plaintiffs and defendants. In complex cases, however, there may be more than two sides, such as when defendants have sued third parties not named by plaintiffs, or when defendants have sued each other. As an example, if P1 and P2 sue D1, D2, and D3, and D1 sues D2 and D3, Ps would together be entitled to depose Ds and others permitted by the rule (*i.e.*, Ds' experts and persons subject to Ds' control) for 50 hours, and Ds would together be entitled to depose Ps and others for 50 hours. D1 would also be entitled to depose D2 and D3 and others for 50 hours on matters in controversy among them, and D2 and D3 would together be entitled to depose D1 and others for 50 hours.

7. Any matter listed in Rule 166 may be addressed in an order issued under Rule 190.4. A pretrial order under Rule 166 may be used in individual cases regardless of the discovery level.

8. For purposes of defining discovery periods, "trial" does not include summary judgment.

Comment to 2013 change: Rule 190 is amended to implement section 22.004(h) of the Texas Government Code, which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed $100,000. Rule 190.2 now applies to expedited actions, as defined by Rule 169. Rule 190.2 continues to apply to divorces not involving children in which the value of the marital estate is not more than $50,000, which are otherwise exempt from the expedited actions process. Amended Rule 190.2(b) ends the discovery period 180 days after the date the first discovery request is served; imposes a fifteen limit maximum on interrogatories, requests for production, and requests for admission; and allows for additional disclosures. Although expedited actions are not subject to mandatory additional discovery under amended Rule 190.5, the court may still allow additional discovery if the conditions of Rule 190(a) are met.

Comment to 2021 change: Rule 190.2 is amended to implement section 22.004(h-1) of the Texas Government Code. Under amended Rule 190.2, Level 1 discovery limitations now apply to a broader subset of civil actions: expedited actions under Rule 169, which is also amended to implement section 22.004(h-1) of the Texas Government Code, and divorces not involving children in which the value of the marital estate is not more than $250,000. Level 1 limitations are revised to impose a twenty-hour limit on oral depositions. Disclosure requests under Rule 190.2(b)(6) and Rule 194 are now replaced by required disclosures under Rule 194, as amended. The discovery periods under Rules 190.2(b)(1) and 190.3(b)(1) are revised to reference the required disclosures.

(Amended by Tex. Sup. Ct. Misc. Docket No. 21-9102, eff. Sept. 1, 2021.)

RULE 191. MODIFYING DISCOVERY PROCEDURES AND LIMITATIONS; CONFERENCE REQUIREMENT; SIGNING DISCLOSURES, DISCOVERY REQUESTS, RESPONSES, AND OBJECTIONS; FILING REQUIREMENTS.

191.1. Modification of Procedures.

Except where specifically prohibited, the procedures and limitations set forth in the rules pertaining to discovery may be modified in any suit by the agreement of the parties or by court order for good cause. An agreement of the parties is enforceable if it complies with Rule 11 or, as it affects an oral deposition, if it is made a part of the record of the deposition.

191.2. Conference.

Parties and their attorneys are expected to cooperate in discovery and to make any agreements reasonably necessary for the efficient disposition of the case. All discovery motions or requests for hearings relating to discovery must contain a certificate by the party filing the motion or request that a reasonable effort has been made to resolve the dispute without the necessity of court intervention and the effort failed.

191.3. Signing of Disclosures, Discovery Requests, Notices, Responses, and Objections.

(a) **Signature required**. Every disclosure, discovery request, notice, response, and objection must be signed:

(1) by an attorney, if the party is represented by an attorney, and must show the attorney's State Bar of Texas identification number, address, telephone number, and fax number, if any; or

(2) by the party, if the party is not represented by an attorney, and must show the party's address, telephone number, and fax number, if any.

(b) **Effect of signature on disclosure**. The signature of an attorney or party on a disclosure constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(c) **Effect of signature of discovery request, notice, response, or objection**. The signature of an attorney or party on a discovery request, notice, response, or objection constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, notice, response, or objection:

(1) is consistent with the rules of civil procedure and these discovery rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(2) has a good faith factual basis;

(3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(4) is not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(d) **Effect of failure to sign**. If a request, notice, response, or objection is not signed, it must be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, notice, response, or objection. A party is not required to take any action with respect to a request or notice that is not signed.

(e) **Sanctions**. If the certification is false without substantial justification, the court may, upon motion or its own initiative, impose on the person who made the certification, or the party on whose behalf the request, notice, response, or objection was made, or both, an appropriate sanction as for a frivolous pleading or motion under Chapter 10 of the Civil Practice and Remedies Code.

191.4. Filing of Discovery Materials.

(a) **Discovery materials not to be filed**. The following discovery materials must not be filed:

(1) discovery requests, deposition notices, and subpoenas required to be served only on parties;

(2) responses and objections to discovery requests and deposition notices, regardless on whom the requests or notices were served;

(3) documents and tangible things produced in discovery; and

(4) statements prepared in compliance with Rule 193.3 (b) or (d).

(b) **Discovery materials to be filed**. The following discovery materials must be filed:

(1) discovery requests, deposition notices, and subpoenas required to be served on nonparties;

(2) motions and responses to motions pertaining to discovery matters; and

(3) agreements concerning discovery matters, to the extent necessary to comply with Rule 11.

(c) **Exceptions**. Notwithstanding paragraph (a)—

(1) the court may order discovery materials to be filed;

(2) a person may file discovery materials in support of or in opposition to a motion or for other use in a court proceeding; and

(3) a person may file discovery materials necessary for a proceeding in an appellate court.

(d) **Retention requirement for persons**. Any person required to serve discovery materials not required to be filed must retain the original or exact copy of the materials during the pendency of the case and any related appellate proceedings begun within six months after judgment is signed, unless otherwise provided by the trial court.

(e) **Retention requirement for courts**. The clerk of the court shall retain and dispose of deposition transcripts and depositions upon written questions as directed by the Supreme Court. [See Misc. Docket No. 05-9025, Order Relating to Retention and Disposition of Deposition Transcripts in Civil Cases, Jan. 27, 2005, eff. June 1, 2005.]

191.5. Service of Discovery Materials.

Every disclosure, discovery request, notice, response, and objection required to be served on a party or person must be served on all parties of record.

(Adopted Aug. 5, 1998, and amended Nov. 9, 1998, eff. Jan. 1, 1999, except that Rules 191.3 and 191.4 apply only to discovery conducted on or after that date.)

Comments to 1999 change:

1. Rule 191.1 preserves the ability of parties by agreement and trial courts by order to adapt discovery to different circumstances. That ability is broad but not unbounded. Parties cannot merely by agreement modify a court order without the court's concurrence. Trial courts cannot simply "opt out" of these rules by form orders or approve or order a discovery control plan that does not contain the matters specified in Rule 190.4, but trial courts may use standard or form orders for providing discovery plans, scheduling, and other pretrial matters. In individual instances, courts may order, or parties may agree, to use discovery methods other than those prescribed in these rules if appropriate. Because the general rule is stated here, it is not repeated in each context in which it applies. Thus, for example, parties can agree to enlarge or shorten the time permitted for a deposition and to change the manner in which a deposition is conducted, notwithstanding Rule 199.5, although parties could not agree to be abusive toward a witness.

2. Rule 191.2 expressly states the obligation of parties and their attorneys to cooperate in conducting discovery.

3. The requirement that discovery requests, notices, responses, and objections be signed also applies to documents used to satisfy the purposes of such instruments. An example is a statement that privileged material or information has been withheld, which may be separate from a response to the discovery request but is nevertheless part of the response.

RULE 192. PERMISSIBLE DISCOVERY: FORMS AND SCOPE; WORK PRODUCT; PROTECTIVE ORDERS; DEFINITIONS.

192.1. Forms of Discovery.

Permissible forms of discovery are:

(a) except in a suit governed by the Family Code, required disclosures;
(b) in a suit governed by the Family Code, requests for disclosure;
(c) requests for production and inspection of documents and tangible things;
(d) requests and motions for entry upon and examination of real property;
(e) interrogatories to a party;
(f) requests for admission;
(g) oral or written depositions; and
(h) motions for mental or physical examinations.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021; Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023.)

192.2. Timing and Sequence of Discovery.

(a) **Timing**.
  (1) In a suit not governed by the Family Code, unless otherwise agreed to by the parties or ordered by the court, a party cannot serve discovery on another party until after the other party's initial disclosures are due.
  (2) In a suit governed by the Family Code, a party may serve discovery with the initial pleading
(b) **Sequence**. The permissible forms of discovery may be combined in the same document and may be taken in any order or sequence.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021; Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023.)

192.3. Scope of Discovery.

(a) **Generally**. In general, a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. It is not a ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
(b) **Documents and tangible things**. A party may obtain discovery of the existence, description, nature, custody, condition, location, and contents of documents and tangible things (including papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, data, and data compilations) that constitute or contain matters relevant to the subject matter of the action. A person is required to produce a document or tangible thing that is within the person's possession, custody, or control.
(c) **Persons with knowledge of relevant facts**. A party may obtain discovery of the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case. A person has knowledge of relevant facts when that person has or may have knowledge of any discoverable matter. The person need not have admissible information or personal knowledge of the facts. An expert is "a person with knowledge of relevant facts" only if that knowledge was obtained first-hand or if it was not obtained in preparation for trial or in anticipation of litigation.
(d) **Trial witnesses**. A party may obtain discovery of the name, address, and telephone number of any person who is expected to be called to testify at trial. This paragraph does not apply to rebuttal or impeaching witnesses the necessity of whose testimony cannot reasonably be anticipated before trial.
(e) **Testifying and consulting experts**. The identity, mental impressions, and opinions of a consulting expert whose mental impressions and opinions have not been reviewed by a testifying expert are not discoverable. A party may discover the following information regarding a testifying expert or regarding a consulting expert whose mental impressions or opinions have been reviewed by a testifying expert:
  (1) the expert's name, address, and telephone number;
  (2) the subject matter on which a testifying expert will testify;
  (3) the facts known by the expert that relate to or form the basis of the expert's mental impressions and opinions formed or made in connection with the case in which the discovery is sought, regardless of when and how the factual information was acquired;
  (4) the expert's mental impressions and opinions formed or made in connection with the case in which discovery is sought, and any methods used to derive them;
  (5) any bias of the witness;
  (6) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of a testifying expert's testimony;
  (7) the expert's current resume and bibliography.
(f) **Indemnity and insuring agreements**. Except as otherwise provided by law, a party may obtain discovery of the existence and contents of any indemnity or insurance agreement under which any person may be liable to satisfy part or all of a judgment rendered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the indemnity or insurance agreement is not by reason of disclosure admissible in evidence at trial.

(g) **Settlement agreements**. A party may obtain discovery of the existence and contents of any relevant portions of a settlement agreement. Information concerning a settlement agreement is not by reason of disclosure admissible in evidence at trial.

(h) **Statements of persons with knowledge of relevant facts**. A party may obtain discovery of the statement of any person with knowledge of relevant facts—a "witness statement"—regardless of when the statement was made. A witness statement is

(1) a written statement signed or otherwise adopted or approved in writing by the person making it, or

(2) a stenographic, mechanical, electrical, or other type of recording of a witness's oral statement, or any substantially verbatim transcription of such a recording. Notes taken during a conversation or interview with a witness are not a witness statement. Any person may obtain, upon written request, his or her own statement concerning the lawsuit, which is in the possession custody or control of any party.

(i) **Potential parties**. A party may obtain discovery of the name, address, and telephone number of any potential party.

(j) **Contentions**. A party may obtain discovery of any other party's legal contentions and the factual bases for those contentions.

192.4. Limitations on Scope of Discovery.

The discovery methods permitted by these rules should be limited by the court if it determines, on motion or on its own initiative and on reasonable notice, that:

(a) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; or

(b) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

192.5. Work Product.

(a) **Work product defined**. Work product comprises:

(1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

(2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents.

(b) **Protection of work product**.

(1) **Protection of core work product-attorney mental processes**. Core work product—the work product of an attorney or an attorney's representative that contains the attorney's or the attorney's representative's mental impressions, opinions, conclusions, or legal theories—is not discoverable.

(2) **Protection of other work product**. Any other work product is discoverable only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the material by other means.

(3) **Incidental disclosure of attorney mental processes**. It is not a violation of subparagraph (1) if disclosure ordered pursuant to subparagraph (2) incidentally discloses by inference attorney mental processes otherwise protected under subparagraph (1).

(4) **Limiting disclosure of mental processes**. If a court orders discovery of work product pursuant to subparagraph (2), the court must—insofar as possible—protect against disclosure of the mental impressions, opinions, conclusions, or legal theories not otherwise discoverable.

(c) **Exceptions**. Even if made or prepared in anticipation of litigation or for trial, the following is not work product protected from discovery:

(1) information discoverable under Rule 192.3 concerning experts, trial witnesses, witness statements, and contentions;

(2) trial exhibits ordered disclosed under Rule 166 or Rule 190.4;

(3) the name, address, and telephone number of any potential party or any person with knowledge of relevant facts;

(4) any photograph or electronic image of underlying facts (e.g., a photograph of the accident scene) or a photograph or electronic image of any sort that a party intends to offer into evidence; and

(5) any work product created under circumstances within an exception to the attorney-client privilege in Rule 503 (d) of the Rules of Evidence.

(d) **Privilege**. For purposes of these rules, an assertion that material or information is work product is an assertion of privilege.

192.6. Protective Orders.

(a) **Motion**. A person from whom discovery is sought, and any other person affected by the discovery request, may move within the time permitted for response to the discovery request for an order protecting that person from the discovery sought. A person should not move for protection when an objection to written discovery or an assertion of privilege is appropriate, but a motion does not waive the objection or assertion of privilege. If a person seeks protection regarding the time or place of discovery, the person must state a reasonable time and place for discovery with which the person will comply. A person must comply with a request to the extent protection is not sought unless it is unreasonable under the circumstances to do so before obtaining a ruling on the motion.

(b) **Order**. To protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights, the court may make any order in the interest of justice and may—among other things—order that:

(1) the requested discovery not be sought in whole or in part;

(2) the extent or subject matter of discovery be limited;

(3) the discovery not be undertaken at the time or place specified;

(4) the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the court;

(5) the results of discovery be sealed or otherwise protected, subject to the provisions of Rule 76a.

192.7. Definitions.

As used in these rules—

(a) Written discovery means required disclosures, requests for disclosure in suits governed by the Family Code, requests for production and inspection of documents and tangible things, requests for entry onto property, interrogatories, and requests for admission.

(b) Possession, custody, or control of an item means that the person either has physical possession of the item or has a right to possession of the item that is equal or superior to the person who has physical possession of the item.

(c) A testifying expert is an expert who may be called to testify as an expert witness at trial.

(d) A consulting expert is an expert who has been consulted, retained, or specially employed by a party in anticipation of litigation or in-preparation for trial, but who is not a testifying expert.

(Adopted Aug. 5, 1998, and amended Nov. 9, 1998, eff. Jan. 1, 1999. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021; Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023.)

Comments to 1999 change:

1. While the scope of discovery is quite broad, it is nevertheless confined by the subject matter of the case and reasonable expectations of obtaining information that will aid resolution of the dispute. The rule must be read and applied in that context. *See In re American Optical Corp.*, ___ S.W.2d ___ (Tex. 1998) (per curiam); *K-Mart v. Sanderson*, 937 S.W.2d 429 (Tex. 1996) (per curiam); *Dillard Dept. Stores v. Hall*, 909 S.W.2d 491 (Tex. 1995) (per curiam); *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813 (Tex. 1995) (per curiam); *Loftin v. Martin*, 776 S.W.2d 145, 148 (Tex. 1989).

2. The definition of documents and tangible things has been revised to clarify that things relevant to the subject matter of the action are within the scope of discovery regardless of their form.

3. Rule 192.3(c) makes discoverable a "brief statement of each identified person's connection with the case." This provision does not contemplate a narrative statement of the facts the person knows, but at most a few words describing the person's identity as relevant to the lawsuit. For instance: "treating physician," "eyewitness," "chief financial officer," "director," "plaintiff's mother and eyewitness to accident." The rule is intended to be consistent with *Axelson v. McIlhany*, 798 S.W.2d 550 (Tex. 1990).

4. Rule 192.3(g) does not suggest that settlement agreements in other cases are relevant or irrelevant.

5. Rule 192.3(j) makes a party's legal and factual contentions discoverable but does not require more than a basic statement of those contentions and does not require a marshaling of evidence.

6. The sections in former Rule 166b concerning land and medical records are not included in this rule. They remain within the scope of discovery and are discussed in other rules.

7. The court's power to limit discovery based on the needs and circumstances of the case is expressly stated in Rule 192.4. The provision is taken from Rule 26(b)(2) of the Federal Rules of Civil Procedure. Courts should limit discovery under this rule only to prevent unwarranted delay and expense as stated more fully in the rule. A court abuses its discretion in unreasonably restricting a party's access to information through discovery.

8. Work product is defined for the first time, and its exceptions stated. Work product replaces the "attorney work product" and "party communication" discovery exemptions from former Rule 166b.

9. Elimination of the "witness statement" exemption does not render all witness statements automatically discoverable but subjects them to the same rules concerning the scope of discovery and privileges applicable to other documents or tangible things.

RULE 193. WRITTEN DISCOVERY: RESPONSE; OBJECTION; ASSERTION OF PRIVILEGE; SUPPLEMENTATION AND AMENDMENT; FAILURE TO TIMELY RESPOND; PRESUMPTION OF AUTHENTICITY.

193.1. Responding to Written Discovery; Duty to Make Complete Response.

A party must respond to written discovery in writing within the time provided by court order or these rules. When responding to written discovery, a party must make a complete response, based on all information reasonably available to the responding party or its attorney at the time the response is made. The responding party's answers, objections, and other responses must be preceded by the request required disclosures to which they apply.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

193.2. Objecting to Written Discovery.

(a) **Form and time for objections**. A party must make any objection to written discovery in writing—either in the response or in a separate document—within the time for response. The party must state specifically the legal or factual basis for the objection and the extent to which the party is refusing to comply with the request.

(b) **Duty to respond when partially objecting objection to time or place of production**. A party must comply with as much of the request to which the party has made no objection unless it is unreasonable under the circumstances to do so before obtaining a ruling on the objection. If the responding party objects to the requested time or place of production, the responding party must state a reasonable time and place for complying with the request and must comply at that time and place without further request or order.

(c) **Good faith basis for objection**. A party may object to written discovery only if a good faith factual and legal basis for the objection exists at the time the objection is made.

(d) **Amendment**. An objection or response to written discovery may be amended or supplemented to state an objection or basis that, at the time the objection or response initially was made, either was inapplicable or was unknown after reasonable inquiry.

(e) **Waiver of objection**. An objection that is not made within the time required, or that is obscured by numerous unfounded objections, is waived unless the court excuses the waiver for good cause shown.

(f) **No objection to preserve privilege**. A party should not object to a request for written discovery on the grounds that it calls for production of material or information that is privileged but should instead comply with Rule 193.3. A party who objects to production of privileged material or information does not waive the privilege but must comply with Rule 193.3 when the error is pointed out.

193.3. Asserting a Privilege.

A party may preserve a privilege from written discovery in accordance with this subdivision.

(a) **Withholding privileged material or information**. A party who claims that material or information responsive to written discovery is privileged may withhold the privileged material or information from the response. The party must state—in the response (or an amended or supplemental response) or in a separate document—that:

(1) information or material responsive to the request or required disclosure has been withheld,

(2) the request or required disclosure to which the information or material relates, and

(3) the privilege or privileges asserted.

(b) **Description of withheld material or information**. After receiving a response indicating that material or information has been withheld from production, a party seeking discovery may serve a written request that the withholding party identify the information and material withheld. Within 15 days of service of that request, the withholding party must serve a response that:

(1) describes the information or materials withheld that, without revealing the privileged information itself or otherwise waiving the privilege, enables other parties to assess the applicability of the privilege, and

(2) asserts a specific privilege for each item or group of items withheld.

(c) **Exemption**. Without complying with paragraphs (a) and (b), a party may withhold a privileged communication to or from a lawyer or lawyer's representative or a privileged document of a lawyer or lawyer's representative—

(1) created or made from the point at which a party consults a lawyer with a view to obtaining professional legal services from the lawyer in the prosecution or defense of a specific claim in the litigation in which discovery is requested or required, and

(2) concerning the litigation in which the discovery is requested or required.

(d) **Privilege not waived by production**. A party who produces material or information without intending to waive a claim of privilege does not waive that claim under these rules or the Rules of Evidence if—within ten days or a shorter time ordered by the court, after the producing party actually discovers that such production was made—the producing party amends the response, identifying the material or information produced and stating the privilege asserted. If the producing party thus amends the response to assert a privilege, any party who has obtained the specific material or information must promptly return the specified material or information and any copies pending any ruling by the court denying the privilege.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

193.4. Hearing and Ruling on Objections and Assertions of Privilege.

(a) **Hearing**. Any party may at any reasonable time request a hearing on an objection or claim of privilege asserted under this rule. The party making the objection or asserting the privilege must present any evidence necessary to support the objection or privilege. The evidence may be testimony presented at the hearing or affidavits served at least seven days before the hearing or at such other reasonable time as the court permits. If the court determines that an *in camera* review of some or all of the requested discovery or required disclosure is necessary, that material or information must be segregated and produced to the court in a sealed wrapper within a reasonable time following the hearing.

(b) **Ruling**. To the extent the court sustains the objection or claim of privilege, the responding party has no further duty to respond to that request or required disclosure. To the extent the court overrules the objection or claim of privilege, the responding party must produce the requested or required material or information within 30 days after the court's ruling or at such time as the court orders. A party need not request a ruling on that party's own objection or assertion of privilege to preserve the objection or privilege.

(c) **Use of material or information withheld under claim of privilege**. A party may not use—at any hearing or trial—material or information withheld from discovery under a claim of privilege, including a claim sustained by the court, without timely amending or supplementing the party's response to that discovery.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

193.5. Amending or Supplementing Responses to Written Discovery.

(a) **Duty to amend or supplement**. If a party learns that the party's response to written discovery was incomplete or incorrect when made, or, although complete and correct when made, is no longer complete and correct, the party must amend or supplement the response:

(1) to the extent that the written discovery sought the identification of persons with knowledge of relevant facts, trial witnesses, or expert witnesses, and

(2) to the extent that the written discovery sought other information, unless the additional or corrective information has been made known to the other parties in writing, on the record at a deposition, or through other discovery responses.

(b) **Time and form of amended or supplemental response**. An amended or supplemental response must be made reasonably promptly after the party discovers the necessity for such a response. Except as otherwise provided by these rules, it is presumed that an amended or supplemental response made less than 30 days before trial was not made reasonably promptly. An amended or supplemental response must be in the same form as the initial response and must be verified by the party if the original response was required to be verified by the party, but the failure to comply

with this requirement does not make the amended or supplemental response untimely unless the party making the response refuses to correct the defect within a reasonable time after it is pointed out.

193.6. Failing to Timely Respond—Effect on Trial.

(a) **Exclusion of evidence and exceptions**. A party who fails to make, amend, or supplement a discovery response, including a required disclosure, in a timely manner may not introduce in evidence the material or information that was not timely disclosed, or offer the testimony of a witness (other than a named party) who was not timely identified, unless the court finds that:

(1) there was good cause for the failure to timely make, amend, or supplement the discovery response; or

(2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties.

(b) **Burden of establishing exception**. The burden of establishing good cause or the lack of unfair surprise or unfair prejudice is on the party seeking to introduce the evidence or call the witness. A finding of good cause or of the lack of unfair surprise or unfair prejudice must be supported by the record.

(c) **Continuance.** Even if the party seeking to introduce the evidence or call the witness fails to carry the burden under paragraph (b), the court may grant a continuance or temporarily postpone the trial to allow a response to be made, amended, or supplemented, and to allow opposing parties to conduct discovery regarding any new information presented by that response.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

193.7. Production of Documents Self-Authenticating.

A party's production of a document in response to written discovery authenticates the document for use against that party in any pretrial proceeding or at trial unless—within ten days or a longer or shorter time ordered by the court, after the producing party has actual notice that the document will be used—the party objects to the authenticity of the document, or any part of it, stating the specific basis for objection. An objection must be either on the record or in writing and must have a good faith factual and legal basis. An objection made to the authenticity of only part of a document does not affect the authenticity of the remainder. If objection is made, the party attempting to use the document should be given a reasonable opportunity to establish its authenticity.

(Adopted Aug. 5, 1998, and amended Nov. 9, 1998 and Dec. 31, 1998, eff. Jan. 1, 1999, except that a response to a discovery request, an objection to a discovery request, an assertion of privilege, or an amendment or supplementation to a discovery response made before that date need not comply with the new rule.)

Comments to 1999 change:

1. This rule imposes a duty upon parties to make a complete response to written discovery based upon all information reasonably available, subject to objections and privileges.

2. An objection to written discovery does not excuse the responding party from complying with the request to the extent no objection is made. But a party may object to a request for "all documents relevant to the lawsuit" as overly broad and not in compliance with the rule requiring specific requests for documents and refuse to comply with it entirely. *See Loftin v. Martin*, 776 S.W.2d 145 (Tex. 1989). A party may also object to a request for a litigation file on the ground that it is overly broad and may assert that on its face the request seeks only materials protected by privilege. *See National Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993). A party who objects to production of documents from a remote time period should produce documents from a more recent period unless that production would be burdensome and duplicative should the objection be overruled.

3. This rule governs the presentation of all privileges including work product. It dispenses with objections to written discovery requests on the basis that responsive information or materials are protected by a specific privilege from discovery. Instead, the rule requires parties to state that information or materials have been withheld and to identify the privilege upon which the party relies. The statement should not be made prophylactically, but only when specific information and materials have been withheld. The party must amend or supplement the statement if additional privileged information or material is found subsequent to the initial response. Thus, when large numbers of documents are being produced, a party may amend the initial response when documents are found as to which the party claims privilege. A party need not state that material created by or for lawyers for the litigation has been withheld as it can be assumed that such material will be withheld from virtually any request on the grounds of attorney-client privilege or work product. However, the rule does not prohibit a party from specifically requesting the material or information if the party has a good faith basis for asserting that it is discoverable. An example would be material or information described by Rule 503(d)(1) of the Rules of Evidence.

4. Rule 193.3(d) is a new provision that allows a party to assert a claim of privilege to material or information produced inadvertently without intending to waive the privilege. The provision is commonly used in complex cases to reduce costs and risks in large document productions. The focus is on the intent to waive the privilege, not the intent to produce the material or information. A party who fails to diligently screen documents before producing them does not waive a claim of privilege. This rule is thus broader than TEX. R. EVID. 511 and overturns *Granada Corp. v. First Court of Appeals*, 844 S.W.2d 223 (Tex. 1992), to the extent the two conflict. The ten-day period (which may be shortened by the court) allowed for an amended response does not run from the production of the material or information but from the party's first awareness of the mistake. To avoid complications at trial, a party may identify prior to trial the documents intended to be offered, thereby triggering the obligation to assert any overlooked privilege under this rule. A trial court may also order this procedure.

5. This rule imposes no duty to supplement or amend deposition testimony. The only duty to supplement deposition testimony is provided in Rule 195.6.

6. Any party can request a hearing in which the court will resolve issues brought up in objections or withholding statements. The party seeking to avoid discovery has the burden of proving the objection or privilege.

7. The self-authenticating provision is new. Authentication is, of course, but a condition precedent to admissibility and does not establish admissibility. *See* TEX. R. EVID. 901(a). The ten-day period allowed for objection to authenticity (which period may be altered by the court in appropriate circumstances) does not run from the production of the material or information but from the party's actual awareness that the document will be used. To avoid complications at trial, a party may identify prior to trial the documents intended to be offered, thereby triggering the obligation to object to authenticity. A trial court may also order this procedure. An objection to authenticity must be made in good faith.

RULE 194. REQUIRED DISCLOSURES.

194.1. Duty to Disclose; Production.

(a) **Duty to Disclose.** Except in a suit governed by the Family Code, as exempted by Rule 194.2(c) or as otherwise agreed by the parties or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties the information or material described in Rule 194.2, 194.3, and 194.4.

(b) **Production.** If a party does not produce copies of all responsive documents, electronically stored information, and tangible things with the response, the response must state a reasonable time and method for the production of these items. The responding party must produce the items at the time and in the method stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021; Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023.)

194.2. Initial Disclosures.

(a) **Time for Initial Disclosures.** A party must make the initial disclosures within 30 days after the filing of the first answer or general appearance unless a different time is set by the parties' agreement or court order. A party that is first served or otherwise joined after the filing of the first answer or general appearance must make the initial disclosures within 30 days after being served or joined, unless a different time is set by the parties' agreement or court order.

(b) **Content.** Without awaiting a discovery request, a party must provide to the other parties:

(1) the correct names of the parties to the lawsuit;

(2) the name, address, and telephone number of any potential parties;

(3) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);

(4) the amount and any method of calculating economic damages;

(5) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

(6) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the responding party has in its possession, custody, or control, and may use to support its claims or defenses, unless the use would be solely for impeachment;

(7) any indemnity and insuring agreements described in Rule 192.3(f);

(8) any settlement agreements described in Rule 192.3(g);

(9) any witness statements described in Rule 192.3(h);

(10) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;

(11) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party; and

(12) the name, address, and telephone number of any person who may be designated as a responsible third party.

(c) **Proceedings Exempt from Initial Disclosure.** The following proceedings are exempt from initial disclosure, but a court may order the parties to make particular disclosures and set the time for disclosure:

(1) an action for review on an administrative record;

(2) a forfeiture action arising from a state statute;

(3) a petition for habeas corpus;

(4) an action involving domestic violence; and

(5) an action on appeal from a justice court.

(Amended by Order Mar. 3, 2004, effective in cases filed on or after July 1, 2003, in which a request for disclosure under Rule 194.1 is made on or after May 1, 2004; Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021; Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023.)

2004 Amendment: Rule 194.2(l) is added as required by changes in chapter 33 of the Texas Civil Practice and Remedies Code. The amendment applies in all cases filed on or after July 1, 2003, in which a request under Rule 194.1 is made after May 1, 2004.

194.3. Testifying Expert Disclosures.

In addition to the disclosures required by Rule 194.2, a party must disclose to the other parties testifying expert information as provided by Rule 195.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

194.4. Pretrial Disclosures.

(a) **In General.** In addition to the disclosures required by Rule 194.2 and 194.3, a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(1) the name and, if not previously provided, the address, and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;

(2) an identification of each document or other exhibits, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.

(b) **Time for Pretrial Disclosures.** Unless the court orders otherwise, these disclosures must be made at least 30 days before trial.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021; Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023.)

Comment to 2023 change: Rule 194 is amended to implement chapter 301 of the Family Code.

194.5. No Objection or Assertion of Work Product.

No objection or assertion of work product is permitted to a disclosure under this rule.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

194.6. Certain Responses Not Admissible.

A disclosure under Rule 194.2(b)(3) and (4) that has been changed by an amended or supplemental response is not admissible and may not be used for impeachment.

(Adopted Aug. 5, 1998 and Nov. 9, 1998, and amended Dec. 31, 1998, eff. Jan. 1, 1999. Rule 194.2 amended Mar. 3, 2004. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

Comments to 1999 change:

1. Disclosure is designed to afford parties basic discovery of specific categories of information, not automatically in every case, but upon request, without preparation of a lengthy inquiry, and without objection or assertion of work product. In those extremely rare cases when information ordinarily discoverable should be protected, such as when revealing a person's residence might result in harm to the person, a party may move for protection. A party may assert any applicable privileges other than work product using the procedures of Rule 193.3 applicable to other written discovery. Otherwise, to fail to respond fully to a request for disclosure would be an abuse of the discovery process.

2. Rule 194.2(c) and (d) permit a party further inquiry into another's legal theories and factual claims than is often provided in notice pleadings. So-called "contention interrogatories" are used for the same purpose. Such interrogatories are not properly used to require a party to marshal evidence or brief legal issues. Paragraphs (c) and (d) are intended to require disclosure of a party's basic assertions, whether in prosecution of claims or in defense. Thus, for example, a plaintiff would be required to disclose that he or she claimed damages suffered in a car wreck caused by defendant's negligence in speeding, and would be required to state how loss of past earnings and future earning capacity was calculated, but would not be required to state the speed at which defendant was allegedly driving. Paragraph (d) does not require a party, either a plaintiff or a defendant, to state a method of calculating non-economic damages, such as for mental anguish. In the same example, defendant would be required to disclose his or her denial of the speeding allegation and any basis for contesting the damage calculations.

3. Responses under Rule 194.2(c) and (d) that have been amended or supplemented are inadmissible and cannot be used for impeachment, but other evidence of changes in position is not likewise barred.

Comment to 2021 change:

Rule 194 is amended to implement section 22.004(h-1) of the Texas Government Code. Rule 194 is amended based on Federal Rule of Civil Procedure 26(a) to require disclosure of basic discovery automatically, without awaiting a discovery request. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures. As with other written discovery responses, required disclosures must be signed under Rule 191.3, complete under Rule 193.1, served under Rule 191.5, and timely amended or supplemented under Rule 193.5.

RULE 194a. REQUEST FOR DISCLOSURE IN SUITS GOVERNED BY THE FAMILY CODE

194a.1. Request.

No later than 30 days before the end of any applicable discovery period, a party may obtain disclosure from another party of the information or material described in Rule 194a.2 by serving the other party the following request: "Under Rule 194a, you ar194ae requested to disclose, within 30 days of service of this request, the information or material described in Rule [state rule, e.g., 194a.2, or 194a.2(a), (c), and (f), or 194a.2(d)–(g)]."

194a.2. Content.

A party may request disclosure under Rule 194a.1 of any of the following:

(a) the correct names of the parties to the lawsuit;

(b) the name, address, and telephone number of any potential parties;

(c) the legal theories and, in general, the factual bases of the responding party's claims or defenses (but the responding party need not marshal all evidence that may be offered at trial);

(d) the amount and any method of calculating economic damages;

(e) the name, address, and telephone number of any person having knowledge of relevant facts and a brief statement of each identified person's connection with the case;

(f) for any testifying expert:

(1) the expert's name, address, and telephone number;

(2) the subject matter on which the expert will testify;

(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting that information; and

(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

(B) the expert's current resume and biography;

(g) any discoverable settlement agreement described by Rule 192.3(g);

(h) any discoverable witness statement described by Rule 192.3(h);

(i) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case:

(1) all medical records and bills that are reasonably related to the injuries or damages asserted; or

(2) an authorization permitting the disclosure of the information described by paragraph (i)(1);

(j) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party through an authorization provided by the requesting party; and

(k) the name, address, and telephone number of any person who may be designated as a responsible third party.

194a.3. Response.

The responding party must serve a written response on the requesting party within 30 days after service of the request, except that:

(a) a defendant served with a request before the defendant's answer is due is not required to respond until 50 days after service of the request; and

(b) a response to a request under Rule 194a.2(f) is governed by Rule 195a.

194a.4. Production of Documents and Tangible Items.

The responding party must provide copies of documents and other tangible items with the response unless:

(a) the responsive documents are voluminous;

(b) the responding party states a reasonable time and place for the production of the documents;

(c) the responding party produces the documents at the time and place stated under paragraph (b) unless otherwise agreed by the parties or ordered by the court; and

(d) the responding party provides the requesting party a reasonable opportunity to inspect the documents.

195a.5. Work Product Objection Prohibited.

A party may not assert a work product privilege for or object on the basis of a work product privilege to a request served under Rule 194a.1.

195a.6. Certain Responses Not Admissable.

A response to a request under Rule 194a.2(c) or (d) that has been changed by an amended or supplemental response is not admissible and may not be used for impeachment.

(Adopted by Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023)

Comment to 2023 change: New Rule 194a is added to implement chapter 301 of the Family Code.

RULE 195. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES.

195.1. Permissible Discovery Tools.

A party may obtain information concerning testifying expert witnesses only through under this rule and through depositions and reports as permitted by this rule.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

195.2. Schedule for Designating Experts.

Unless otherwise ordered by the court, a party must designate experts—that is, furnish information described in Rule 195.5(a)—by the following dates:

(a) with regard to all experts testifying for a party seeking affirmative relief, 90 days before the end of the discovery period;

(b) with regard to all other experts, 60 days before the end of the discovery period.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

195.3. Scheduling Depositions.

(a) **Experts for party seeking affirmative relief**. A party seeking affirmative relief must make an expert retained by, employed by, or otherwise in the control of the party available for deposition as follows:

(1) **If no report furnished**. If a report of the expert's factual observations, tests, supporting data, calculations, photographs, and opinions is not produced when the expert is designated, then the party must make the expert available for deposition reasonably promptly after the expert is

designated. If the deposition cannot—due to the actions of the tendering party—reasonably be concluded more than 15 days before the deadline for designating other experts, that deadline must be extended for other experts testifying on the same subject.

(2) **If report furnished**. If a report of the expert's factual observations, tests, supporting data, calculations, photographs, and opinions is produced when the expert is designated, then the party need not make the expert available for deposition until reasonably promptly after all other experts have been designated.

(b) **Other experts**. A party not seeking affirmative relief must make an expert retained by, employed by, or otherwise in the control of the party available for deposition reasonably promptly after the expert is designated and the experts testifying on the same subject for the party seeking affirmative relief have been deposed.

195.4. Oral Deposition.

In addition to the information disclosed under Rule 195.5(a) a party may obtain discovery concerning the subject matter on which the expert is expected to testify, the expert's mental impressions and opinions, the facts known to the expert (regardless of when the factual information was acquired) that relate to or form the basis of the testifying expert's mental impressions and opinions, and other discoverable matters, including documents not produced in disclosure, only by oral deposition of the expert and by a report prepared by the expert under this rule.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

195.5. Expert Disclosures and Reports.

(a) **Disclosures**. Without awaiting a discovery request, a party must provide the following for any testifying expert:

(1) the expert's name, address, and telephone number;

(2) the subject matter on which the expert will testify;

(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony;

(B) the expert's current resume and bibliography;

(C) the expert's qualifications, including a list of all publications authored in the previous 10 years;

(D) except when the expert is the responding party's attorney and is testifying to attorney fees, a list of all other cases in which, during the previous four years, the expert testified as an expert at trial or by deposition; and

(E) a statement of the compensation to be paid for the expert's study and testimony in the case.

(b) **Expert Reports.** If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert have not been recorded and reduced to tangible form, the court may order these matters reduced to tangible form and produced in addition to the deposition.

(c) **Expert Communications Protected.** Communications between the party's attorney and any testifying expert witness in the case are protected from discovery, regardless of the form of the communications, except to the extent that the communications:

(1) relate to compensation for the expert's study or testimony;

(2) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(3) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(d) **Draft Expert Reports and Disclosures Protected.** A draft expert report or draft disclosure required under this rule is protected from discovery, regardless of the form in which the draft is recorded.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021.)

195.6. Amendment and Supplementation.

A party's duty to amend and supplement written discovery regarding a testifying expert is governed by Rule 193.5. If an expert witness is retained by, employed by, or otherwise under the control of a party, that party must also amend or supplement any deposition testimony or written report by the expert, but only with regard to the expert's mental impressions or opinions and the basis for them.

195.7. Cost of Expert Witnesses.

When a party takes the oral deposition of an expert witness retained by the opposing party, all reasonable fees charged by the expert for time spent in preparing for, giving, reviewing, and correcting the deposition must be paid by the party that retained the expert.

(Adopted Aug. 5, 1998, and amended Nov. 9, 1998 and Dec. 31, 1998, eff. Jan. 1, 1999, except that interrogatories that have been served but not answered as of that date and request information pertaining to experts should be answered; and the rule should not be applied to disrupt expert discovery that is in progress or impending, or that has been scheduled by order or by agreement of the parties.)

Comments to 1999 change:

1. This rule does not limit the permissible methods of discovery concerning consulting experts whose mental impressions or opinions have been reviewed by a testifying expert. *See* Rule 192.3(e). Information concerning purely consulting experts, of course, is not discoverable.

2. This rule and Rule 194 do not address depositions of testifying experts who are not retained by, employed by, or otherwise subject to the control of the responding party, nor the production of the materials identified in Rule 192.3(e)(5) and (6) relating to such experts. Parties may obtain this discovery, however, through Rules 176 and 205.

3. In scheduling the designations and depositions of expert witnesses, the rule attempts to minimize unfair surprise and undue expense. A party seeking affirmative relief must either produce an expert's report or tender the expert for deposition before an opposing party is required to designate experts. A party who does not wish to incur the expense of a report may simply tender the expert for deposition, but a party who wishes an expert to have the benefit of an opposing party's expert's opinions before being deposed may trigger designation by providing a report. Rule 191.1 permits a trial court, for good cause, to modify the order or deadlines for designating and deposing experts and the allocation of fees and expenses.

Comment to 2021 change: Rule 195 is amended to reflect changes to Rule 194. Amended Rule 195.5(a) lists the disclosures for any testifying expert, which are now required without awaiting a discovery request, that were formerly listed in Rule 194(f). Amended Rule 195.5(a) also includes three new disclosures based on Federal Rule of Civil Procedure 26(a)(2)(B). New Rules 195.5(b) and (c) are based on Federal Rules of Civil Procedure 26(b)(4)(B) and (C) and are added to clarify protections available.

195A. DISCOVERY REGARDING TESTIFYING EXPERTS IN SUITS GOVERNED BY THE FAMILY CODE

195a.1. Permissible Discovery Methods.

A party may request another party to designate and disclose information concerning testifying expert witnesses only through:

(a) a disclosure request served under Rule 194a.1; or

(b) a deposition or report permitted by this rule.

195a.2. Deadline for Response.

Unless otherwise ordered by the court, a responding party must provide the information requested under Rule 194a.2(f) by the later of the following dates:

(a) 30 days after the request is served; or

(b) either, as applicable:

(1) with respect to an expert testifying for a party seeking affirmative relief, 90 days before the end of the discovery period; or

(2) with respect to an expert not described by paragraph (b)(1), 60 days before the end of the discovery period.

195a.3. Deposition Availability.

(a) A party seeking affirmative relief must make an expert retained by, employed by, or otherwise under the control of the party available for a deposition in accordance with this rule.

(b) If a party seeking affirmative relief does not provide a report of the party's expert's factual observations, tests, supporting data, calculations, photographs, and opinions when the party designates the expert, the party must make the expert available for a deposition reasonably promptly after the designation. If the deposition cannot be reasonably concluded more than 15 days before the deadline for designating other experts due to the actions of the party who designated the expert, the court must extend the deadline for other experts testifying on the same subject.

(c) If a party seeking affirmative relief provides a report of the party's expert's factual observations, tests, supporting data, calculations, photographs, and opinions when the party designates the expert, the party is not required to make the expert available for a deposition until reasonably promptly after all other experts have been designated.

(d) A party not seeking affirmative relief must make an expert retained by, employed by, or otherwise under the control of the party available for a deposition reasonably promptly after the party designates the expert and the experts testifying on the same subject for the party seeking affirmative relief have been deposed.

195a.4. Content of Oral Depositions and Court-Ordered Reports.

In addition to a disclosure request served under Rule 194a.1, a party may obtain discovery by oral deposition and a report prepared in accordance with Rule 195a.5 of:

(a) the subject matter on which a testifying expert is expected to testify;

(b) the expert's mental impressions and opinions;

(c) the facts known to the expert, regardless of when the factual information is acquired, that relate to or form the basis of the expert's mental impressions and opinions; and

(d) other discoverable items, including documents not produced in response to a disclosure request.

195a.5. Court-Ordered Reports.

If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert are not recorded and reduced to tangible form, the court may order that information be reduced to tangible form and produced in addition to the deposition.

195a.6. Amendment and Supplementation of Discovery.

A party's duty to amend and supplement written discovery regarding a testifying expert is governed by Rule 193.5. If a party retains, employs, or otherwise controls an expert witness, the party must amend or supplement the expert's deposition testimony or written report only with regard to the expert's mental impressions or opinions and the basis for those impressions or opinions.

195a.7. Cost of Expert Witness.

When a party takes the oral deposition of an expert witness retained by an opposing party, the party retaining the expert must pay all reasonable fees charged by the expert for time spent in preparing for, giving, reviewing, and correcting the deposition.

195a.8. Expert Communications Protected.

Communications between a party's attorney and a testifying expert witness in an action subject to this chapter are protected from discovery regardless of the form of the communications, except to the extent that the communications:

(a) relate to compensation for the expert's study or testimony;

(b) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions the expert will express; or

(c) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions the expert will express.

195a.9. Draft Expert Reports and Disclosures Protected.

A draft expert report or draft disclosure required under this rule is protected from discovery regardless of the form in which the draft is recorded.

(Adopted by Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023.)

Comment to 2023 change: New Rule 195a is added to implement chapter 301 of the Family Code.

RULE 196. REQUESTS FOR PRODUCTION AND INSPECTION TO PARTIES; REQUESTS AND MOTIONS FOR ENTRY UPON PROPERTY.

196.1. Request for Production and Inspection to Parties.

(a) **Request**. A party may serve on another party—no later than 30 days before the end of the discovery period—a request for production or for inspection, to inspect, sample, test, photograph and copy documents or tangible things within the scope of discovery.

(b) **Contests of request**. The request must specify the items to be produced or inspected, either by individual item or by category, and describe with reasonable particularity each item and category. The request must specify a reasonable time (on or after the date on which the response is due) and place for production. If the requesting party will sample or test the requested items, the means, manner and procedure for testing or sampling must be described with sufficient specificity to inform the producing party of the means, manner, and procedure for testing or sampling.

(c) **Requests for production of medical or mental health records regarding nonparties**.

(1) **Service of request on nonparty**. If a party requests another party to produce medical or mental health records regarding a nonparty, the requesting party must serve the nonparty with the request for production under Rule 21a.

(2) **Exceptions**. A party is not required to serve the request for production on a nonparty whose medical records are sought if:

(A) the nonparty signs a release of the records that is effective as to the requesting party;

(B) the identity of the nonparty whose records are sought will not directly or indirectly be disclosed by production of the records; or

(C) the court, upon a showing of good cause by the party seeking the records, orders that service is not required.

(3) **Confidentiality**. Nothing in this rule excuses compliance with laws concerning the confidentiality of medical or mental health records.

196.2. Response to Request for Production and Inspection.

(a) **Time for response**. The responding party must serve a written response on the requesting party within 30 days after service of the request, except that a defendant in a suit governed by the Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request.

(b) **Content of response**. With respect to each item or category of items, the responding party must state objections and assert privileges as required by these rules, and state, as appropriate, that:

(1) production, inspection, or other requested action will be permitted as requested,

(2) the requested items are being served on the requesting party with the response;

(3) production, inspection, or other requested action will take place at a specified time and place, if the responding party is objecting to the time and place of production; or

(4) no items have been identified—after a diligent search—that are responsive to the request.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021; Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023.)

196.3. Production.

(a) **Time and place of production**. Subject to any objections stated in the response, the responding party must produce the requested documents or tangible things within the person's possession, custody or control at either the time and place requested or the time and place stated in the response, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.

(b) **Copies**. The responding party may produce copies in lieu of originals unless a question is raised as to the authenticity of the original or in the circumstances it would be unfair to produce copies in lieu of originals. If originals are produced, the responding party is entitled to retain the originals while the requesting party inspects and copies them.

(c) **Organization**. The responding party must either produce documents and tangible things as they are kept in the usual course of business or organize and label them to correspond with the categories in the request.

196.4. Electronic or Magnetic Data.

To obtain discovery of data or information that exists in electronic or magnetic form, the requesting party must specifically request production of electronic or magnetic data and specify the form in which the requesting party wants it produced. The responding party must produce the electronic or magnetic data that is responsive to the request and is reasonably available to the responding party in its ordinary course of business. If the responding party cannot—through reasonable efforts—retrieve the data or information requested or produce it in the form requested, the responding party must state an objection complying with these rules. If the court orders the responding party to comply with the request, the court must also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.

196.5. Destruction or Alteration.

Testing, sampling or examination of an item may not destroy or materially alter an item unless previously authorized by the court.

196.6. Expenses of Production.

Unless otherwise ordered by the court for good cause, the expense of producing items will be borne by the responding party and the expense of inspecting, sampling, testing, photographing, and copying items produced will be borne by the requesting party.

196.7. Request or Motion for Entry Upon Property.

(a) **Request or motion**. A party may gain entry on designated land or other property to inspect, measure, survey, photograph, test, or sample the property or any designated object or operation thereon by serving—no later than 30 days before the end of any applicable discovery period -

(1) a request on all parties if the land or property belongs to a party, or

(2) a motion and notice of hearing on all parties and the nonparty if the land or property belongs to a nonparty. If the identity or address of the nonparty is unknown and cannot be obtained through reasonable diligence, the court must permit service by means other than those specified in Rule 21a that are reasonably calculated to give the nonparty notice of the motion and hearing.

(b) **Time, place, and other conditions**. The request for entry upon a party's property, or the order for entry upon a nonparty's property, must state the time, place, manner, conditions, and scope of the inspection, and must specifically describe any desired means, manner, and procedure for testing or sampling, and the person or persons by whom the inspection, testing, or sampling is to be made.

(c) **Response to request for entry**.

(1) **Time to Respond**. The responding party must serve a written response on the requesting party within 30 days after service of the request. except that a defendant in a suit governed by the Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request.

(2) **Content of response**. The responding party must state objections and assert privileges as required by these rules, and state, as appropriate, that:

(A) entry or other requested action will be permitted as requested;

(B) entry or other requested action will take place at a specified time and place, if the responding party is objecting to the time and place of production; or

(C) entry or other requested action cannot be permitted for reasons stated in the response.

(d) **Requirements for order for entry on nonparty's property**. An order for entry on a nonparty's property may issue only for good cause shown and only if the land, property, or object thereon as to which discovery is sought is relevant to the subject matter of the action.

(Adopted Aug. 5, 1998, and amended Nov. 9, 1998 and Dec. 31, 1998, eff. Jan. 1, 1999. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021; Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023.)

Comments to 1999 change:

1. "Document and tangible things" are defined in Rule 192.3(b).

2. A party requesting sampling or testing must describe the procedure with sufficient specificity to enable the responding party to make any appropriate objections.

3. A party requesting production of magnetic or electronic data must specifically request the data, specify the form in which it wants the data produced, and specify any extraordinary steps for retrieval and translation. Unless ordered otherwise, the responding party need only produce the data reasonably available in the ordinary course of business in reasonably usable form.

4. The rule clarifies how the expenses of production are to be allocated absent a court order to the contrary.

5. The obligation of parties to produce documents within their possession, custody or control is explained in Rule 192.3(b).

6. Parties may request production and inspection of documents and tangible things from nonparties under Rule 205.3.

7. Rule 196.3(b) is based on TEX. R. EVID. 1003.

8. Rule 196.1(c) is merely a notice requirement and does not expand the scope of discovery of a nonparty's medical records.

RULE 197. INTERROGATORIES TO PARTIES.

197.1. Interrogatories.

A party may serve on another party—no later than 30 days before the end of the discovery period—written interrogatories to inquire about any matter within the scope of discovery except matters covered by Rule 195. An interrogatory may inquire whether a party makes a specific legal or factual contention and may ask the responding party to state the legal theories and to describe in general the factual bases for the party's claims or defenses, but interrogatories may not be used to require the responding party to marshal all of its available proof or the proof the party intends to offer at trial.

197.2. Response to Interrogatories.

(a) **Time for response**. The responding party must serve a written response on the requesting party within 30 days after service of the interrogatories, except that a defendant in a suit governed by the Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request.

(b) **Content of response**. A response must include the party's answers to the interrogatories and may include objections and assertions of privilege as required under these rules.

(c) **Option to produce records**. If the answer to an interrogatory may be derived or ascertained from public records, from the responding party's business records, or from a compilation, abstract or summary of the responding party's business records, and the burden of deriving or ascertaining the answer is substantially the same for the requesting party as for the responding party, the responding party may answer the interrogatory by specifying and, if applicable, producing the records or compilation, abstract or summary of the records. The records from which the answer may be derived or ascertained must be specified in sufficient detail to permit the requesting party to locate and identify them as readily as can the responding party. If the responding party has specified business records, the responding party must state a reasonable time and place for examination of the documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.

(d) **Verification required, exceptions**. A responding party—not an agent or attorney as otherwise permitted by Rule 14—must sign the answers under oath except that:

(1) when answers are based on information obtained from other persons, the party may so state, and

(2) a party need not sign answers to interrogatories about persons with knowledge of relevant facts, trial witnesses, and legal contentions.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021; Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023.)

197.3. Use.

Answers to interrogatories may be used only against the responding party. An answer to an interrogatory inquiring about matters described in Rule 194.2 (b)(3) and (b)(4) that has been amended or supplemented is not admissible and may not be used for impeachment.

(Adopted Aug. 5, 1998, and amended Nov. 9, 1998 and Dec. 31, 1998, eff. Jan. 1, 1999. Amended by Tex. Sup. Ct. Misc. Docket No. 21-9102, eff. Sept. 1, 2021.)

Comments to 1999 change:

1. Interrogatories about specific legal or factual assertions—such as, whether a party claims a breach of implied warranty, or when a party contends that limitations began to run—are proper, but interrogatories that ask a party to state all legal and factual assertions are improper. As with requests for disclosure, interrogatories may be used to ascertain basic legal and factual claims and defenses but may not be used to force a party to marshal evidence. Use of the answers to such interrogatories is limited, just as the use of similar disclosures under Rule 194.6 is.

2. Rule 191's requirement that a party's attorney sign all discovery responses and objections applies to interrogatory responses and objections. In addition, the responding party must sign some interrogatory answers under oath, as specified by the rule. Answers in amended and supplemental responses must be signed by the party under oath only if the original answers were required to be signed under oath. The failure to sign or verify answers is only a formal defect that does not otherwise impair the answers unless the party refuses to sign or verify the answers after the defect is pointed out.

RULE 198. REQUESTS FOR ADMISSIONS.

198.1. Request for Admissions.

A party may serve on another party—no later than 30 days before the end of the discovery period—written requests that the other party admit the truth of any matter within the scope of discovery, including statements of opinion or of fact or of the application of law to fact, or the genuineness of any documents served with the request or otherwise made available for inspection and copying. Each matter for which an admission is requested must be stated separately.

198.2. Response to Requests for Admissions.

(a) **Time for response**. The responding party must serve a written response on the requesting party within 30 days after service of the request, except that a defendant in a suit governed by the Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request..

(b) **Content of response**. Unless the responding party states an objection or asserts a privilege, the responding party must specifically admit or deny the request or explain in detail the reasons that the responding party cannot admit or deny the request. A response must fairly meet the substance of the request. The responding party may qualify an answer, or deny a request in part, only when good faith requires. Lack of information or knowledge is not a proper response unless the responding party states that a reasonable inquiry was made but that the information known or easily

obtainable is insufficient to enable the responding party to admit or deny. An assertion that the request presents an issue for trial is not; a proper response.

(c) **Effect of failure to respond**. If a response is not timely served, the request is considered admitted without the necessity of a court order.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9101, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9153, Dec. 23, 2020, eff. Jan. 1, 2021; Tex. Sup. Ct. Misc. Docket No. 23-9052, Aug. 7, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9092, Nov. 17, 2023, eff. Nov. 17, 2023.)

198.3. Effect of Admissions; Withdrawal or Amendment.

Any admission made by a party under this rule may be used solely in the pending action and not in any other proceeding. A matter admitted under this rule is conclusively established as to the party making the admission unless the court permits the party to withdraw or amend the admission. The court may permit the party to withdraw or amend the admission if:

(a) the party shows good cause for the withdrawal or amendment; and

(b) the court finds that the parties relying upon the responses and deemed admissions will not be unduly prejudiced and that the presentation of the merits of the action will be subserved by permitting the party to amend or withdraw the admission.

(Adopted Aug. 5, 1998, and Nov. 9, 1998, eff. Jan. 1, 1999.)

RULE 199. DEPOSITIONS UPON ORAL EXAMINATION.

199.1. Oral Examination; Alternative Methods of Conducting or Recording.

(a) **Generally**. A party may take the testimony of any person or entity by deposition on oral examination before any officer authorized by law to take depositions. The testimony, objections, and any other statements during the deposition must be recorded at the time they are given or made.

(b) **Depositions by telephone or other remote electronic means**. A party may take an oral deposition by telephone or other remote electronic means if the party gives reasonable prior written notice of intent to do so. For the purposes of these rules, an oral deposition taken by telephone or other remote electronic means is considered as having been taken in the district and at the place where the witness is located when answering the questions.

(c) **Nonstenographic recording**. Any party may cause a deposition upon oral examination to be recorded by other than stenographic means, including videotape recording. The party requesting the nonstenographic recording will be responsible for obtaining a person authorized by law to administer the oath and for assuring that the recording will be intelligible, accurate, and trustworthy. At least five days prior to the deposition, the party must serve on the witness and all parties a notice, either in the notice of deposition or separately, that the deposition will be recorded by other than stenographic means. This notice must state the method of nonstenographic recording to be used and whether the deposition will also be recorded stenographically. Any other party may then serve written notice designating another method of recording in addition to the method specified, at the expense of such other party unless the court orders otherwise.

(Amended Tex. Sup. Ct. Misc. Docket No. 21-9083 and Tex. Sup. Ct. Misc. Docket No. 21-9138, eff. Sept. 1, 2021.)

Comment to 2021 change: Rule 199.1(b) is amended in response to changes to section 154.105 of the Texas Government Code governing the administration of oaths by court reporters.

199.2. Procedure for Noticing Oral Deposition.

(a) **Time to notice deposition**. A notice of intent to take an oral deposition must be served on the witness and all parties a reasonable time before the deposition is taken. An oral deposition may be taken outside the discovery period only by agreement of the parties or with leave of court.

(b) **Content of notice**.

(1) **Identity of witness; organizations**. The notice must state the name of the witness, which may be either an individual or a public or private corporation, partnership, association, governmental agency, or other organization. If an organization is named as the witness, the notice must describe with reasonable particularity the matters on which examination is requested. In response, the organization named in the notice must—a reasonable time before the deposition—designate one or more individuals to testify on its behalf and set forth, for each individual designated, the matters on which the individual will testify. Each individual designated must testify as to matters that are known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized by these rules.

(2) **Time and Place**. The notice must state a reasonable time and place for the oral deposition. The place may be in:

(A) the county of the witness's residence;

(B) the county where the witness is employed or regularly transacts business in person;

(C) the county of suit, if the witness is a party or a person designated by a party under Rule 199.2 (b)(1);

(D) the county where the witness was served with the subpoena, or within 150 miles of the place of service, if the witness is not a resident of Texas or is a transient person; or

(E) subject to the foregoing, at any other convenient place directed by the court in which the cause is pending.

(3) **Alternative means of conducting and recording**. The notice must state whether the deposition is to be taken by telephone or other remote electronic means and identify the means. If the deposition is to be recorded by nonstenographic means, the notice may include the notice required by Rule 199.1 (c).

(4) **Additional attendees**. The notice may include the notice concerning additional attendees required by Rule 199.5 (a)(3).

(5) **Request for production of documents**. A notice may include a request that the witness produce at the deposition documents or tangible things within the scope of discovery and within the witness's possession, custody, or control. If the witness is a nonparty, the request must comply with Rule 205 and the designation of materials required to be identified in the subpoena must be attached to, or included in, the

notice. The nonparty's response to the request is governed by Rules 176 and 205. When the witness is a party or subject to the control of a party, document requests under this subdivision are governed by Rules 193 and 196.

199.3. Compelling Witness to Attend.

A party may compel the witness to attend the oral deposition by serving the witness with a subpoena under Rule 176. If the witness is a party or is retained by, employed by, or otherwise subject to the control of a party, however, service of the notice of oral deposition upon the party's attorney has the same effect as a subpoena served on the witness.

199.4. Objections to Time and Place of Oral Deposition.

A party or witness may object to the time and place designated for an oral deposition by motion for protective order or by motion to quash the notice of deposition. If the motion is filed by the third business day after service of the notice of deposition an objection to the time and place of a deposition stays the oral deposition until the motion can be determined.

199.5. Examination, Objection, and Conduct During Oral Depositions.

(a) Attendance.

(1) **Witness**. The witness must remain in attendance from day to day until the deposition is begun and completed.

(2) **Attendance by party**. A party may attend an oral deposition in person, even if the deposition is taken by telephone or other remote electronic means. If a deposition is taken by telephone or other remote electronic means, the party noticing the deposition must make arrangements for all persons to attend by the same means. If the party noticing the deposition appears in person, any other party may appear by telephone or other remote electronic means if that party makes the necessary arrangements with the deposition officer and the party noticing the deposition.

(3) **Other attendees**. If any party intends to have in attendance any persons other than the witness, parties, spouses of parties, counsel, employees of counsel, and the officer taking the oral deposition, that party must give reasonable notice to all parties, either in the notice of deposition or separately, of the identity of the other persons.

(b) **Oath; examination**. Every person whose deposition is taken by oral examination must first be placed under oath. The parties may examine and cross-examine the witness. Any party, in lieu of participating in the examination, may serve written questions in a sealed envelope on the party noticing the oral deposition, who must deliver them to the deposition officer, who must open the envelope and propound them to the witness.

(c) **Time limitation**. No side may examine or cross-examine an individual witness for more than six hours. Breaks during depositions do not count against this limitation.

(d) **Conduct during the oral deposition, conferences**. The oral deposition must be conducted in the same manner as if the testimony were being obtained in court during trial. Counsel should cooperate with and be courteous to each other and to the witness. The witness should not be evasive and should not unduly delay the examination. Private conferences between the witness and the witness's attorney during the actual taking of the deposition are improper except for the purpose of determining whether a privilege should be asserted. Private conferences may be held, however, during agreed recesses and adjournments. If the lawyers and witnesses do not comply with this rule, the court may allow in evidence at trial statements, objections, discussions, and other occurrences during the oral deposition that reflect upon the credibility of the witness or the testimony.

(e) **Objections**. Objections to questions during the oral deposition are limited to "Objection, leading" and "Objection, form." Objections to testimony during the oral deposition are limited to "Objection, nonresponsive." These objections are waived if not stated as phrased during the oral deposition. All other objections need not be made or recorded during the oral deposition to be later raised with the court. The objecting party must give a clear and concise explanation of an objection if requested by the party taking the oral deposition, or the objection is waived. Argumentative or suggestive objections or explanations waive objection and may be grounds for terminating the oral deposition or assessing costs or other sanctions. The officer taking the oral deposition will not rule on objections but must record them for ruling by the court. The officer taking the oral deposition must not fail to record testimony because an objection has been made.

(f) **Instructions not to answer**. An attorney may instruct a witness not to answer a question during an oral deposition only if necessary to preserve a privilege, comply with a court order or these rules, protect a witness from an abusive question or one for which any answer would be misleading, or secure a ruling pursuant to paragraph (g). The attorney instructing the witness not to answer must give a concise, nonargumentative, nonsuggestive explanation of the grounds for the instruction if requested by the party who asked the question.

(g) **Suspending the deposition**. If the time limitations for the deposition have expired or the deposition is being conducted or defended in violation of these rules, a party or witness may suspend the oral deposition for the time necessary to obtain a ruling.

(h) **Good faith required**. An attorney must not ask a question at an oral deposition solely to harass or mislead the witness, for any other improper purpose, or without a good faith legal basis at the time. An attorney must not object to a question at an oral deposition, instruct the witness not to answer a question, or suspend the deposition unless there is a good faith factual and legal basis for doing so at the time.

199.6. Hearing on Objections.

Any party may, at any reasonable time, request a hearing on an objection or privilege asserted by an instruction not to answer or suspension of the deposition; provided the failure of a party to obtain a ruling prior to trial does not waive any objection or privilege. The party seeking to avoid discovery must present any evidence necessary to support the objection or privilege either by testimony at the hearing or by affidavits served on opposing parties at least seven days before the hearing If the court determines that an in camera review of some or all of the requested discovery is necessary to rule, answers to the deposition questions may be made *in camera*, to be transcribed and sealed in the event the privilege is sustained, or made in an affidavit produced to the court in a sealed wrapper.

(Adopted Aug. 5, 1998, and amended Nov. 9, 1998, eff. Jan. 1, 1999.)

Comments to 1999 change:

1. Rule 199.2(b)(5) incorporates the procedures and limitations applicable to requests for production or inspection under Rule 196, including the 30-day deadline for responses, as well as the procedures and duties imposed by Rule 193.

2. For purposes of Rule 199.5(c), each person designated by an organization under Rule 199.2(b)(1) is a separate witness.

3. The requirement of Rule 199.5(d) that depositions be conducted in the same manner as if the testimony were being obtained in court is a limit on the conduct of the lawyers and witnesses in the deposition, not on the scope of the interrogation permitted by Rule 192.

4. An objection to the form of a question includes objections that the question calls for speculation, calls for a narrative answer, is vague, is confusing, or is ambiguous. Ordinarily, a witness must answer a question at a deposition subject to the objection. An objection may therefore be inadequate if a question incorporates such unfair assumptions or is worded so that any answer would necessarily be misleading. A witness should not be required to answer whether he has yet ceased conduct he denies ever doing, subject to an objection to form (*i.e.*, that the question is confusing or assumes facts not in evidence) because any answer would necessarily be misleading on account of the way in which the question is put. The witness may be instructed not to answer. Abusive questions include questions that inquire into matters clearly beyond the scope of discovery or that are argumentative, repetitious, or harassing.

RULE 200. DEPOSITIONS UPON WRITTEN QUESTIONS.

200.1. Procedure for Noticing Deposition Upon Written Questions.

(a) **Who may be noticed, when**. A party may take the testimony of any person or entity by deposition on written questions before any person authorized by law to take depositions on written questions. A notice of intent to take the deposition must be served on the witness and all parties at least 20 days before the deposition is taken. A deposition on written questions may be taken outside the discovery period only by agreement of the parties or with leave of court. The party noticing the deposition must also deliver to the deposition officer a copy of the notice and of all written questions to be asked during the deposition.

(b) **Content of notice**. The notice must comply with Rules 199.1 (b), 199.2 (b), and 199.5 (a)(3). If the witness is an organization, the organization must comply with the requirements of that provision. The notice also may include a request for production of documents as permitted by Rule 199.2 (b)(5), the provisions of which will govern the request, service, and response.

200.2. Compelling Witness to Attend.

A party may compel the witness to attend the deposition on written questions by serving the witness with a subpoena under Rule 176. If the witness is a party or is retained by, employed by, or otherwise subject to the control of a party, however, service of the deposition notice upon the party's attorney has the same effect as a subpoena served on the witness.

200.3. Questions and Objections.

(a) **Direct questions**. The direct questions to be propounded to the witness must be attached to the notice.

(b) **Objections and additional questions**. Within ten days after the notice and direct questions are served, any party may object to the direct questions and serve cross-questions on all other parties. Within five days after cross-questions are served, any party may object to the cross-questions and serve redirect questions on all other parties. Within three days after redirect questions are served, any party may object to the redirect questions and serve recross questions on all other parties. Objections to recross questions must be served within five days after the earlier of when recross questions are served or the time of the deposition on written questions.

(c) **Objections to form of questions**. Objections to the form of a question are waived unless asserted in accordance with this subdivision.

200.4. Conducting the Deposition Upon Written Questions.

The deposition officer must: take the deposition on written questions at the time and place designated; record the testimony of the witness under oath in response to the questions; and prepare, certify, and deliver the deposition transcript in accordance with Rule 203. The deposition officer has authority when necessary to summon and swear an interpreter to facilitate the taking of the deposition.

(AdoptedAug. 5 1998 and Nov. 9, 1998, and amended Dec. 31, 1998, eff. Jan. 1, 1999.)

Comments to 1999 change:

1. The procedures for asserting objections during oral depositions under Rule 199.5(e) do not apply to depositions on written questions.

2. Section 20.001 of the Civil Practice and Remedies Code provides that a deposition on written questions of a witness who is alleged to reside or to be in this state may be taken by a clerk of a district court, a judge or clerk of a county court, or a notary public of this state.

RULE 201. DEPOSITIONS IN FOREIGN JURISDICTIONS FOR USE IN TEXAS PROCEEDINGS; DEPOSITIONS IN TEXAS FOR USE IN FOREIGN PROCEEDINGS.

201.1. Depositions in Foreign Jurisdictions for Use in Texas Proceedings.

(a) **Generally**. A party may take a deposition on oral examination or written questions of any person or entity located in another state or a foreign country for use in proceedings in this State. The deposition may be taken by:

(1) notice;

(2) letter rogatory, letter of request, or other such device;

(3) agreement of the parties; or

(4) court order.

(b) **By notice**. A party may take the deposition by notice in accordance with these rules as if the deposition were taken in this State, except that the deposition officer may be a person authorized to administer oaths in the place where the deposition is taken.

(c) **By letter rogatory**. On motion by a party, the court in which an action is pending must issue a letter rogatory on terms that are just and appropriate, regardless of whether any other manner of obtaining the deposition is impractical or inconvenient. The letter must:

(1) be addressed to the appropriate authority in the jurisdiction in which the deposition is to be taken;

(2) request and authorize that authority to summon the witness before the authority at a time and place stated in the letter for examination on oral or written questions; and

(3) request and authorize that authority to cause the witness's testimony to be reduced to writing and returned, together with any items marked as exhibits, to the party requesting the letter rogatory.

(d) **By letter of request or other such device**. On motion by a party, the court in which an action is pending, or the clerk of that court, must issue a letter of request or other such device in accordance with an applicable treaty or international convention on terms that are just and appropriate. The letter or other device must be issued regardless of whether any other manner of obtaining the deposition is impractical or inconvenient. The letter or other device must:

(1) be in the form prescribed by the treaty or convention under which it is issued, as presented by the movant to the court or clerk; and

(2) must state the time, place, and manner of the examination of the witness.

(e) **Objections to form of letter rogatory, letter of request, or other such device**. In issuing a letter rogatory, letter of request, or other such device, the court must set a time for objecting to the form of the device. A party must make any objection to the form of the device in writing and serve it on all other parties by the time set by the court, or the objection is waived.

(f) **Admissibility of evidence**. Evidence obtained in response to a letter rogatory, letter of request, or other such device is not inadmissible merely because it is not a verbatim transcript, or the testimony was not taken under oath, or for any similar departure from the requirements for depositions taken within this State under these rules.

(g) **Deposition by electronic means**. A deposition in another jurisdiction may be taken by telephone, videoconference, teleconference, or other electronic means under the provisions of Rule 199.

201.2. Depositions in Texas for Use in Proceedings in Foreign Jurisdictions.

If a court of record of any other state or foreign jurisdiction issues a mandate, writ, or commission that requires a witness's oral or written deposition testimony in this State, the witness may be compelled to appear and testify in the same manner and by the same process used for taking testimony in a proceeding pending in this State.

(AdoptedAug. 5, 1998 and Nov. 9, 1998, eff. Jan. 1, 1999.)

Comments to 1999 change:

1. Rule 201.1 sets forth procedures for obtaining deposition testimony of a witness in another state or foreign jurisdiction for use in Texas court proceedings. It does not, however, address whether any of the procedures listed are, in fact, permitted or recognized by the law of the state or foreign jurisdiction where the witness is located. A party must first determine what procedures are permitted by the jurisdiction where the witness is located before using this rule.

2. Section 20.001 of the Civil Practice and Remedies Code provides a nonexclusive list of persons who are qualified to take a written deposition in Texas and who may take depositions (oral or written) in another state or outside the United States.

3. Rule 201.2 is based on Section 20.002 of the Civil Practice and Remedies Code.

RULE 202. DEPOSITIONS BEFORE SUIT OR TO INVESTIGATE CLAIMS.

202.1. Generally.

A person may petition the court for an order authorizing the taking of a deposition on oral examination or written questions either:

(a) to perpetuate or obtain the person's own testimony or that of any other person for use in an anticipated suit; or

(b) to investigate a potential claim or suit.

202.2. Petition.

The petition must:

(a) be verified;

(b) be filed in a proper court of any county:

(1) where venue of the anticipated suit may lie, if suit is anticipated; or

(2) where the witness resides, if no suit is yet anticipated;

(c) be in the name of the petitioner;

(d) state either:

(1) that the petitioner anticipates the institution of a suit in which the petitioner may be a party; or

(2) that the petitioner seeks to investigate a potential claim by or against petitioner;

(e) state the subject matter of the anticipated action, if any, and the petitioner's interest therein;

(f) if suit is anticipated, either:

(1) state the names of the persons petitioner expects to have interests adverse to petitioner's in the anticipated suit, and the addresses and telephone numbers for such persons; or

(2) state that the names, addresses, and telephone numbers of persons petitioner expects to have interests adverse to petitioner's in the anticipated suit cannot be ascertained through diligent inquiry, and describe those persons;

(g) state the names, addresses and telephone numbers of the persons to be deposed, the substance of the testimony that the petitioner expects to elicit from each, and the petitioner's reasons for desiring to obtain the testimony of each; and

(h) request an order authorizing the petitioner to take the depositions of the persons named in the petition.

202.3. Notice and Service.

(a) **Personal service on witnesses and persons named**. At least 15 days before the date of the hearing on the petition, the petitioner must serve the petition and a notice of the hearing—in accordance with Rule 21a—on all persons petitioner seeks to depose and, if suit is anticipated, on all persons petitioner expects to have interests adverse to petitioner's in the anticipated suit.

(b) **Service by publication on persons not named**.

(1) **Manner**. Unnamed persons described in the petition whom the petitioner expects to have interests adverse to petitioner's in the anticipated suit if any, may be served by publication with the petition and notice of the hearing. The notice must state the place for the hearing and the time it will be held, which must be more than 14 days after the first publication of the notice. The petition and notice must be published once each week for two consecutive weeks in the newspaper of broadest circulation in the county in which the petition is filed, or if no such newspaper exists, in the newspaper of broadest circulation in the nearest county where a newspaper is published.

(2) **Objection to depositions taken on notice by publication**. Any interested party may move, in the proceeding or by bill of review, to suppress any deposition, in whole or in part, taken on notice by publication, and may also attack or oppose the deposition by any other means available.

(c) **Service in probate cases**. A petition to take a deposition in anticipation of an application for probate of a will, and notice of the hearing on the petition, may be served by posting as prescribed by Section 33(f)(2) of the Probate Code. The notice and petition must be directed to all parties interested in the testator's estate and must comply with the requirements of Section 33(c) of the Probate Code insofar as they may be applicable.

(d) **Modification by order**. As justice or necessity may require, the court may shorten or lengthen the notice periods under this rule and may extend the notice period to permit service on any expected adverse party.

202.4. Order.

(a) **Required findings**. The court must order a deposition to be taken if, but only if, it finds that:

(1) allowing the petitioner to take the requested deposition may prevent a failure or delay of justice in an anticipated suit: or

(2) the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure.

(b) **Contents**. The order must state whether a deposition will be taken an oral examination or written questions. The order may also state the time and place at which a deposition will be taken. If the order does not state the time and place at which a deposition will be taken, the petitioner must notice the deposition as required by Rules 199 or 200. The order must contain any protections the court finds necessary or appropriate to protect the witness or any person who may be affected by the procedure.

202.5. Manner of Taking and Use.

Except as otherwise provided in this rule, depositions authorized by this rule are governed by the rules applicable to depositions of nonparties in a pending suit. The scope of discovery in depositions authorized by this rule is the same as if the anticipated suit or potential claim had been filed. A court may restrict or prohibit the use of a deposition taken under this rule in a subsequent suit to protect a person who was not served with notice of the deposition from any unfair prejudice or to prevent abuse of this rule.

(AdoptedAug. 5. 1998 and Nov. 8, 1998, to apply to proceedings filed on or after Jan. 1, 1999, but a court may use the rule for guidance in previously filed proceedings.)

Comments to 1999 change:

1. This rule applies to all discovery before suit covered by former rules governing depositions to perpetuate testimony and bills of discovery.

2. A deposition taken under this rule may be used in a subsequent suit as permitted by the rules of evidence, except that a court may restrict or prohibit its use to prevent taking unfair advantage of a witness or others. The bill of discovery procedure, which Rule 202 incorporates, is equitable in nature, and a court must not permit it to be used inequitably.

RULE 203. SIGNING, CERTIFICATION AND USE OF ORAL AND WRITTEN DEPOSITIONS.

203.1. Signature and Changes.

(a) **Deposition transcript to be provided to witness**. The deposition officer must provide the original deposition transcript to the witness for examination and signature. If the witness is represented by an attorney at the deposition, the deposition officer must provide the transcript to the attorney instead of the witness.

(b) **Changes by witness; signature**. The witness may change responses as reflected in the deposition transcript by indicating the desired changes, in writing, on a separate sheet of paper, together with a statement of the reasons for making the changes. No erasures or obliterations of any kind may be made to the original deposition transcript. The witness must then sign the transcript under oath and return it to the deposition officer. If the witness does not return the transcript to the deposition officer within 20 days of the date the transcript was provided to the witness or the witness's attorney, the witness may be deemed to have waived the right to make the changes.

(c) **Exceptions**. The requirements of presentation and signature under this subdivision do not apply:
(1) if the witness and all parties waive the signature requirement;
(2) to depositions on written questions; or
(3) to nonstenographic recordings of oral depositions.

203.2. Certification.

The deposition officer must file with the court, serve on all parties, and attach as part of the deposition transcript or nonstenographic recording of an oral deposition a certificate duly sworn by the officer stating:
(a) that the witness was duly sworn by the officer and that the transcript or nonstenographic recording of the oral deposition is a true record of the testimony given by the witness;
(b) that the deposition transcript, if any, was submitted to the witness or to the attorney for the witness for examination and signature, the date on which the transcript was submitted, whether the witness returned the transcript, and if so, the date on which it was returned.
(c) that changes, if any, made by the witness are attached to the deposition transcript;
(d) that the deposition officer delivered the deposition transcript or nonstenographic recording of an oral deposition in accordance with Rule 203.3;
(e) the amount of time used by each party at the deposition;
(f) the amount of the deposition officer's charges for preparing the original deposition transcript, which the clerk of the court must tax as costs; and
(g) that a copy of the certificate was served on all parties and the date of service.

203.3. Delivery.

(a) **Endorsement, to whom delivered**. The deposition officer must endorse the title of the action and "Deposition of (name of witness)" on the original deposition transcript (or a copy, if the original was not returned) or the original nonstenographic recording of an oral deposition, and must return:
(1) the transcript to the party who asked the first question appearing in the transcript, or
(2) the recording to the party who requested it.
(b) **Notice**. The deposition officer must serve notice of delivery on all other parties.
(c) **Inspection and copying; copies**. The party receiving the original deposition transcript or nonstenographic recording must make it available upon reasonable request for inspection and copying by any other party. Any party or the witness is entitled to obtain a copy of the deposition transcript or nonstenographic recording from the deposition officer upon payment of a reasonable fee.

203.4. Exhibits.

At the request of a party, the original documents and things produced for inspection during the examination of the witness must be marked for identification by the deposition officer and annexed to the deposition transcript or nonstenographic recording. The person producing the materials may produce copies instead of originals if the party gives all other parties fair opportunity at the deposition to compare the copies with the originals. If the person offers originals rather than copies, the deposition officer must, after the conclusion of the deposition, make copies to be attached to the original deposition transcript or nonstenographic recording, and then return the originals to the person who produced them. The person who produced the originals must preserve them for hearing or trial and make them available for inspection or copying by any other party upon seven days' notice. Copies annexed to the original deposition transcript or nonstenographic recording may be used for all purposes.

203.5. Motion to Suppress.

A party may object to any errors and irregularities in the manner in which the testimony is transcribed, signed, delivered, or otherwise dealt with by the deposition officer by filing a motion to suppress all or part of the deposition. If the deposition officer complies with Rule 203.3 at least one day before the case is called to trial, with regard to a deposition transcript, or 30 days before the case is called to trial, with regard to a nonstenographic recording, the party must file and serve a motion to suppress before trial commences to preserve the objections.

203.6. Use.

(a) **Nonstenographic recording; transcription**. A nonstenographic recording of an oral deposition, or a written transcription of all or part of such a recording, may be used to the same extent as a deposition taken by stenographic means. However, the court, for good cause shown, may require that the party seeking to use a nonstenographic recording or written transcription first obtain a complete transcript of the deposition recording from a certified court reporter. The court reporter's transcription must be made from the original or a certified copy of the deposition recording. The court reporter must, to the extent applicable, comply with the provisions of this rule, except that the court reporter must deliver the original transcript to the attorney requesting the transcript, and the court reporter's certificate must include a statement that the transcript is a true record of the nonstenographic recording. The party to whom the court reporter delivers the original transcript must make the transcript available, upon reasonable request, for inspection and copying by the witness or any party.
(b) **Same proceeding**. All or part of a deposition may be used for any purpose in the same proceeding in which it was taken. If the original is not filed, a certified copy may be used. "Same proceeding" includes a proceeding in a different court but involving the same subject matter and the same parties or their representatives or successors in interest. A deposition is admissible against a party joined after the deposition was taken if:
(1) the deposition is admissible pursuant to Rule 804 (b)(1) of the Rules of Evidence, or
(2) that party has had a reasonable opportunity to redepose the witness and has failed to do so.

(c) **Different proceeding**. Depositions taken in different proceedings may be used as permitted by the Rules of Evidence.

(AdoptedAug. 5, 1998 and Nov. 9, 1998, eff. Jan. 1, 1999.)

RULE 204. PHYSICAL AND MENTAL EXAMINATIONS.

204.1. Motion and Order Required.

(a) **Motion**. A party may—no later than 30 days before the end of any applicable discovery period—move for an order compelling another party to:
   (1) submit to a physical or mental examination by a qualified physician or a mental examination by a qualified psychologist; or
   (2) produce for such examination a person in the other party's custody, conservatorship or legal control.

(b) **Service**. The motion and notice of hearing must be served on the person to be examined and all parties.

(c) **Requirements for obtaining order**. The court may issue an order for examination only for good cause shown and only in the following circumstances:
   (1) when the mental or physical condition (including the blood group) of a party, or of a person in the custody, conservatorship or under the legal control of a party, is in controversy; or
   (2) except as provided in Rule 204.4, an examination by a psychologist may be ordered when the party responding to the motion has designated a psychologist as a testifying expert or has disclosed a psychologist's records for possible use at trial.

(d) **Requirements of order**. The order must be in writing and must specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

204.2. Report of Examining Physician or Psychologist.

(a) **Right to report**. Upon request of the person ordered to be examined, the party causing the examination to be made must deliver to the person a copy of a detailed written report of the examining physician or psychologist setting out the findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery of the report, upon request of the party causing the examination, the party against whom the order is made must produce a like report of any examination made before or after the ordered examination of the same condition, unless the person examined is not a party and the party shows that the party is unable to obtain it. The court on motion may limit delivery of a report on such terms as are just. If a physician or psychologist fails or refuses to make a report the court may exclude the testimony if offered at the trial.

(b) **Agreements; relationship to other rules**. This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or psychologist or the taking of a deposition of the physician or psychologist in accordance with the provisions of any other rule.

204.3. Effect of No Examination.

If no examination is sought either by agreement or under this subdivision, the party whose physical or mental condition is in controversy must not comment to the court or jury concerning the party's willingness to submit to an examination, or on the right or failure of any other party to seek an examination.

204.4. Cases Arising Under Titles II or V, Family Code.

In cases arising under Family Code Titles II or V, the court may—on its own initiative or on motion of a party—appoint:

(a) one or more psychologists or psychiatrists to make any and all appropriate mental examinations of the children who are the subject of the suit or of any other parties, and may make such appointment irrespective of whether a psychologist or psychiatrist has been designated by any party as a testifying expert;

(b) one or more experts who are qualified in paternity testing to take blood, body fluid, or tissue samples to conduct paternity tests as ordered by the court.

204.5. Definition.

For the purpose of this rule, a psychologist is a person licensed or certified by a state or the District of Columbia as a psychologist.

(Adopted Aug. 5, 1998 and Nov. 9, 1998, eff. Jan. 1, 1999.)

RULE 205. DISCOVERY FROM NONPARTIES.

205.1. Forms of Discovery; Subpoena Requirement.

A party may compel discovery from a nonparty—that is, a person who is not a party or subject to a party's control—only by obtaining a court order under Rules 196.7, 202, or 204, or by serving a subpoena compelling:

(a) an oral deposition;

(b) a deposition on written questions;

(c) a request for production of documents or tangible things, pursuant to Rule 199.2(b)(5) or Rule 200.1(b), served with a notice of deposition on oral examination or written questions; and

(d) a request for production of documents and tangible things under this rule.

205.2. Notice.

A party seeking discovery by subpoena from a nonparty must serve, on the nonparty and all parties, a copy of the form of notice required under the rules governing the applicable form of discovery. A notice of oral or written deposition must be served before or at the same time that a subpoena compelling attendance or production under the notice is served. A notice to produce documents or tangible things under Rule 205.3 must be served at least 10 days before the subpoena compelling production is served.

205.3. Production of Documents and Tangible Things Without Deposition.

(a) **Notice; subpoena**. A party may compel production of documents and tangible things from a nonparty by serving—a reasonable time before the response is due but no later than 30 days before the end of any applicable discovery period—the notice required in Rule 205.2 and a subpoena compelling production or inspection of documents or tangible things.

(b) **Contents of notice**. The notice must state:

(1) the name of the person from whom production or inspection is sought to be compelled;

(2) a reasonable time and place for the production or inspection; and

(3) the items to be produced or inspected, either by individual item or by category, describing each item and category with reasonable particularity, and, if applicable, describing the desired testing and sampling with sufficient specificity to inform the nonparty of the means, manner, and procedure for testing or sampling.

(c) **Requests for production of medical or mental health records of other nonparties**. If a party requests a nonparty to produce medical or mental health records of another nonparty, the requesting party must serve the nonparty whose records are sought with the notice required under this rule. This requirement does not apply under the circumstances set forth in Rule 196.1 (c)(2).

(d) **Response**. The nonparty must respond to the notice and subpoena in accordance with Rule 176.6.

(e) **Custody, inspection and copying**. The party obtaining the production must make all materials produced available for inspection by any other party on reasonable notice, and must furnish copies to any party who requests at that party's expense.

(f) **Cost of production**. A party requiring production of documents by a nonparty must reimburse the nonparty's reasonable costs of production.

(Adopted Aug. 5, 1998 and Nov. 9, 1998, and amended Dec. 31, 1998, eff. Jan. 1, 1999.)

Comments to 1999 change: Under this rule, a party may subpoena production of documents and tangible things from nonparties without need for a motion or oral or written deposition.

RULES 206, 207, 208, 208A, 209, 210, 211, 212, 213, AND 214. [REPEALED]

(Rules 206 to 209 repealed Aug. 5, 1998 and Nov. 9, 1998, eff. Jan. 1, 1999; Rules 210 to 214 repealed Dec. 5, 1983, eff. April 1, 1984.)

RULE 215. ABUSE OF DISCOVERY; SANCTIONS.

215.1. Motion for Sanctions or Order Compelling Discovery.

A party, upon reasonable notice to other parties and all other persons affected thereby, may apply for sanctions or an order compelling discovery as follows:

(a) **Appropriate court**. On matters relating to a deposition, an application for an order to a party may be made to the court in which the action is pending, or to any district court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken. As to all other discovery matters, an application for an order will be made to the court in which the action is pending.

(b) **Motion**.

(1) If a party or other deponent which is a corporation or other entity fails to make a designation under Rules 199.2 (b)(1) or 200.1 (b); or

(2) If a party, or other deponent, or a person designated to testify on behalf of a party or other deponent fails:

(A) to appear before the officer who is to take his deposition, after being served with a proper notice; or

(B) to answer a question propounded or submitted upon oral examination or upon written questions; or

(3) if a party fails:

(A) to serve answers or objections to interrogatories submitted under Rule 197, after proper service of the interrogatories; or

(B) to answer an interrogatory submitted under Rule 197; or

(C) to serve a written response to a request for inspection submitted under Rule 196, after proper service of the request; or

(D) to respond that discovery will be permitted as requested or fails to permit discovery as requested in response to a request for inspection submitted under Rule 196; the discovering party may move for an order compelling a designation, an appearance, an answer or answers, or inspection or production in accordance with the request, or apply to the court in which the action is pending for the imposition of any sanction authorized by Rule 215.2 (b) without the necessity of first having obtained a court order compelling such discovery. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion pursuant to Rule 192.6.

(c) **Evasive or incomplete answer**. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(d) **Disposition of motion to compel: award of expenses**. If the motion is granted, the court shall, after opportunity for hearing, require a party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay, at such time as ordered by the court, the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. Such an order shall be subject to review on appeal from the final judgment. If the motion is denied, the court may, after opportunity for hearing, require the moving party or attorney advising such motion to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner. In determining the amount of reasonable expenses, including attorney fees, to be awarded in connection with a motion, the trial court shall award expenses which are reasonable in relation to the amount of work reasonably expended in obtaining an order compelling compliance or in opposing a motion which is denied.

(e) **Providing person's own statement**. If a party fails to comply with any person's written request for the person's own statement as provided in Rule 192.3(h), the person who made the request may move for an order compelling compliance. If the motion is granted, the movant may recover the expenses incurred in obtaining the order, including attorney fees, which are reasonable in relation to the amount of work reasonably expended in obtaining the order.

215.2. Failure to Comply with Order or with Discovery Request.

(a) **Sanctions by court in district where deposition is taken**. If a deponent fails to appear or to be sworn or to answer a question after being directed to do so by a district court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(b) **Sanctions by court in which action is pending**. If a party or an officer, director, or managing agent of a party or a person designated under Rules 199.2 (b)(1) or 200.1 (b) to testify on behalf of a party fails to comply with proper discovery requests or to obey an order to provide or permit discovery, including an order made under Rules 204 or 215.1, the court in which the action is pending may, after notice and hearing, make such orders in regard to the failure as are just, and among others the following:

(1) an order disallowing any further discovery or any kind or of a particular kind by the disobedient party;

(2) an order charging all or any portion of the expenses of discovery or taxable court costs or both against the disobedient party or the attorney advising him;

(3) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(4) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(5) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing with or without prejudice the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party;

(6) in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(7) when a party has failed to comply with an order under Rule 204 requiring him to appear or produce another for examination, such orders as are listed in paragraphs (1), (2), (3), (4) or (5) of this subdivision, unless the person failing to comply shows that he is unable to appear or to produce such person for examination.

(8) In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him, or both, to pay, at such time as ordered by the court, the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Such an order shall be subject to review on appeal from the final judgment.

(c) **Sanction against nonparty for violation of Rules 196.7 or 205.3**. If a nonparty fails to comply with an order under Rules 196.7 or 205.3, the court which made the order may treat the failure to obey as contempt of court.

215.3. Abuse of Discovery Process in Seeking, Making, or Resisting Discovery.

If the court finds a party is abusing the discovery process in seeking, making or resisting discovery or if the court finds that any interrogatory or request for inspection or production is unreasonably frivolous, oppressive, or harassing, or that a response or answer is unreasonably frivolous or made for purposes of delay, then the court in which the action is pending may, after notice and hearing, impose any appropriate sanction authorized by paragraphs (1), (2), (3), (4), (5), and (8) of Rule 215.2(b). Such order of sanction shall be subject to review on appeal from the final judgment.

215.4. Failure to Comply with Rule 198.

(a) **Motion**. A party who has requested an admission under Rule 198 may move to determine the sufficiency of the answer or objection. For purposes of this subdivision an evasive or incomplete answer may be treated as a failure to answer. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of Rule 198, it may order either that the matter is admitted or that an amended answer be served. The provisions of Rule 215.1 (d) apply to the award of expenses incurred in relation to the motion.

(b) **Expenses on failure to admit**. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 198 and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that

(1) the request was held objectionable pursuant to Rule 193, or

(2) the admission sought was of no substantial importance, or

(3) the party failing to admit had a reasonable ground to believe that he might prevail on the matter, or

(4) there was other good reason for the failure to admit.

215.5. Failure of Party or Witness to Attend or to Serve Subpoena; Expenses.

(a) **Failure of party giving notice to attend**. If the party giving the notice of the taking of an oral deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney fees.

(b) **Failure of witness to attend**. If a party gives notice of the taking of an oral deposition of a witness and the witness does not attend because of the fault of the party giving the notice, if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney fees.

215.6. Exhibits to Motions and Responses.

Motions or responses made under this rule may have exhibits attached including affidavits, discovery pleadings, or any other documents.

(Amended by Order Aug. 5, 1998, and Nov. 9, 1998, eff. Jan. 1, 1999.)

Comments to 1999 change: The references in this rule to other discovery rules are changed to reflect the revisions in those rules, and former Rule 203 is added as Rule 215.5 in place of the former provision, which is superseded by Rule 193.6.

SECTION 10.
THE JURY IN COURT

RULE 216. REQUEST AND FEE FOR JURY TRIAL.

a. **Request**. No jury trial shall be had in any civil suit, unless a written request for a jury trial is filed with the clerk of the court a reasonable time before the date set for trial of the cause on the non-jury docket, but not less than thirty days in advance.

b. **Jury Fee**. Unless otherwise provided by law, a fee of ten dollars if in the district court and five dollars if in the county court must be deposited with the clerk of the court within the time for making a written request for a jury trial. The clerk shall promptly enter a notation of the payment of such fee upon the court's docket sheet.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941; Sept. 20, 1941, eff. Dec. 31, 1941; Oct. 12, 1949, eff. March 1, 1950; July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990.)

RULE 217. OATH OF INABILITY.

The deposit for a jury fee shall not be required when the party shall within the time for making such deposit, file with the clerk his affidavit to the effect that he is unable to make such deposit, and that he can not, by the pledge of property or otherwise, obtain the money necessary for that purpose; and the court shall then order the clerk to enter the suit on the jury docket.

RULE 218. JURY DOCKET.

The clerks of the district and county courts shall each keep a docket, styled, "The Jury Docket," in which shall be entered in their order the cases in which jury fees have been paid or affidavit in lieu thereof has been filed as provided in the two preceding rules.

RULE 219. JURY TRIAL DAY.

The court shall designate the days for taking up the jury docket and the trial of jury cases. Such order may be revoked or changed in the court's discretion.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 220. WITHDRAWING CAUSE FROM JURY DOCKET.

When any party has paid the fee for a jury trial, he shall not be permitted to withdraw the cause from the jury docket over the objection of the parties adversely interested. If so permitted, the court in its discretion may by an order permit him to withdraw also his jury fee deposit. Failure of a party to appear for trial shall be deemed a waiver by him of the right to trial by jury.

(Amended by Order Aug. 18, 1947, eff. Dec. 31, 1947; July 21, 1970, eff. Jan. 1, 1971.)

RULE 221. CHALLENGE TO THE ARRAY.

When the jurors summoned have not been selected by jury commissioners or by drawing the names from a jury wheel, any party to a suit which is to be tried by a jury may, before the jury is drawn challenge the array upon the ground that the sheriff or clerk summoning the jury has acted corruptly, and has wilfully summoned jurors known to be prejudiced against the party challenging or biased in favor of the adverse party. All such challenges must be in writing setting forth distinctly the grounds of such challenge and supported by the affidavit of the party or some other credible person. When such challenge is made, the court shall hear evidence and decide without delay whether or not the challenge shall be sustained.

(Amended by Tex. Sup. Ct. Misc. Docket No. 23-9044, July 14, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9088, Nov. 7, 2023, eff. Sept. 1, 2023.)

RULE 222. WHEN CHALLENGE IS SUSTAINED.

If the challenge be sustained, the array of jurors summoned shall be discharged, and the court shall order other jurors summoned in their stead, and shall direct that the sheriff or clerk who summoned the persons so discharged, and on account of whose misconduct the challenge has been sustained, shall not summon any other jurors in the case.

(Amended by Tex. Sup. Ct. Misc. Docket No. 23-9044, July 14, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9088, Nov. 7, 2023, eff. Sept. 1, 2023.)

RULE 223. JURY LIST IN CERTAIN COUNTIES.

In counties governed as to juries by the laws providing for interchangeable juries, the names of the jurors shall be placed upon the general panel in the order in which they are randomly selected, and jurors shall be assigned for service from the top thereof, in the order in which they shall be needed, and jurors returned to the general panel after service in any of such courts shall be enrolled at the bottom of the list in the order of their respective return; provided, however, after such assignment to a particular court, the trial judge of such court, upon the demand prior to voir dire examination by any party or attorney in the case reached for trial in such court, shall cause the names of all members of such assigned jury panel in such case to be placed in a receptacle, shuffled, and drawn, and such names shall be transcribed in the order drawn on the jury list from which the jury is to be selected to try such case. There shall be only one shuffle and drawing by the trial judge in each case.

(Amended by Order April 24, 1990, eff. Sept. 1, 1990.)

RULE 224. PREPARING JURY LIST.

In counties not governed as to juries by the laws providing for interchangeable juries, when the parties have announced ready for trial the clerk shall write the name of each regular juror entered of record for that week on separate slips of paper, as near the same size and appearance as may be, and shall place the slips in a box and mix them well. The clerk shall draw from the box, in the presence of the court, the names of twenty-four jurors, if in the district court, or so many as there may be, if there be a less number in the box; and the names of twelve jurors if in the county court, or so many as there may be, and write the names as drawn upon two slips of paper and deliver one slip to each party to the suit or his attorney.

RULE 225. SUMMONING TALESMAN.

When there are not as many as twenty-four names drawn from the box, if in the district court, or as many as twelve, if in the county court, the court shall direct the sheriff or clerk to summon such number of qualified persons as the court deems necessary to complete the panel. The names of those thus summoned shall be placed in the box and drawn and entered upon the slips as provided in the preceding rules.

(Amended by Tex. Sup. Ct. Misc. Docket No. 23-9044, July 14, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9088, Nov. 7, 2023, eff. Sept. 1, 2023.)

RULE 226. OATH TO JURY PANEL.

Before the parties or their attorneys begin the examination of the jurors whose names have thus been listed, the jurors shall be sworn by the court or under its direction, as follows: "You, and each of you, do solemnly swear that you will true answers give to all questions propounded to you concerning your qualifications as a juror, so help you God."

RULE 226a. INSTRUCTIONS TO JURY PANEL AND JURY.

The court must give instructions to the jury panel and the jury as prescribed by order of the Supreme Court under this rule.

(AdoptedJuly 20, 1966, eff. Jan. 1, 1967. Amended by Order July 15, 1987, eff. Jan. 1, 1988; Jan. 27, 2005, eff. Feb. 1, 2005 in all pending cases.)

Comment – 2005:

The rule is clarified. With these amendments, the Supreme Court has ordered changes in the prescribed jury instructions consistent with Act of June 2, 2003, 78th Leg., R.S., c. 204, § 13.04, 2003 Tex. Gen. Laws 847, 888, codified as TEX. CIV. PRAC. & REM. CODE § 41.003.

AMENDMENTS TO JURY INSTRUCTIONS
UNDER RULE 226a, TEXAS RULES OF CIVIL PROCEDURE

To implement Act of June 2, 2003, 78th Leg., R.S., c. 204, § 13.04, 2003 Tex. Gen. Laws 847, 888, codified as TEX. CIV. PRAC. & REM. CODE § 41.003, Part III of the jury instructions prescribed under Rule 226a, Texas Rules of Civil Procedure, by orders dated July 20, 1966 (effective January

1, 1967), July 21, 1970 (effective January 1, 1971), October 3, 1972 (effective February 1, 1973), December 5, 1983 (effective April 1, 1984), March 10, 1987 (effective January 1, 1988), December 16, 1987 (effective January 1, 1988), and January 28, 1988 (effective January 1, 1988), and March 15, 2011 (effective April 1, 2011), and April 13, 2011 (effective April 13, 2011) is amended as follows.

Jury Instructions Prescribed by Order Under Rule 226a

I.

That the following oral instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the members of the jury panel after they have been sworn in as provided in Rule 226 and before the voir dire examination:

Members of the Jury Panel [or Ladies and Gentlemen of the Jury Panel]:

Thank you for being here. We are here to select a jury. Twelve [six] of you will be chosen for the jury. Even if you are not chosen for the jury, you are performing a valuable service that is your right and duty as a citizen of a free country.

Before we begin: Turn off all phones and other electronic devices. While you are in the courtroom, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [I will give you a number where others may contact you in case of an emergency.] Do not record or photograph any part of these court proceedings, because it is prohibited by law.

If you are chosen for the jury, your role as jurors will be to decide the disputed facts in this case. My role will be to ensure that this case is tried in accordance with the rules of law.

Here is some background about this case. This is a civil case. It is a lawsuit that is not a criminal case. The parties are as follows: The plaintiff is _____, and the defendant is _____. Representing the plaintiff is _____, and representing the defendant is _____. They will ask you some questions during jury selection. But before their questions begin, I must give you some instructions for jury selection.

Every juror must obey these instructions. You may be called into court to testify about any violations of these instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.

These are the instructions.

1. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like "hello" and "good morning." Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.

2. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.

3. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.

4. The parties, through their attorneys, have the right to ask you questions about your background, experiences, and attitudes. They are not trying to meddle in your affairs. They are just being thorough and trying to choose fair jurors who do not have any bias or prejudice in this particular case.

5. Remember that you took an oath that you will tell the truth, so be truthful when the lawyers ask you questions, and always give complete answers. If you do not answer a question that applies to you, that violates your oath. Sometimes a lawyer will ask a question of the whole panel instead of just one person. If the question applies to you, raise your hand and keep it raised until you are called on.

Do you understand these instructions? If you do not, please tell me now.

The lawyers will now begin to ask their questions.

II.

That the following oral and written instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the jury immediately after the jurors are selected for the case:

Members of the Jury [or Ladies and Gentlemen]:

You have been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

[Hand out the written instructions.]

You have each received a set of written instructions. I am going to read them with you now. Some of them you have heard before and some are new.

1. Turn off all phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on the Internet before these court proceedings end and you are released from jury duty. Do not record or photograph any part of these court proceedings, because it is prohibited by law.

2. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like "hello" and "good morning." Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.

3. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.

4. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.

5. Do not discuss this case with anyone during the trial, not even with the other jurors, until the end of the trial. You should not discuss the case with your fellow jurors until the end of the trial so that you do not form opinions about the case before you have heard everything. After you have heard all the evidence, received all of my instructions, and heard all of the lawyers' arguments, you will then go to the jury room to discuss the case with the other jurors and reach a verdict.

6. Do not investigate this case on your own. For example, do not:

a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;

b. go to places mentioned in the case to inspect the places;

c. inspect items mentioned in this case unless they are presented as evidence in court;

d. look anything up in a law book, dictionary, or public record to try to learn more about the case;

e. look anything up on the Internet to try to learn more about the case; or

f. let anyone else do any of these things for you.

This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial.

7. Do not tell other jurors about your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another similar case. Do not tell the other jurors about it. Telling other jurors about it is wrong because it means the jury will be considering things that were not admitted in court.

8. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.

9. Do not consider or guess whether any party is covered by insurance unless I tell you to.

10. During the trial, if taking notes will help focus your attention on the evidence, you may take notes using the materials the court has provided. Do not use any personal electronic devices to take notes. If taking notes will distract your attention from the evidence, you should not take notes. Your notes are for your own personal use. They are not evidence. Do not show or read your notes to anyone, including other jurors.

You must leave your notes in the jury room or with the bailiff. The bailiff is instructed not to read your notes and to give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone.

[You may take your notes back into the jury room and consult them during deliberations. But keep in mind that your notes are not evidence. When you deliberate, each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. After you complete your deliberations, the bailiff will collect your notes.]

When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

11. I will decide matters of law in this case. It is your duty to listen to and consider the evidence and to determine fact issues that I may submit to you at the end of the trial. After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked and you should not consider which side will win. Instead, you will need to answer the specific questions I give you.

Every juror must obey my instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I may have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.

Do you understand these instructions? If you do not, please tell me now.

Please keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.

III.
Court's Charge

Before closing arguments begin, the court must give to each member of the jury a copy of the charge, which must include the following written instructions, with such modifications as the circumstances of the particular case may require:

Members of the Jury [or Ladies & Gentlemen of the Jury]:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. [I will give you a number where others may contact you in case of an emergency.]

[Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.]

[You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.]

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence [unless you are told otherwise]. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence [unless you are told otherwise].

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. [Unless otherwise instructed] The answers to the questions must be based on the decision of at least 10 of the 12 [5 of the 6] jurors. The same 10 [5] jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 [5] jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

[Definitions, questions, and special instructions given to the jury will be transcribed here. If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D1 and D2, instructions in substantially the following form must immediately precede such questions:

Preceding question (ii):

Answer Question (ii) for D1 only if you unanimously answered "Yes" to Question[s] (i) regarding D1. Otherwise, do not answer Question (ii) for D1. [Repeat for D2.]

You are instructed that in order to answer "Yes" to [any part of] Question (ii), your answer must be unanimous. You may answer "No" to [any part of] Question (ii) only upon a vote of 10 [5] or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

Answer Question (iii) for D1 only if you answered "Yes" to Question (ii) for D1. Otherwise, do not answer Question (iii) for D1. [Repeat for D2.]

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

These examples are given by way of illustration.]

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
    a. have the complete charge read aloud if it will be helpful to your deliberations;
    b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
    c. give written questions or comments to the bailiff who will give them to the judge;
    d. write down the answers you agree on;
    e. get the signatures for the verdict certificate; and

f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. [Unless otherwise instructed] You may answer the questions on a vote of 10 [5] jurors. The same 10 [5] jurors must agree on every answer in the charge. This means you may not have one group of 10 [5] jurors agree on one answer and a different group of 10 [5] jurors agree on another answer.

2. If 10 [5] jurors agree on every answer, those 10 [5] jurors sign the verdict.

If 11 jurors agree on every answer, those 11 jurors sign the verdict.

If all 12 [6] of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 [6] of you

agreeing on some answers, while only 10 [5] or 11 of you agree on other answers. But when you sign the verdict, only those 10 [5] who agree on every answer will sign the verdict.

4. [Added if the charge requires some unanimity] There are some special instructions before Questions _____ explaining how to answer those questions. Please follow the instructions. If all 12 [6] of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

_____
Judge Presiding

Verdict Certificate

Check one:

_____ Our verdict is unanimous. All 12 [6] of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 [6] of us.

_____ _____
Signature of Presiding Juror Printed Name of Presiding Juror

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

_____ Our verdict is not unanimous. Ten [Five] of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE	NAME PRINTED
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____

If you have answered Question No. _____ [the exemplary damages amount], then you must sign this certificate also.

Additional Certificate

[Used when some questions require unanimous answers]

I certify that the jury was unanimous in answering the following questions. All 12 [6] of us agreed to each of the answers. The presiding juror has signed the certificate for all 12 [6] of us.

[Judge to list questions that require a unanimous answer, including the predicate liability question.]

_____ _____
Signature of Presiding Juror Printed Name of Presiding Juror

IV.

That the following oral instructions shall be given by the court to the jury after the verdict has been accepted by the court and before the jurors are released from jury duty:

Thank you for your verdict.

I have told you that the only time you may discuss the case is with the other jurors in the jury room. I now release you from jury duty. Now you may discuss the case with anyone. But you may also choose not to discuss the case; that is your right.

After you are released from jury duty, the lawyers and others may ask you questions to see if the jury followed the instructions, and they may ask you to give a sworn statement. You are free to discuss the case with them and to give a sworn statement. But you may choose not to discuss the case and not to give a sworn statement; that is your right.

Instructions adopted by orders dated July 20, 1966 (eff. Jan. 1, 1967). Amended by Orders July 21, 1970 (eff. Jan. 1, 1971); Oct. 3, 1972 (eff. Feb. 1, 1973); Dec. 5, 1983 (eff. April 1, 1984); March 10, 1987 (eff. Jan. 1, 1988); Dec. 16, 1987 (eff. Jan. 1, 1988); Jan. 28, 1988 (eff. Jan. 1, 1988); Jan. 27, 2005 (eff. Feb. 1, 2005, in all cases filed on or after Sept. 1, 2003); March 15, 2011 (effective April 1, 2011); April 13, 2011 (effective April 13, 2011).

RULE 227. CHALLENGE TO JUROR.

A challenge to a particular juror is either a challenge for cause or a peremptory challenge. The court shall decide without delay any such challenge, and if sustained, the juror shall be discharged from the particular case. Either such challenge may be made orally on the formation of a jury to try the case.

RULE 228. "CHALLENGE FOR CAUSE" DEFINED.

A challenge for cause is an objection made to a juror, alleging some fact which by law disqualifies him to serve as a juror in the case or in any case, or which in the opinion of the court, renders him an unfit person to sit on the jury. Upon such challenge the examination is not confined to the answers of the juror, but other evidence may be heard for or against the challenge.

RULE 229. CHALLENGE FOR CAUSE.

When twenty-four or more jurors, if in the district court, or twelve or more, if in the county court, are drawn, and the lists of their names delivered to the parties, if either party desires to challenge any juror for cause, the challenge shall then be made. The name of a juror challenged and set aside for cause shall be erased from such lists.

RULE 230. CERTAIN QUESTIONS NOT TO BE ASKED.

In examining a juror, he shall not be asked a question the answer to which may show that he has been convicted of an offense which disqualifies him, or that he stands charged by some legal accusation with theft or any felony.

RULE 231. NUMBER REDUCED BY CHALLENGES.

If the challenges reduce the number of jurors to less than twenty-four, if in the district court, or to less than twelve, if in the county court, the court shall order other jurors to be drawn from the wheel or from the central jury panel or summoned, as the practice may be in the particular county, and their names written upon the list instead of those set aside for cause. Such jurors so summoned may likewise be challenged for cause.

RULE 232. MAKING PEREMPTORY CHALLENGES.

If there remain on such lists not subject to challenge for cause, twenty-four names, if in the district court, or twelve names, if in the county court, the parties shall proceed to make their peremptory challenges. A peremptory challenge is made to a juror without assigning any reason therefor.

RULE 233. NUMBER OF PEREMPTORY CHALLENGES.

Except as provided below, each party to a civil action is entitled to six peremptory challenges in a case tried in the district court, and to three in the county court.

Alignment of the Parties. In multiple party cases, it shall be the duty of the trial judge to decide whether any of the litigants aligned on the same side of the docket are antagonistic with respect to any issued to be submitted to the jury, before the exercise of peremptory challenges.

Definition of Side. The term "side" as used in this rule is not synonymous with "party," "litigant," or "person." Rather, "side" means one or more litigants who have common interests on the matters with which the jury is concerned.

Motion to Equalize. In multiple party cases, upon motion of any litigant made prior to the exercise of peremptory challenges, it shall be the duty of the trial judge to equalize the number of peremptory challenges so that no litigant or side is given unfair advantage as a result of the alignment of the litigants and the award of peremptory challenges to each litigant or side. In determining how the challenges should be allocated the court shall consider any matter brought to the attention of the trial judge concerning the ends of justice and the elimination of an unfair advantage.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 234. LISTS RETURNED TO THE CLERK.

When the parties have made or declined to make their peremptory challenges, they shall deliver their lists to the clerk. The clerk shall, if the case be in the district court, call off the first twelve names on the lists that have not been erased; and if the case be in the county court, he shall call off the first six names on the lists that have not been erased; those whose names are called shall be the jury.

RULE 235. IF JURY IS INCOMPLETE.

When by peremptory challenges the jury is left incomplete, the court shall direct other jurors to be drawn or summoned to complete the jury; and such other jurors shall be impaneled as in the first instance.

RULE 236. OATH TO JURY.

The jury shall be sworn by the court or under its direction, in substance as follows: "You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God."

SECTION 11.
TRIAL OF CAUSES

A.
APPEARANCE AND PROCEDURE

RULE 237. APPEARANCE DAY.

If a defendant, who has been duly cited, is by the citation required to answer on a day which is in term time, such day is appearance day as to him. If he is so required to answer on a day in vacation, he shall plead or answer accordingly, and the first day of the next term is appearance day as to him.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941; July 20, 1954, eff. Jan. 1, 1955.)

RULE 237A. CASES REMANDED FROM FEDERAL COURT.

When any cause is removed to the Federal Court and is afterwards remanded to the state court, the plaintiff shall file a certified copy of the order of remand with the clerk of the state court and shall forthwith give written notice of such filing to the attorneys of record for all adverse parties. All such adverse parties shall have fifteen days from the receipt of such notice within which to file an answer. No default judgment shall be rendered against a party in a removed action remanded from federal court if that party filed an answer in federal court during removal.

(Adopted July 20, 1954, eff. Jan. 1, 1955. Amended by Order Dec. 5, 1983, eff. April 1, 1984; caption amended by order of July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990.)

RULE 238. CALL OF APPEARANCE DOCKET.

On the appearance day of a particular defendant and at the hour named in the citation, or as soon thereafter as may be practicable, the court or clerk in open court shall call, in their order, all the cases on the docket in which such day is appearance day as to any defendant, or, the court or clerk failing therein, any such case shall be so called on request of the plaintiff's attorney.

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 return of service shall have been on file with the clerk for the length of time required by Rule 107.

(Amended by Order April 12, 1962, eff. Sept. 1, 1962; Oct. 17, 2011, eff. Jan. 1, 2012.)

RULE 239A. NOTICE OF DEFAULT JUDGMENT.

At or immediately prior to the time in interlocutory or final default judgment is rendered, the party taking the same or his attorney shall certify to the clerk in writing the last known mailing address of the party against whom the judgment is taken, which certificate shall be filed among the papers in the cause. Immediately upon the signing of the judgment, the clerk shall mail written notice thereof to the party against whom the judgment was rendered at the address shown in the certificate, and note the fact of such mailing on the docket. The notice shall state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date of the signing of the judgment. Failure to comply with the provisions of this rule shall not affect the finality of the judgment.

(Adopted July 20, 1966, eff. Jan. 1, 1967. Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 240. WHERE ONLY SOME ANSWER.

Where there are several defendants, some of whom have answered or have not been duly served and some of whom have been duly served and have made default, an interlocutory judgment by default may be entered against those who have made default, and the cause may proceed or be postponed as to the others.

RULE 241. ASSESSING DAMAGES ON LIQUIDATED DEMANDS.

When a judgment by default is rendered against the defendant, or all of several defendants, if the claim is liquidated and proved by an instrument in writing, the damages shall be assessed by the court, or under its direction, and final judgment shall be rendered therefor, unless the defendant shall demand and be entitled to a trial by jury.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 242. [REPEALED]

(Repealed by Order Sept. 20, 1941, eff. Dec. 31, 1941.)

RULE 243. UNLIQUIDATED DEMANDS.

If the cause of action is unliquidated or be not proved by an instrument in writing, the court shall hear evidence as to damages and shall render judgment therefor, unless the defendant shall demand and be entitled to a trial by jury in which case the judgment by default shall be noted, a writ of inquiry awarded, and the cause entered on the jury docket.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941.)

RULE 244. ON SERVICE BY PUBLICATION.

Where service has been made by publication, and no answer has been filed nor appearance entered within the prescribed time, the court shall appoint an attorney to defend the suit in behalf of the defendant, and judgment shall be rendered as in other cases; but, in every such case a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as a part of the record thereof The court shall allow such attorney a reasonable fee for his services, to be taxed as part of the costs.

RULE 245. ASSIGNMENT OF CASES FOR TRIAL.

The court may set contested cases on written request of any party, or on the court's own motion, with reasonable notice of not less than forty-five days to the parties of a first setting for trial, or by agreement of the parties; provided, however, that when a case previously has been set for trial, the Court may reset said contested case to a later date on any reasonable notice to the parties or by agreement of the parties. Noncontested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time.

A request for trial setting constitutes a representation that the requesting party reasonably and in good faith expects to be ready for trial by the date requested, but no additional representation concerning the completion of pretrial proceedings or of current readiness for trial shall be required in order to obtain a trial setting in a contested case.

(Amended by Order July 22, 1975, eff. Jan. 1, 1976; Dec. 5, 1983, eff. April 1, 1984; April 24, 1990, eff. Sept. 1, 1990.)

RULE 246. CLERK TO GIVE NOTICE OF SETTINGS.

The clerk shall keep a record in his office of all cases set for trial, and it shall be his duty to inform any non-resident attorney of the date of setting of any case upon request by mail from such attorney, accompanied by a return envelope properly addressed and stamped. Failure of the clerk to furnish such information on proper request shall be sufficient ground for continuance or for a new trial when it appears to the court that such failure has prevented the attorney from preparing or presenting his claim or defense.

RULE 247. TRIED WHEN SET.

Every suit shall be tried when it is called, unless continued or postponed to a future day or placed at the end of the docket to be called again for trial in its regular order. No cause which has been set upon the trial docket of the court shall be taken from the trial docket for the date set except by agreement of the parties or for good cause upon motion and notice to the opposing party.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 248. JURY CASES.

When a jury has been demanded, questions of law, motions, exceptions to pleadings, and other unresolved pending matters shall, as far as practicable, be heard and determined by the court before the trial commences, and jurors shall be summoned to appear on the day so designated.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; April 24, 1990, eff. Sept. 1, 1990.)

RULE 249. CALL OF NONJURY DOCKET.

The nonjury docket shall be taken up at such times as not unnecessarily to interfere with the dispatch of business on the jury docket.

RULE 250. [REPEALED]

(Repealed by Order Sept. 20, 1941, eff. Dec. 31, 1941.)

B.
CONTINUANCE AND CHANGE OF VENUE

RULE 251. CONTINUANCE.

No application for a continuance shall be heard before the defendant files his defense, nor shall any continuance be granted except for sufficient cause supported by affidavit, or by consent of the parties, or by operation of law.

RULE 252. APPLICATION FOR CONTINUANCE.

If the ground of such application be the want of testimony, the party applying therefor shall make affidavit that such testimony is material, showing the materiality thereof, and that he has used due diligence to procure such testimony, stating such diligence, and the cause of failure, if known; that such testimony cannot be procured from any other source; and, if it be for the absence of a witness, he shall state the name and residence of the witness, and what he expects to prove by him; and also state that the continuance is not sought for delay only, but that justice may be done; provided that, on a first application for a continuance, it shall not be necessary to show that the absent testimony cannot be procured from any other source.

The failure to obtain the deposition of any witness residing within 100 miles of the courthouse of the county in which the suit is pending shall not be regarded as want of diligence when diligence has been used to secure the personal attendance of such witness under the rules of law, unless by reason of age, infirmity or sickness, or official duty, the witness will be unable to attend the court, or unless such witness is about to leave, or has left, the State or county in which the suit is pending and will not probably be present at the trial.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 253. ABSENCE OF COUNSEL AS GROUND FOR CONTINUANCE.

Except as provided elsewhere in these rules, absence of counsel will not be good cause for a continuance or postponement of the cause when called for trial, except it be allowed in the discretion of the court, upon cause shown or upon matters within the knowledge or information of the judge to be stated on the record.

RULE 254. ATTENDANCE ON LEGISLATURE.

In all civil actions, including matters of probate, and in all matters ancillary to such suits which require action by or the attendance of an attorney, including appeals but excluding temporary restraining orders, at any time within thirty days of a date when the legislature is to be in session, or at any time the legislature is in session, or when the legislature sits as a Constitutional Convention, it shall be mandatory that the court continue the cause if it shall appear to the court, by affidavit, that any party applying for continuance, or any attorney for any party to the cause, is a member of either branch of the legislature, and will be or is in actual attendance on a session of the same. If the member of the legislature is an attorney for a party to the cause, his affidavit shall contain a declaration that it is his intention to participate actively in the preparation and/or presentation of the case. Where a party to any cause, or an attorney for any party to a cause, is a member of the legislature, his affidavit need not be corroborated. On the filing of such affidavit, the court shall continue the cause until thirty days after adjournment of the legislature and the affidavit shall be proof of the necessity for the continuance, and the continuance shall be deemed one of right and shall not be charged against the movant upon any subsequent application for continuance.

The right to a continuance shall be mandatory, except only where the attorney was employed within ten days of the date the suit is set for trial, the right to continuance shall be discretionary.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 255. CHANGE OF VENUE BY CONSENT.

Upon the written consent of the parties filed with the papers of the cause, the court, by an order entered on the minutes, may transfer the same for trial to the court of any other county having jurisdiction of the subject matter of such suit.

RULE 256. [REPEALED]

(Repealed by Order March 31, 1941, eff. Sept. 1, 1941.)

RULE 257. GRANTED ON MOTION.

A change of venue may be granted in civil causes upon motion of either party, supported by his own affidavit and the affidavit of at least three credible persons, residents of the county in which the suit is pending, for any following cause:

(a) That there exists in the county where the suit is pending so great a prejudice against him that he cannot obtain a fair and impartial trial.

(b) That there is a combination against him instigated by influential persons, by reason of which he cannot expect a fair and impartial trial.

(c) That an impartial trial cannot be had in the county where the action is pending.

(d) For other sufficient cause to be determined by the court.

(Amended by Order June 15, 1983, eff. Sept. 1, 1983.)

RULE 258. SHALL BE GRANTED.

Where such motion to transfer venue is duly made, it shall be granted, unless the credibility of those making such application, or their means of knowledge or the truth of the facts set out in the said application are attacked by the affidavit of a credible person; when thus attacked, the issue thus formed shall be tried by the judge; and the application either granted or refused. Reasonable discovery in support of, or in opposition to, the application shall be permitted, and such discovery as is relevant, including deposition testimony on file, may be attached to, or incorporated by reference in, the affidavit of a party, a witness, or an attorney who has knowledge of such discovery.

(Amended by Order June 15, 1983, eff. Sept. 1, 1983.)

RULE 259. TO WHAT COUNTY.

If the motion under Rule 257 is granted, the cause shall be removed:

(a) If from a district court, to any county of proper venue in the same or an adjoining district;

(b) If from a county court, to any adjoining county of proper venue;

(c) If (a) or (b) are not applicable, to any county of proper venue;

(d) If a county of proper venue (other than the county of suit) cannot be found, then if from

(1) A district court, to any county in the same or an adjoining district or to any district where an impartial trial can be had;

(2) A county court, to any adjoining county or to any district where an impartial trial can be had; but the parties may agree that venue shall be changed to some other county, and the order of the court shall conform to such agreement.

(Amended by Order June 15, 1983, eff. Sept. 1, 1983.)

RULE 260. [REPEALED]

(Repealed by Order April 24, 1990, eff. Sept. 1, 1990.)

RULE 261. TRANSCRIPT ON CHANGE.

When a change of venue has been granted, the clerk shall immediately make out a correct transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and send the same, with the original papers in the cause, to the clerk of the court to which the venue has been changed.

C.
THE TRIAL

RULE 262. TRIAL BY THE COURT.

The rules governing the trial of causes before a jury shall govern in trials by the court in so far as applicable.

RULE 263. AGREED CASE.

Parties may submit matters in controversy to the court upon an agreed statement of facts filed with the clerk, upon which judgment shall be rendered as in other cases; and such agreed statement signed and certified by the court to be correct and the judgment rendered thereon shall constitute the record of the cause.

RULE 264. VIDEOTAPE TRIAL.

By agreement of the parties, the trial court may allow that all testimony and such other evidence as may be appropriate be presented at trial by videotape. The expenses of such videotape recordings shall be taxed as costs. If any party withdraws agreement to a videotape trial, the videotape costs that have accrued will be taxed against the party withdrawing from the agreement.

(Adopted July 15, 1987, eff. Jan. 1, 1988.)

RULE 265. ORDER OF PROCEEDINGS ON TRIAL BY JURY.

The trial of cases before a jury shall proceed in the following order unless the court should, for good cause stated in the record, otherwise direct:

(a) The party upon whom rests the burden of proof on the whole case shall state to the jury briefly the nature of his claim or defense and what said party expects to prove and the relief sought. Immediately thereafter, the adverse party may make a similar statement, and intervenors and other parties will be accorded similar rights in the order determined by the court.

(b) The party upon whom rests the burden of proof on the whole case shall then introduce his evidence.

(c) The adverse party shall briefly state the nature of his claim or defense and what said party expects to prove and the relief sought unless he has already done so.

(d) He shall then introduce his evidence.

(e) The intervenor and other parties shall make their statement, unless they have already done so, and shall introduce their evidence.

(f) The parties shall then be confined to rebutting testimony on each side.

(g) But one counsel on each side shall examine and cross-examine the same witness, except on leave granted.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941; July 20, 1966, eff. Jan. 1, 1967; July 11, 1977, eff. Jan. 1, 1978.)

RULE 266. OPEN AND CLOSE—ADMISSION.

Except as provided in Rule 269 the plaintiff shall have the right to open and conclude both in adducing his evidence and in the argument, unless the burden of proof on the whole case under the pleadings rests upon the defendant, or unless the defendant or all of the defendants, if there should be more than one, shall, after the issues of fact are settled and before the trial commences, admit that the plaintiff is entitled to recover as set forth in the petition, except so far as he may be defeated, in whole or in part, by the allegations of the answer constituting a good defense, which may be established on the trial; which admission shall be entered of record, whereupon the defendant, or the defendants, if more than one, shall have the right to open and conclude in adducing the evidence and in the argument of the cause. The admission shall not serve to admit any allegation which is inconsistent with such defense, which defense shall be one that defendant has the burden of establishing, as for example, and without excluding other defenses: accord and satisfaction, adverse possession, arbitration and award, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, release, res judicata, statute of frauds, statute of limitations, waiver, and the like.

RULE 267. WITNESSES PLACED UNDER RULE.

(a) At the request of either party, in a civil case, the witnesses on both sides shall be sworn and removed out of the courtroom to some place where they cannot hear the testimony as delivered by any other witness in the cause. This is termed placing witnesses under the rule.

(b) This rule does not authorize exclusion of (1) a party who is a natural person or the spouse of such natural person, or (2) an officer or employee of a party that is not a natural person and who is designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the cause.

(c) If any party be absent, the court in its discretion may exempt from the rule a representative of such party.

(d) Witnesses, when placed under Rule 614 of the Texas Rules of Civil Evidence, shall be instructed by the court that they are not to converse with each other or with any other person about the case other than the attorneys in the case, except by permission of the court, and that they are not to read any report of or comment upon the testimony in the case while under the rule.

(e) Any witness or other person violating such instructions may be punished for contempt of court.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 268. MOTION FOR INSTRUCTED VERDICT.

A motion for directed verdict shall state the specific grounds therefor.

RULE 269. ARGUMENT.

(a) After the evidence is concluded and the charge is read, the parties may argue the case to the jury. The party having the burden of proof on the whole case, or on all matters which are submitted by the charge, shall be entitled to open and conclude the argument; where there are several parties having separate claims or defenses, the court shall prescribe the order of argument between them.

(b) In all arguments, and especially in arguments on the trial of the case, the counsel opening shall present his whole case as he relies on it, both of law and facts, and shall be heard in the concluding argument only in reply to the counsel on the other side.

(c) Counsel for an intervenor shall occupy the position in the argument assigned by the court according to the nature of the claim.

(d) Arguments on questions of law shall be addressed to the court, and counsel should state the substance of the authorities referred to without reading more from books than may be necessary to verify the statement. On a question on motions, exceptions to the evidence, and other incidental matters, the counsel will be allowed only such argument as may be necessary to present clearly the question raised and refer to authorities on it, unless further discussion is invited by the court.

(e) Arguments on the facts should be addressed to the jury, when one is impaneled in a case that is being tried, under the supervision of the court. Counsel shall be required to confine the argument strictly to the evidence and to the arguments of opposing counsel. Mere personal criticism by counsel upon each other shall be avoided, and when indulged in shall be promptly corrected as a contempt of court.

(f) Side-bar remarks, and remarks by counsel of one side, not addressed to the court, while the counsel on the other side is examining a witness or arguing any question to the court, or addressing the jury, will be rigidly repressed by the court.

(g) The court will not be required to wait for objections to be made when the rules as to arguments are violated; but should they not be noticed and corrected by the court, opposing counsel may ask leave of the court to rise and present his point of objection. But the court shall protect counsel from any unnecessary interruption made on frivolous and unimportant grounds.

(h) It shall be the duty of every counsel to address the court from his place at the bar, and in addressing the court to rise to his feet; and while engaged in the trial of a case he shall remain at his place in the bar.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941; April 24, 1990, eff. Sept. 1, 1990.)

RULE 270. ADDITIONAL TESTIMONY.

When it clearly appears to be necessary to the due administration of justice, the court may permit additional evidence to be offered at any time; provided that in a jury case no evidence on a controversial matter shall be received after the verdict of the jury.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

D.
CHARGE TO THE JURY

RULE 271. CHARGE TO THE JURY.

Unless expressly waived by the parties, the trial court shall prepare and in open court deliver a written charge to the jury.

(Amended by Order May 25, 1973, eff. Sept. 1, 1973; July 15, 1987, eff. Jan. 1, 1988.)

RULE 272. REQUISITES.

The charge shall be in writing, signed by the court, and filed with the clerk, and shall be a part of the record of the cause. It shall be submitted to the respective parties or their attorneys for their inspection, and a reasonable time given them in which to examine and present objections thereto outside the presence of the jury, which objections shall in every instance be presented to the court in writing, or be dictated to the court reporter in the presence of the court and opposing counsel, before the charge is read to the jury. All objections not so presented shall be considered as waived. The court shall announce its rulings thereon before reading the charge to the jury and shall endorse the rulings on the objections if written or dictate same to the court reporter in the presence of counsel. Objections to the charge and the court's rulings thereon may be included as a part of any transcript or statement of facts on appeal and, when so included in either, shall constitute a sufficient bill of exception to the rulings of the court thereon. It shall be presumed, unless otherwise noted in the record, that the party making such objections presented the same at the proper time and excepted to the ruling thereon.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941; May 25, 1973, eff. Sept. 1, 1973; July 22, 1975, eff. Jan. 1, 1976; July 15, 1987, eff. Jan. 1, 1988.)

RULE 273. JURY SUBMISSIONS.

Either party may present to the court and request written questions, definitions, and instructions to be given to the jury; and the court may give them or a part thereof, or may refuse to give them, as may be proper. Such requests shall be prepared and presented to the court and submitted to opposing counsel for examination and objection within a reasonable time after the charge is given to the parties or their attorneys for examination. A request by either party for any questions, definitions, or instructions shall be made separate and apart from such party's objections to the court's charge.

(Amended by Order Oct. 12, 1949, eff. March 1, 1950; July 15, 1987, eff. Jan. 1, 1988.)

RULE 274. OBJECTIONS AND REQUESTS.

A party objecting to a charge must point out distinctly the objectionable matter and the grounds of the objection. Any complaint as to a question, definition, or instruction, on account of any defect, omission, or fault in pleading, is waived unless specifically included in the objections. When the complaining party's objection, or requested question, definition, or instruction is, in the opinion of the appellate court, obscured or concealed by voluminous unfounded objections, minute differentiations or numerous unnecessary requests, such objection or request shall be untenable. No objection to one part of the charge may be adopted and applied to any other part of the charge by reference only.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941; July 15, 1987, eff. Jan. 1, 1988.)

RULE 275. CHARGE READ BEFORE ARGUMENT.

Before the argument is begun, the trial court shall read the charge to the jury in the precise words in which it was written, including all questions, definitions, and instructions which the court may give.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 276. REFUSAL OR MODIFICATION.

When an instruction, question, or definition is requested and the provisions of the law have been complied with and the trial judge refuses the same, the judge shall endorse thereon "Refused," and sign the same officially. If the trial judge modifies the same the judge shall endorse thereon "Modified as follows: (stating in what particular the judge has modified the same) and given, and exception allowed" and sign the same officially. Such refused or modified instruction, question, or definition, when so endorsed shall constitute a bill of exceptions, and it shall be conclusively presumed that the party asking the same presented it at the proper time, excepted to its refusal or modification, and that all the requirements of law have been observed, and such procedure shall entitle the party requesting the same to have the action of the trial judge thereon reviewed without preparing a formal bill of exceptions.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 277. SUBMISSION TO THE JURY.

In all jury cases the court shall, whenever feasible, submit the cause upon broad-form questions. The court shall submit such instructions and definitions as shall be proper to enable the jury to render a verdict.

Inferential rebuttal questions shall not be submitted in the charge. The placing of the burden of proof may be accomplished by instructions rather than by inclusion in the question.

In any cause in which the jury is required to apportion the loss among the parties the court shall submit a question or questions inquiring what percentage, if any, of the negligence or causation, as the case may be, that caused the occurrence or injury in question is attributable to each of the persons found to have been culpable. The court shall also instruct the jury to answer the damage question or questions without any reduction because of the percentage of negligence or causation, if any, of the person injured. The court may predicate the damage question or questions upon affirmative findings of liability.

In a suit in which termination of the parent-child relationship is requested, the court shall submit separate questions for each parent and each child on (1) each individual statutory ground for termination of the parent-child relationship and (2) whether termination of the parent-child relationship is in the best interest of the child. The court shall predicate the best-interest question upon an affirmative finding of at least one termination ground.

The court may submit a question disjunctively when it is apparent from the evidence that one or the other of the conditions or facts inquired about necessarily exists.

The court shall not in its charge comment directly on the weight of the evidence or advise the jury of the effect of their answers, but the court's charge shall not be objectionable on the ground that it incidentally constitutes a comment on the weight of the evidence or advises the jury of the effect of their answers when it is properly a part of an instruction or definition.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941; May 25, 1973, eff. Sept. 1, 1973; Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988; Tex. Sup. Ct. Misc. Docket No. 20-9008, Jan. 8, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9056, April 14, 2020, eff. May 1, 2020.)

Comment to 2020 change: Rule 277 is revised to require a jury question on each individual statutory ground for termination as to each parent and each child without requiring further granulated questions for subparts of an individual ground for termination. Rule 277 is also revised to require a separate question on best interest of the child as to each parent and each child that is predicated on an affirmative answer to at least one termination-ground question. The revisions supersede *Texas Department of Human Services v. E.B.*, 802 S.W.2d 647 (Tex. 1990).

RULE 278. SUBMISSION OF QUESTIONS, DEFINITIONS, AND INSTRUCTIONS.

The court shall submit the questions, instructions and definitions in the form provided by Rule 277, which are raised by the written pleadings and the evidence. Except in trespass to try title, statutory partition proceedings, and other special proceedings in which the pleadings are specially defined by statutes or procedural rules, a party shall not be entitled to any submission of any question raised only by a general denial and not raised by affirmative written pleading by that party. Nothing herein shall change the burden of proof from what it would have been under a general denial. A judgment shall not be reversed because of the failure to submit other and various phases or different shades of the same question. Failure to submit a question shall not be deemed a ground for reversal of the judgment, unless its submission, in substantially correct wording, has been requested in writing and tendered by the party complaining of the judgment; provided, however, that objection to such failure shall suffice in such respect if the question is one relied upon by the opposing party. Failure to submit a definition or instruction shall not be deemed a ground for reversal of the judgment unless a substantially correct definition or instruction has been requested in writing and tendered by the party complaining of the judgment.

(Adopted July 15, 1987, eff. Jan. 1, 1988.)

RULE 279. OMISSIONS FROM THE CHARGE.

Upon appeal all independent grounds of recovery or of defense not conclusively established under the evidence and no element of which is submitted or requested are waived. When a ground of recovery or defense consists of more than one element, if one or more of such elements necessary to sustain such ground of recovery or defense, and necessarily referable thereto, are submitted to and found by the jury, and one or more of such elements are omitted from the charge, without request or objection, and there is factually sufficient evidence to support a finding thereon, the trial court, at the

request of either party, may after notice and hearing and at any time before the judgment is rendered, make and file written findings on such omitted element or elements in support of the judgment. If no such written findings are made, such omitted element or elements shall be deemed found by the court in such manner as to support the judgment. A claim that the evidence was legally or factually insufficient to warrant the submission of any question may be made for the first time after verdict, regardless of whether the submission of such question was requested by the complainant.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941; July 15, 1987, eff. Jan. 1, 1988.)

E.
CASE TO THE JURY

RULE 280. PRESIDING JUROR OF JURY.

Each jury shall appoint one of their body presiding juror.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 281. PAPERS TAKEN TO JURY ROOM.

With the court's permission, the jury may take with them to the jury room any notes they took during the trial. In addition, the jury may, and on request shall, take with them in their retirement the charges and instructions, general or special, which were given and read to them, and any written evidence, except the depositions of witnesses, but shall not take with them any special charges which have been refused. Where only part of a paper has been read in evidence, the jury shall not take the same with them, unless the part so read to them is detached from that which was excluded.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; March 15, 2011, eff. April 1, 2011.)

RULE 282. JURY KEPT TOGETHER.

The jury may either decide a case in court or retire for deliberation. If they retire, they shall be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict or are discharged by the court; but the court in its discretion may permit them to separate temporarily for the night and at their meals, and for other proper purposes.

RULE 283. DUTY OF OFFICER ATTENDING JURY.

The officer in charge of the jury shall not make nor permit any communication to be made to them, except to inquire if they have agreed upon a verdict, unless by order of the court; and he shall not before their verdict is rendered communicate to any person the state of their deliberations or the verdict agreed upon.

RULE 284. JUDGE TO CAUTION JURY.

Immediately after jurors are selected for a case, the court must instruct them to turn off their phones and other electronic devices and not to communicate with anyone through any electronic device while they are in the courtroom or while they are deliberating. The court must also instruct them that, while they are serving as jurors, they must not post any information about the case on the Internet or search for any information outside of the courtroom, including on the Internet, to try to learn more about the case.

If jurors are permitted to separate before they are released from jury duty, either during the trial or after the case is submitted to them, the court must instruct them that it is their duty not to communicate with, or permit themselves to be addressed by, any other person about any subject relating to the case.

(Amended by Order March 15, 2011, eff. April 1, 2011.)

RULE 285. JURY MAY COMMUNICATE WITH COURT.

The jury may communicate with the court by making their wish known to the officer in charge, who shall inform the court, and they may then in open court, and through their presiding juror, communicate with the court, either verbally or in writing. If the communication is to request further instructions, Rule 286 shall be followed.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 286. JURY MAY RECEIVE FURTHER INSTRUCTIONS.

After having retired, the jury may receive further instructions from the court touching any matter of law, either at their request or upon the court's own motion. For this purpose they shall appear before the judge in open court in a body, and if the instruction is being given at their request, they shall through their presiding juror state to the court, in writing, the particular question of law upon which they desire further instruction. The court shall give such instruction in writing, but no instruction shall be given except in conformity with the rules relating to the charge. Additional argument may be allowed in the discretion of the court.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

RULE 287. DISAGREEMENT AS TO EVIDENCE.

If the jury disagree as to the statement of any witness, they may, upon applying to the court, have read to them from the court reporter's notes that part of such witness' testimony on the point in dispute; but, if there be no such reporter, or if his notes cannot be read to the jury, the court may cause such witness to be again brought upon the stand and the judge shall direct him to repeat his testimony as to the point in dispute, and no other, as nearly as he can in the language used on the trial; and on their notifying the court that they disagree as to any portion of a deposition or other paper not permitted to be carried with them in their retirement, the court may, in like manner, permit such portion of said deposition or paper to be again read to the jury.

RULE 288. COURT OPEN FOR JURY.

The court, during the deliberations of the jury, may proceed with other business or recess from time to time, but shall be deemed open for all purposes connected with the case before the jury.

RULE 289. DISCHARGE OF JURY.

The jury to whom a case has been submitted may be discharged by the court when they cannot agree and the parties consent to their discharge, or when they have been kept together for such time as to render it altogether improbable that they can agree, or when any calamity or accident may, in the opinion of the court, require it, or when by sickness or other cause their number is reduced below the number constituting the jury in such court.

The cause shall again be placed on the jury docket and shall again be set for trial as the court directs.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

F.
VERDICT

RULE 290. DEFINITION AND SUBSTANCE.

A verdict is a written declaration by a jury of its decision, comprehending the whole or all the issues submitted to the jury, and shall be either a general or special verdict, as directed, which shall be signed by the presiding juror of the jury.

A general verdict is one whereby the jury pronounces generally in favor of one or more parties to the suit upon all or any of the issues submitted to it. A special verdict is one wherein the jury finds the facts only on issues made up and submitted to them under the direction of the court.

A special verdict shall, as between the parties, be conclusive as to the facts found.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 291. FORM OF VERDICT.

No special form of verdict is required, and the judgment shall not be arrested or reversed for mere want of form therein if there has been substantial compliance with the requirements of the law in rendering a verdict.

(Amended by Order Oct. 3, 1972, eff. Feb. 1, 1973.)

RULE 292. VERDICT BY PORTION OF ORIGINAL JURY.

(a) Except as provided in subsection (b), a verdict may be rendered in any cause by the concurrence, as to each and all answers made, of the same ten or more members of an original jury of twelve or of the same five or more members of an original jury of six. However, where as many as three jurors die or be disabled from sitting and there are only nine of the jurors remaining of an original jury of twelve, those remaining may render and return a verdict. If less than the original twelve or six jurors render a verdict, the verdict must be signed by each juror concurring therein.

(b) A verdict may be rendered awarding exemplary damages only if the jury was unanimous in finding liability for and the amount of exemplary damages.

(Amended by Order Oct. 3, 1972, eff. Feb. 1, 1973; Jan. 27, 2005, eff. Feb. 1, 2005 in all cases filed on or after Sept. 1, 2003.)

Comment – 2005: The rule is divided into two subsections. Subsection (a) is clarified. Subsection (b) is added to make the rule consistent with Act of June 2, 2003, 78th Leg., R.S., c. 204, § 13.04, 2003 Tex. Gen. Laws 847, 888, codified as TEX. CIV. PRAC. & REM. CODE § 41.003.

RULE 293. WHEN THE JURY AGREE.

When the jury agree upon a verdict, they shall be brought into court by the proper officer, and they shall deliver their verdict to the clerk; and if they state that they have agreed, the verdict shall be read aloud by the clerk. If the verdict is in proper form, no juror objects to its accuracy, no juror

represented as agreeing thereto dissents therefrom, and neither party requests a poll of the jury, the verdict shall be entered upon the minutes of the court.

(Amended by Order Oct. 3, 1972, eff. Feb. 1, 1973.)

RULE 294. POLLING THE JURY.

Any party shall have the right to have the jury polled. A jury is polled by reading once to the jury collectively the general verdict, or the questions and answers thereto consecutively, and then calling the name of each juror separately and asking the juror if it is the juror's verdict. If any juror answers in the negative when the verdict is returned signed only by the presiding juror as a unanimous verdict, or if any juror shown by the juror's signature to agree to the verdict should answer in the negative, the jury shall be retired for further deliberation.

(Amended by Order Oct. 3, 1972, eff. Feb. 1, 1973; Dec. 5, 1983, eff. April 1, 1984; April 24, 1990, eff. Sept. 1, 1990.)

RULE 295. CORRECTION OF VERDICT.

If the purported verdict is defective, the court may direct it to be reformed. If it is incomplete, or not responsive to the questions contained in the court's charge, or the answers to the questions are in conflict, the court shall in writing instruct the jury in open court of the nature of the incompleteness, unresponsiveness, or conflict, provide the jury such additional instructions as may be proper, and retire the jury for further deliberations.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

G.
FINDINGS BY COURT

RULE 296. REQUESTS FOR FINDINGS OF FACTS AND CONCLUSIONS OF LAW.

In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law. Such request shall be entitled "Request for Findings of Fact and Conclusions of Law" and shall be filed within twenty days after judgment is signed with the clerk of the court, who shall immediately call such request to the attention of the judge who tried the case. The party making the request shall serve it on all other parties in accordance with Rule 21a.

(Amended by Order March 19, 1957, eff. Sept. 1, 1957; June 10, 1980, eff. Jan. 1, 1981; Dec. 5, 1983, eff. April 1, 1984; April 24, 1990, eff. Sept. 1, 1990.)

RULE 297. TIME TO FILE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The court shall file its findings of fact and conclusions of law within twenty days after a timely request is filed. The court shall cause a copy of its findings and conclusions to be mailed to each party in the suit.

If the court fails to file timely findings of fact and conclusions of law, the party making the request shall, within thirty days after filing the original request, file with the clerk and serve on all other parties in accordance with Rule 21a a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the court by the clerk. Such notice shall state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, the time for the court to file findings of fact and conclusions of law is extended to forty days from the date the original request was filed.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981; Dec. 5, 1983, eff. April 1, 1984; April 24, 1990, eff. Sept. 1, 1990.)

RULE 298. ADDITIONAL OR AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

After the court files original findings of fact and conclusions of law, any party may file with the clerk of the court a request for specified additional or amended findings or conclusions. The request for these findings shall be made within ten days after the filing of the original findings and conclusions by the court. Each request made pursuant to this rule shall be served on each party to the suit in accordance with Rule 21a.

The court shall file any additional or amended findings and conclusions that are appropriate within ten days after such request is filed, and cause a copy to be mailed to each party to the suit. No findings or conclusions shall be deemed or presumed by any failure of the court to make any additional findings or conclusions.

(Amended by Order March 19, 1957, eff. Sept. 1. 1957; April 24, 1990, eff. Sept. 1, 1990.)

RULE 299. OMITTED FINDINGS.

When findings of fact are filed by the trial court they shall form the basis of the judgment upon all grounds of recovery and of defense embraced therein. The judgment may not be supported upon appeal by a presumed finding upon any ground of recovery or defense, no element of which has been included in the findings of fact; but when one or more elements thereof have been found by the trial court, omitted unrequested elements, when supported by evidence, will be supplied by presumption in support of the judgment. Refusal of the court to make a finding requested shall be reviewable on appeal.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941; April 24, 1990, eff. Sept. 1, 1990.)

RULE 299a. FINDINGS OF FACT TO BE SEPARATELY FILED AND NOT RECITED IN A JUDGMENT.

Findings of fact shall not be recited in a judgment. If there is a conflict between findings of fact recited in a judgment in violation of this rule and findings of fact made pursuant to Rules 297 and 298, the latter findings will control for appellate purposes. Findings of fact shall be filed with the clerk of the court as a document or documents separate and apart from the judgment.

(Adopted by Order April 24, 1990, eff. Sept. 1, 1990.)

H.
JUDGMENTS

RULE 300. COURT TO RENDER JUDGMENT.

Where a special verdict is rendered, or the conclusions of fact found by the judge are separately stated the court shall render judgment thereon unless set aside or a new trial is granted, or judgment is rendered notwithstanding verdict or jury finding under these rules.

RULE 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.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990; amendment withdrawn Sept. 4, 1990, eff. retroactively to Sept. 1, 1990.)

RULE 302. ON COUNTERCLAIM.

If the defendant establishes a demand against the plaintiff upon a counterclaim exceeding that established against him by the plaintiff, the court shall render judgment for defendant for such excess.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 303. ON COUNTERCLAIM FOR COSTS.

When a counterclaim is pleaded, the party in whose favor final judgment is rendered shall also recover the costs, unless it be made to appear on the trial that the counterclaim of the defendant was acquired after the commencement of the suit, in which case, if the plaintiff establishes a claim existing at the commencement of the suit, he shall recover his costs.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 304. JUDGMENT UPON RECORD.

Judgments rendered upon questions raised upon citations, pleadings, and all other proceedings, constituting the record proper as known at common law, must be entered at the date of each term when pronounced.

RULE 305. PROPOSED JUDGMENT.

Any party may prepare and submit a proposed judgment to the court for signature.

Each party who submits a proposed judgment for signature shall serve the proposed judgment on all other parties to the suit who have appeared and remain in the case, in accordance with Rule 21a.

Failure to comply with this rule shall not affect the time for perfecting an appeal.

(Amended by Order April 24, 1990, eff. Sept. 1, 1990.)

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.

(Amended by Order July 21, 1970, eff. Jan. 1, 1971; Order Dec. 12, 2011, eff. March 1, 2012; Order Feb. 13, 2012, eff. March 1, 2012.)

RULE 306A. PERIODS TO RUN FROM SIGNING OF JUDGMENT.

1. **Beginning of Periods**. The date of judgment or order is signed as shown of record shall determine the beginning of the periods prescribed by these rules for the court's plenary power to grant a new trial or to vacate, modify, correct or reform a judgment or order and for filing in the trial court the various documents that these rules authorize a party to file within such periods including, but not limited to, motions for new trial, motions to modify judgment, motions to reinstate a case dismissed for want of prosecution, motions to vacate judgment and requests for findings of fact and conclusions of law; but this rule shall not determine what constitutes rendition of a judgment or order for any other purpose.
2. **Date to Be Shown**. Judges, attorneys and clerks are directed to use their best efforts to cause all judgments, decisions and orders of any kind to be reduced to writing and signed by the trial judge with the date of signing stated therein. If the date of signing is not recited in the judgment or order, it may be shown in the record by a certificate of the judge or otherwise; provided, however, that the absence of a showing of the date in the record shall not invalidate any judgment or order.
3. **Notice of Judgment**. When the final judgment or other appealable order is signed, the clerk of the court must immediately give notice to the parties or their attorneys of record electronically or by first-class mail advising that the judgment or order was signed. If the judgment awards monetary damages, the notice must state: "If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting www.texaslawhelp.org/exempt-property. / *Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio* www.texaslawhelp.org/exempt-property." Failure to comply with the provisions of this rule shall not affect the periods mentioned in paragraph (1) of this rule, except as provided in paragraph (4).
4. **No Notice of Judgment**. When the final judgment or other appealable order is signed, the clerk of the court must immediately give notice to the parties or their attorneys of record electronically or by first-class mail advising that the judgment or order was signed. If the judgment awards monetary damages, the notice must state: "If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting https://texaslawhelp.org/exempt-property. / *Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio https://texaslawhelp.org/exempt-property*." Failure to comply with the provisions of this rule shall not affect the periods mentioned in paragraph (1) of this rule, except as provided in paragraph (4).
5. **Motion, Notice and Hearing**. In order to establish the application of paragraph (4) of this rule, the party adversely affected is required to prove in the trial court, on sworn motion and notice, the date on which the party or his attorney first either received a notice of the judgment or acquired actual knowledge of the signing and that this date was more than twenty days after the judgment was signed.
6. **Nunc Pro Tunc Order**. When a collected judgment has been signed after expiration of the court's plenary power pursuant to Rule 316, the periods mentioned in paragraph (1) of this rule shall run from the date of signing the corrected judgment with respect to any complaint that would not be applicable to the original document.
7. **When Process Served by Publication**. With respect to a motion for new trial filed more than thirty days after the judgment was signed pursuant to Rule 329 when process has been served by publication, the periods provided by paragraph (1) shall be computed as if the judgment were signed on the date of filing the motion.

(Adopted by Order June 16, 1943, eff. Dec. 31, 1943. Amended by Order Oct. 10, 1945, eff. Feb. 1, 1946; June 10, 1980, eff. Jan. 1, 1981; Dec. 5, 1983, eff. April 1, 1984; April 10, 1986, eff. Sept. 1, 1986; July 15, 1987, eff. Jan. 1, 1988; Tex. Sup. Ct. Misc. Docket No. 21-9152, Dec. 7, 2021 and Tex. Sup. Ct. Misc. Docket No. 22-9031, April 25, 2022, eff. May 1, 2022.)

RULE 306B. ADVISE OF RIGHT TO APPEAL ORDERS CERTIFYING A CHILD TO STAND TRIAL AS AN ADULT.

When a juvenile court issues an order under Family Code section 54.02 certifying a child to stand trial as an adult, the court must inform the child and the child's attorney, orally on the record and in writing in the certification order, that:

(a) the child may immediately appeal the certification order under Family Code section 56.01; and

(b) the appeal is accelerated under Texas Rule of Appellate Procedure 28.1.

(Adopted by Tex. Sup. Ct. Misc. Docket No. 22-9104, Nov. 30, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9029, May 30, 2023, eff. June, 1, 2023.)

Notes and Comments

Comment to 2023 change: This rule is adopted to implement Texas Family Code section 56.01(h-1).

RULE 306C. PREMATURELY FILED DOCUMENTS.

No motion for new trial or request for findings of fact and conclusions of law shall be held ineffective because prematurely filed; but every such motion shall be deemed to have been filed on the date of but subsequent to the time of signing of the judgment the motion assails, and every such request for findings of fact and conclusions of law shall be deemed to have been filed on the date of but subsequent to the time of signing of the judgment.

(Adopted by Order Oct. 10, 1945, eff. Feb. 1, 1946. Amended by Order April 12, 1962, eff. Sept. 1, 1962; July 22, 1975, eff. Jan. 1, 1976; Dec. 5, 1983, eff. April 1, 1984; April 10, 1986, eff. Sept. 1, 1986; April 24, 1990, eff. Sept. 1, 1990.)

RULE 306D. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 307. EXCEPTIONS, ETC., TRANSCRIPT.

In non-jury cases, where findings of fact and conclusions of law are requested and filed, and in jury cases, where a special verdict is returned, any party claiming that the findings of the court or the jury, as the case may be, do not support the judgment, may have noted in the record an exception to said judgment and thereupon take an appeal or writ of error, where such writ is allowed, without a statement of facts or further exceptions in the transcript, but the transcript in such cases shall contain the conclusions of law and fact or the special verdict and the judgment rendered thereon.

RULE 308. COURT SHALL ENFORCE ITS DECREES.

The court shall cause its judgments and decrees to be carried into execution; and where the judgment is for personal property, and it is shown by the pleadings and evidence and the verdict, if any, that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff; and in such case may enforce its judgment by attachment, fine and imprisonment.

RULE 308A. IN SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP.

When the court has ordered child support or possession of or access to a child and it is claimed that the order has been violated, the person claiming that a violation has occurred shall make this known to the court. The court may appoint a member of the bar to investigate the claim to determine whether there is reason to believe that the court order has been violated. If the attorney in good faith believes that the order has been violated, the attorney shall take the necessary action as provided under Chapter 14, Family Code. On a finding of a violation, the court may enforce its order as provided in Chapter 14, Family Code.

Except by order of the court, no fee shall be charged by or paid to the attorney representing the claimant. If the court determines that an attorney's fee should be paid, the fee shall be adjudged against the party who violated the court's order. The fee may be assessed as costs of court, or awarded by judgment, or both.

(Adopted by Order Oct. 12, 1949, eff. March 1, 1950. Amended by Order Oct. 10, 1951, eff. March 1, 1952; July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990.)

RULE 308B. DETERMINING THE ENFORCEABILITY OF A JUDGEMENT OR ARBITRATION AWARD BASED ON FOREIGN LAW IN CERTAIN SUITS UNDER THE FAMILY CODE.

(a) *Definitions*. In this rule:
  (1) *Comity* means the recognition by a court of one jurisdiction of the laws and judicial decisions of another jurisdiction.
  (2) *Foreign law* means a law, rule, or code of a jurisdiction outside of the states and territories of the United States.

(b) *Applicability of This Rule*.
  (1) Except as provided in (2) and (3), this rule applies to the recognition or enforcement of a judgment or arbitration award based on foreign law in a suit involving a marriage relationship or a parent-child relationship under the Family Code.
  (2) This rule does not apply to an action brought under the International Child Abduction Remedies Act (22 U.S.C. § 9001 *et seq.*) concerning rights under the Hague Convention on the Civil Aspects of International Child Abduction.
  (3) In the event of a conflict between this rule and any federal or state law, the federal or state law will prevail.

(c) *Applicability of Texas Rule of Evidence 203*.
  (1) Paragraphs (c) and (d) of Rule 203, Texas Rules of Evidence, apply to an action under this rule.
  (2) Paragraphs (a) and (b) of Rule 203, Texas Rules of Evidence, do not apply to an action under this rule.

(d) *Notice*.
  (1) *Party Seeking Enforcement of a Judgment or Arbitration Award Based on Foreign Law*. Within 60 days of filing an original pleading, the party seeking enforcement must give written notice to the court and all parties that describes the court's authority to enforce or decide to enforce the judgment or award.
  (2) *Party Opposing Enforcement of a Judgment or Arbitration Award Based on Foreign Law*. Within 30 days of the date that a notice under (1) is served, a party opposing enforcement must give written notice to the court and all parties that explains the basis for the party's opposition and states whether the party asserts that the judgment or award violates constitutional rights or public policy.

(e) *Pretrial Conference*. Within 75 days of the date that a notice under (d)(1) is served, the court must conduct a pretrial conference to set deadlines and make other appropriate orders regarding:
  (1) the submission of materials for the court to consider in determining foreign law;
  (2) the translation of foreign-language documents; and
  (3) the designation of expert witnesses.

(f) *Determination Hearing and Order*.
  (1) At least 30 days before trial, the court must conduct a hearing on the record to determine whether to enforce the judgment or award. The parties must have timely notice of the hearing.
  (2) Within 15 days of the hearing, the Court must issue a written order on the determination that includes findings of fact and conclusions of law. This deadline must not be altered absent extraordinary circumstances.
  (3) The court may issue any order necessary to preserve the principles of comity or the freedom to contract for arbitration while protecting against violations of constitutional rights and public policy.

(4) The court must comply with all requirements of this paragraph and make an independent determination whether to enforce the judgment or award even if no party opposes enforcement of the judgment or award.

(g) *Temporary Orders*. Notwithstanding any other provision of this rule, the court may set filing deadlines and conduct the determination hearing to accommodate the circumstances of the case in connection with issuing temporary orders.

(Adopted by Tex. Sup. Ct. Misc. Docket No. 16-9018 Dec. 28, 2017, eff. Jan. 1, 2018.)

RULE 309. IN FORECLOSURE PROCEEDINGS.

Judgments for the foreclosure of mortgages and other liens shall be that the plaintiff recover his debt, damages and costs, with a foreclosure of the plaintiff's lien on the property subject thereto, and, except in judgments against executors, administrators and guardians, that an order of sale shall issue to any sheriff or any constable within the State of Texas, directing him to seize and sell the same as under execution, in satisfaction of the judgment; and, if the property cannot be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to take the money or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary executions.

(Amended by Order July 20, 1966, eff. Jan. 1, 1967.)

RULE 310. WRIT OF POSSESSION.

When an order foreclosing a lien upon real estate is made in a suit having for its object the foreclosure of such lien, such order shall have all the force and effect of a writ of possession as between the parties to the foreclosure suit and any person claiming under the defendant to such suit by any right acquired pending such suit; and the court shall so direct in the judgment providing for the issuance of such order. The sheriff or other officer executing such order of sale shall proceed by virtue of such order of sale to place the purchaser of the property sold thereunder in possession thereof within thirty days after the day of sale.

RULE 311. ON APPEAL FROM PROBATE COURT.

Judgment on appeal or certiorari from any county court sitting in probate shall be certified to such county court for observance.

RULE 312. ON APPEAL FROM JUSTICE COURT.

Judgment on appeal or certiorari from a justice court shall be enforced by the county or district court rendering the judgment.

RULE 313. AGAINST EXECUTORS, ETC.

A judgment for the recovery of money against an executor, administrator or guardian, as such, shall state that it is to be paid in the due course of administration. No execution shall issue thereon, but it shall be certified to the county court, sitting in matters of probate, to be there enforced in accordance with law, but judgment against an executor appointed and acting under a will dispensing with the action of the county court in reference to such estate shall be enforced against the property of the testator in the hands of such executor, by execution, as in other cases.

RULE 314. CONFESSION OF JUDGMENT.

Any person against whom a cause of action exists may, without process, appear in person or by attorney, and confess judgment therefor in open court as follows:

(a) A petition shall be filed and the justness of the debt or cause of action be sworn to by the person in whose favor the judgment is confessed.

(b) If the judgment is confessed by attorney, the power of attorney shall be filed and its contents be recited in the judgment.

(c) Every such judgment duly made shall operate as a release of all errors in the record thereof, but such judgment may be impeached for fraud or other equitable cause.

I.
REMITTITUR AND CORRECTION

RULE 315. REMITTITUR.

Any party in whose favor a judgment has been rendered may remit any part thereof in open court, or by executing and filing with the clerk a written remittitur signed by the party or the party's attorney of record, and duly acknowledged by the party or the party's attorney. Such remittitur shall be a part of the record of the cause. Execution shall issue for the balance only of such judgment.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 316. CORRECTION OF CLERICAL MISTAKES IN JUDGMENT RECORD.

Clerical mistakes in the record of any judgment may be corrected by the judge in open court according to the truth or justice of the case after notice of the motion therefor has been given to the parties interested in such judgment, as provided in Rule 21a, and thereafter the execution shall conform to the judgment as amended.

(Amended by Order June 16, 1943, eff. Dec. 31, 1943; July 15, 1987, eff. Jan. 1, 1988.)

RULES 317 TO 319. [REPEALED]

(Repealed by Order July 15, 1987, eff. Jan. 1, 1988.)

J.
NEW TRIALS

RULE 320. MOTION AND ACTION OF COURT THEREON.

New trials may be granted and judgment set aside for good cause, on motion or on the court's own motion on such terms as the court shall direct. New trials may be granted when the damages are manifestly too small or too large. When it appears to the court that a new trial should be granted on a point or points that affect only a part of the matters in controversy and that such part is clearly separable without unfairness to the parties, the court may grant a new trial as to that part only, provided that a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested. Each motion for new trial shall be in writing and signed by the party of his attorney.

(Amended by Order July 20, 1964, eff. Jan. 1, 1955; July 22, 1975, eff. Jan. 1, 1976; July 11, 1977, eff. Jan. 1, 1978, June 10, 1980, eff. Jan. 1, 1981; Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

RULE 321. FORM.

Each point relied upon in a motion for new trial or in arrest of judgment shall briefly refer to that part of the ruling of the court, charge given to the jury, or charge refused, admission or rejection of evidence, or other proceedings which are designated to be complained of, in such a way that the objection can be clearly identified and understood by the court.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 322. GENERALITY TO BE AVOIDED.

Grounds of objections couched in general terms—as that the court erred in its charge, in sustaining or overruling exceptions to the pleadings, and in excluding or admitting evidence, the verdict of the jury is contrary to law, and the like—shall not be considered by the court.

RULE 323. [REPEALED]

(Repealed by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 324. PREREQUISITES OF APPEAL.

(a) **Motion for New Trial Not Required**. A point in a motion for new trial is not a prerequisite to a complaint on appeal in either a jury or a nonjury case, except as provided in subdivision (b).

(b) **Motion for New Trial Required**. A point in a motion for new trial is a prerequisite to the following complaints on appeal:

(1) A complaint on which evidence must be heard such as one of jury misconduct or newly discovered evidence or failure to set aside a judgment by default;

(2) A complaint of factual insufficiency of the evidence to support a jury finding;

(3) A complaint that a jury finding is against the overwhelming weight of the evidence;

(4) A complaint of inadequacy or excessiveness of the damages found by the jury; or

(5) Incurable jury argument if not otherwise ruled on by the trial court.

(c) **Judgment Notwithstanding Findings; Cross-Points**. When judgment is rendered non obstante veredicto or notwithstanding the findings of a jury on one or more questions, the appellee may bring forward by cross-point contained in his brief filed in the Court of Appeals any ground which would have vitiated the verdict or would have prevented an affirmance of the judgment had one been rendered by the trial court in harmony with the verdict, including although not limited to the ground that one or more of the jury's findings have insufficient support in the evidence or are against the overwhelming preponderance of the evidence as a matter of fact, and the ground that the verdict and judgment based thereon should be set aside because of improper argument of counsel. The failure to bring forward by cross-points such grounds as would vitiate the verdict shall be deemed a waiver thereof; provided, however, that if a cross-point is upon a ground which requires the taking of evidence in addition to that

adduced upon the trial of the cause, it is not necessary that the evidentiary hearing be held until after the appellate court determines that the cause be remanded to consider such a cross-point.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941; Sept. 20, 1941, eff. Dec. 31, 1941; July 20, 1954, eff. Jan. 1, 1955; March 19, 1957, eff. Sept. 1, 1957; April 12, 1962, eff. Sept. 1, 1962; July 11, 1977, eff. Jan. 1, 1978; June 10, 1980, eff. Jan. 1, 1981; Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

RULE 325. [REPEALED]

(Repealed by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 326. NOT MORE THAN TWO.

Not more than two new trials shall be granted either party in the same cause because of insufficiency or weight of the evidence.

RULE 327. FOR JURY MISCONDUCT.

a. When the ground of a motion for new trial, supported by affidavit, is misconduct of the jury or of the officer in charge of them, or because of any communication made to the jury, or that a juror gave an erroneous or incorrect answer on voir dire examination, the court shall hear evidence thereof from the jury or others in open court, and may grant a new trial if such misconduct proved, or the communication made, or the erroneous or incorrect answer on voir dire examination, be material, and if it reasonably appears from the evidence both on the hearing of the motion and the trial of the case and from the record as a whole that injury probably resulted to the complaining party.

b. A juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict concerning his mental processes in connection therewith, except that a juror may testify whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

(Amended by Order July 20, 1954, eff. Jan. 1, 1955; Dec. 5, 1983, eff. April 1, 1984.)

RULE 328. [REPEALED]

(Repealed by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 329. MOTION FOR NEW TRIAL ON JUDGMENT FOLLOWING CITATION BY PUBLICATION

In cases in which judgment has been rendered on service of process by publication, when the defendant has not appeared in person or by attorney of his own selection:

(a) The court may grant a new trial upon petition of the defendant showing good cause, supported by affidavit, filed within two years after such judgment was signed. The parties adversely interested in such judgment shall be cited as in other cases.

(b) Execution of such judgment shall not be suspended unless the party applying therefor shall give a good and sufficient bond payable to the plaintiff in the judgment, in an amount fixed in accordance with Appellate Rule 47 relating to supersedeas bonds, to be approved by the clerk, and conditioned that the party will prosecute his petition for new trial to effect and will perform such judgment as may be rendered by the court should its decision be against him.

(c) If property has been sold under the judgment and execution before the process was suspended, the defendant shall not recover the property so sold, but shall have judgment against the plaintiff in the judgment for the proceeds of such sale.

(d) If the motion is filed more than thirty days after the judgment was signed, the time period shall be computed pursuant to Rule 306a(7).

(Amended by Order June 10, 1980, eff. Jan. 1, 1981; Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

RULE 329a. COUNTY COURT CASES.

If a case or other matter is on trial or in the process of hearing when the term of the county court expires, such trial, hearing or other matter may be proceeded with at the next or any subsequent term of court and no motion or plea shall be considered as waived or overruled, because not acted upon at the term of court at which it was filed, but may be acted upon at any time the judge may fix or at which it may have been postponed or continued by agreement of the parties with leave of the court. This subdivision is not applicable to original or amended motions for new trial which are governed by Rule 329b.

(Adopted by Order July 20, 1954 eff. Jan. 1, 1955. Amended by Order March 19, 1957, eff. Sept. 1, 1957; July 26, 1960, eff. Jan. 1, 1961.)

RULE 329b. TIME FOR FILING MOTIONS.

The following rules shall be applicable to motions for new trial and motions to modify, correct, or reform judgments (other than motions to correct the record under Rule 316) in all district and county courts:

(a) A motion for new trial, if filed, shall be filed prior to or within thirty days after the judgment or other order complained of is signed.

(b) One or more amended motions for new trial may be filed without leave of court before any preceding motion for new trial filed by the movant is overruled and within thirty days after the judgment or other order complained of is signed.

(c) In the event an original or amended motion for new trial or a motion to modify, correct or reform a judgment 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 expiration of that period.

(d) The trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment within thirty days after the judgment is signed.

(e) If a motion for new trial is timely filed by any party, the trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment until thirty days after all such timely-filed motions are overruled, either by a written and signed order or by operation of law, whichever occurs first.

(f) On expiration of the time within which the trial court has plenary power, a judgment cannot be set aside by the trial court except by bill of review for sufficient cause, filed within the time allowed by law; provided that the court may at any time correct a clerical error in the record of a judgment and render judgment nunc pro tunc under Rule 316, and may also sign an order declaring a previous judgment or order to be void because signed after the court's plenary power had expired.

(g) A motion to modify, correct, or reform a judgment (as distinguished from motion to correct the record of a judgment under Rule 316), if filed, shall be filed and determined within the time prescribed by this rule for a motion for new trial and shall extend the trial court's plenary power and the time for perfecting an appeal in the same manner as a motion for new trial. Each such motion shall be in writing and signed by the party or his attorney and shall specify the respects in which the judgment should be modified, corrected, or reformed. The overruling of such a motion shall not preclude the filing of a motion for new trial, nor shall the overruling of a motion for new trial preclude the filing of a motion to modify, correct, or reform.

(h) If a judgment is modified, corrected or reformed in any respect, the time for appeal shall run from the time the modified, corrected, or reformed judgment is signed, but if a correction is made pursuant to Rule 316 after expiration of the period of plenary power provided by this rule, no complaint shall be heard on appeal that could have been presented in an appeal from the original judgment.

(Adopted by Order July 20, 1954, eff. Jan. 1, 1955. Amended by Order July 26, 1960), eff. Jan. 1, 1961; July 20, 1966, eff. Jan. 1, 1967; Oct. 3, 1972, eff. Feb. 1, 1973; July 11, 1977, eff. Jan. 1, 1978; June 10, 1980, eff. Jan. 1, 1981; Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

K.
CERTAIN DISTRICT COURTS

RULE 330. RULES OF PRACTICE AND PROCEDURE IN CERTAIN DISTRICT COURTS.

The following rules of practice and procedure shall govern and be followed in all civil actions in district courts in counties where the only district court of said county vested with civil jurisdiction, or all the district courts thereof having civil jurisdiction, have successive terms in said county throughout the year, without more than two days intervening between any of such terms, whether or not any one or more of such district courts include one or more other counties within its jurisdiction.

(a) **Appealed Cases**. In cases appealed to said district courts from inferior courts, the appeal, including transcript, shall be filed in the district court within thirty (30) days after the rendition of the judgment or order appealed from, and the appellee shall enter his appearance on the docket or answer to said appeal on or before ten o'clock a.m. of the Monday next after the expiration of twenty (20) days from the date the appeal is filed in the district court.

(b) Repealed by order of July 22, 1975, eff. Jan. 1, 1976.

(c) **Postponement or Continuance**. Cases may be postponed or continued by agreement with the approval of the court, or upon the court's own motion or for cause. When a case is called for trial and only one party is ready, the court may for good cause either continue the case for the term or postpone and reset it for a later day in the same or succeeding term.

(d) **Cases May Be Reset**. A case that is set and reached for trial may be postponed for a later day in the term or continued and reset for a day certain in the succeeding term on the same grounds as an application for continuance would be granted in other district courts. After any case has been set and reached in its due order and called for trial two (2) or more times and not tried, the court may dismiss the same unless the parties agree to a postponement or continuance but the court shall respect written agreements of counsel for postponement and continuance if filed in the case when or before it is called for trial unless to do so will unreasonably delay or interfere with other business of the court.

(e) **Exchange and Transfer**. Where in such county there are two or more district courts having civil jurisdiction, the judges of such courts may, in their discretion, exchange benches or districts from time to time, and may transfer cases and other proceedings from one court to another, and any of them may in his own courtroom try and determine any case or proceeding pending in another court without having the case transferred, or may sit in any other of said courts and there hear and determine any case there pending, and every judgment and order shall be entered in the minutes of the court in which the case is pending and at the time the judgment or order is rendered, and two (2) or more judges may try different cases in the same court at the same time, and each may occupy his own courtroom or the room of any other court. The judge of any such court may issue restraining orders and injunctions returnable to any other judge or court, and any judge may transfer any case or proceeding pending in his court to any other of said courts, and the judge of any court to which a case or proceeding is transferred shall receive and try the same, and in turn shall have power in his discretion to transfer any such case to any other of said courts and any other judge may in his courtroom try any case pending in any other of such courts.

(f) **Cases Transferred to Judges Not Occupied**. Where in such counties there are two or more district courts having civil jurisdiction, when the judge of any such court shall become disengaged, he shall notify the presiding judge, and the presiding judge shall transfer to the court of the disengaged judge the next case which is ready for trial in any of said courts. Any judge not engaged in his own court may try any case in any other court.

(g) **Judge May Hear Only Part of Case**. Where in such counties there are two or more district courts having civil jurisdiction, any judge may hear any part of any case or proceeding pending in any of said courts and determine the same, or may hear and determine any question in any case, and any other judge may complete the hearing and render judgment in the case.

(h) **Any Judge May Hear Dilatory Pleas**. Where in such county there are two or more district courts having civil jurisdiction, any judge may hear and determine motions, petitions for injunction, applications for appointment of receivers, interventions, pleas of privilege, pleas in abatement, all dilatory pleas and special exceptions, motions for a new trial and all preliminary matters, questions and proceedings and may enter judgment or order thereon in the court in which the case is pending without having the case transferred to the court of the judge acting, and the judge in whose court the case is pending may thereafter proceed to hear, complete and determine the case or other matter, or any part thereof, and render final judgment therein. Any judgment rendered or action taken by any judge in any of said courts in the county shall be valid and binding.

(i) **Acts in Succeeding Terms**. If a case or other matter is on trial, or in the process of hearing when the term of court expires, such trial, hearing or other matter may be proceeded with at the next or any subsequent term of court and no motion or plea shall be considered as waived or overruled, because not acted upon at the term of court at which it was filed, but may be acted upon at any time the judge may fix or at which it may have been postponed or continued by agreement of the parties with leave of the court. This subdivision is not applicable to original or amended motions for new trial which are governed by Rule 329b.

(Amended by Order July 20, 1954, eff. Jan. 1, 1955; July 26, 1960, eff. Jan. 1, 1961; Oct. 3, 1972, eff. Feb. 1, 1973; July 22, 1975, eff. Jan. 1, 1976.)

RULE 331. [REPEALED]

(Repealed by Order July 15, 1987, eff. Jan. 1, 1988.)

SECTION 12.
REVIEW BY DISTRICT COURTS OF COUNTY COURT RULINGS

RULES 332 TO 351. [REPEALED]

(Repealed by Order July 22, 1975, eff. Jan. 1, 1976.)

PART III.
RULES OF PROCEDURE FOR THE COURTS OF APPEALS

RULES 352 TO 358. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 359. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 360. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULES 361 AND 362. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULES 363 TO 369a. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 370. [REPEALED]

(Repealed by Order June 10, 1980, eff. Jan. 1, 1981.)

RULES 371 TO 373. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 374. [REPEALED]

(Repealed by Order July 11, 1977, eff. Jan. 1, 1978.)

RULES 375 AND 376. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 376a TO 389a. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 390. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 391. [REPEALED]

(Repealed by Order Oct. 12, 1949, eff. March 1, 1950.)

RULE 392. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULES 393 TO 414. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULES 415 TO 417. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 4, 1984.)

RULES 418 TO 420. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 421. [REPEALED]

(Repealed by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 422. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 423. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULES 424 TO 427. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULES 428 AND 429. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULES 430 TO 432. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULES 433 TO 442. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULES 443 AND 444. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 445. [REPEALED]

(Repealed by Order July 11, 1977, eff. Jan. 1, 1978.)

RULES 446 TO 448. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULES 449 AND 450. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULES 451 AND 452. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULES 453 TO 455. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULES 456 TO 458. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 459. [REPEALED]

(Repealed by Order Sept. 20, 1941, eff. Dec. 31, 1941.)

RULES 460 TO 462. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULES 463 AND 464. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULES 465 AND 466. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 467. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULES 468 TO 470. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 471. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 472. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 473. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

PART IV.
RULES OF PRACTICE FOR THE SUPREME COURT

RULES 474 TO 481. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986)

RULE 482. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULES 483 TO 486. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 487. [REPEALED]

(Repealed by Order Oct. 10, 1945, eff. Feb. 1, 1946.)

RULES 488 TO 491. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 492. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 493. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 494. [REPEALED]

(Repealed by Order Oct. 10, 1945, eff. Feb. 1, 1946.)

RULE 495. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 496. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULES 497 TO 505. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept., 1, 1986.)

RULE 506. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 507. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULE 508. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 509. [REPEALED]

(Repealed by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 510. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULES 511 TO 513. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULES 514 AND 515. [REPEALED]

(Repealed by Order April 10, 1986, eff. Sept. 1, 1986.)

RULES 516 AND 517. [REPEALED]

(Repealed by Order Dec. 5, 1983, eff. April 1, 1984.)

RULES 518 TO 522. [REPEALED]

(Repealed by Order Oct. 10, 1945, eff. Feb. 1, 1946.)

PART V.
IN RULES OF PRACTICE IN JUSTICE COURTS

[Rules of Civil Procedure 500-510 govern cases filed on or after August 31 , 2013, and cases pending on August 31 , 2013, except to the extent that in the opinion of the court their application in a case pending on August 31 , 2013, would not be feasible or would work injustice, in which event the formerly applicable procedure applies. An action taken before August 31 , 2013, in a case pending on August 31, 2013, that was done pursuant to any previously applicable procedure must be treated as valid. Where citation or other process was issued or served prior to August 31, 2013 , in compliance with any previously applicable procedure, the party served has the time provided for under the previously applicable procedure to answer or otherwise respond.]

RULE 500. GENERAL RULES.

RULE 500.1. CONSTRUCTION OF RULES.

Unless otherwise expressly provided, in Part V of these Rules of Civil Procedure:

(a) the past, present, and future tense each includes the other;

(b) the term "it" includes a person of either gender or an entity; and

(c) the singular and plural each includes the other.

RULE 500.2. DEFINITIONS.

In Part V of these Rules of Civil Procedure:

(a) "Answer" is the written response that a party who is sued must file with the court after being served with a citation.

(b) "Citation" is the court-issued document required to be served upon a party to inform the party that it has been sued.

(c) "Claim" is the legal theory and alleged facts that, if proven, entitle a party to relief against another party in court.

(d) "Clerk" is a person designated by the judge as a justice court clerk, or the judge if there is no clerk available.

(e) "Counterclaim" is a claim brought by a party who has been sued against the party who filed the lawsuit, for example, a defendant suing a plaintiff.

(f) "County court" is the county court, statutory county court, or district court in a particular county with jurisdiction over appeals of civil cases from justice court.

(g) "Court proceeding" is an appearance before the court, such as a hearing or a trial.

(h) "Cross-claim" is a claim brought by one party against another party on the same side of a lawsuit. For example, if a plaintiff sues two defendants, the defendants can seek relief against each other by means of a cross-claim.

(i) "Default judgment" is a judgment awarded to a plaintiff when the defendant fails to answer and dispute the plaintiff s claims in the lawsuit.

(j "Defendant" is a party who is sued, including a plaintiff against whom a counterclaim is filed.

(k) "Defense" is an assertion by a defendant that the plaintiff is not entitled to relief from the court.

(l) "Discovery" is the process through which parties obtain information from each other in order to prepare for trial or enforce a judgment. The term does not refer to any information that a party is entitled to under applicable law.

(m) "Dismissed without prejudice" means a case has been dismissed but has not been finally decided and may be refiled.

(n) "Dismissed with prejudice" means a case has been dismissed and finally decided and may not be refiled.

(o) "Judge" is a justice of the peace.

(p) "Judgment" is a final order by the court that states the relief, if any, a party is entitled to or must provide.

(q) "Jurisdiction" is the authority of the court to hear and decide a case.

(r) "Motion" is a request that the court make a specified ruling or order.

(s) "Notice" is a document prepared and delivered by the court or a party stating that something is required of the party receiving the notice.

(t) "Participant" is any party, attorney, witness, or juror who participates in a court proceeding.

(u) "Party" is a person or entity involved in the case that is either suing or being sued, including all plaintiffs, defendants, and third parties that have been joined in the case.

(v) "Petition" is a formal written application stating a party's claims and requesting relief from the court. It is the first document filed with the court to begin a lawsuit.

(w) "Plaintiff' is a party who sues, including a defendant who files a counterclaim.

(x) "Pleading" is a written document filed by a party, including a petition and an answer, that states a claim or defense and outlines the relief sought.

(y) "Relief' is the remedy a party requests from the court, such as the recovery of money or the return of property.

(z) "Serve" and "service" are delivery of citation as required by Rule 50 1 .2, or of a document as required by Rule 501 .4.

(aa) "Sworn" means signed in front of someone authorized to take oaths, such as a notary, or signed under penalty of perjury. Filing a false sworn document can result in criminal prosecution.

(bb) "Third party claim" is a claim brought by a party being sued against someone who is not yet a party to the case.

(Amended by Tex. Sup. Ct. Misc. Docket No. 22-9091, Oct. 14, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9004, Jan. 27, 2023, eff. Feb. 1, 2023.)

RULE 500.3. APPLICATION OF RULES IN JUSTICE COURT CASES.

(a) *Small Claims Case*. A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than $20,000, excluding statutory interest and court costs but including attorney fees, if any. Small claims cases are governed by Rules 500-507 of Part V of the Rules of Civil Procedure.

(b) *Debt Claim Case*. A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than $20,000, excluding statutory interest and court costs but including attorney fees, if any. Debt claim cases injustice court are governed by Rules 500-507 and 508 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 508 and the rest of Part V, Rule 508 applies.

(c) *Repair and Remedy Case*. A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than $20,000, excluding statutory interest and court costs but including attorney fees, if any. Repair and remedy

cases are governed by Rules 500-507 and 509 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 509 and the rest of Part V, Rule 509 applies.

(d) *Eviction Case*. An eviction case is a lawsuit brought to recover possession of real property under Chapter 24 of the Texas Property Code, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than $20,000, excluding statutory interest and court costs but including attorney fees, if any. Eviction cases are governed by Rules 500-507 and 5 1 0 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 5 1 0 and the rest of Part V, Rule 510 applies.

(e) *Application of Other Rules*. The other Rules of Civil Procedure and the Rules of Evidence do not apply except:

(1) when the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties; or

(2) when otherwise specifically provided by law or these rules.

(f) *Examination of Rules*. The court must make the Rules of Civil Procedure and the Rules of Evidence available for examination, either in paper form or electronically, during the court's business hours.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9070, May 26, 2020, eff. Sept. 1, 2020.)

RULE 500.4. REPRESENTATION IN JUSTICE COURT CASES.

(a) *Representation of an Individual*. An individual may:

(1) represent himself or herself;

(2) be represented by an authorized agent in an eviction case; or

(3) be represented by an attorney.

(b) *Representation of a Corporation or Other Entity*. A corporation or other entity may:

(1) be represented by an employee, owner, officer, or partner of the entity who is not an attorney;

(2) be represented by a property manager or other authorized agent in an eviction case; or

(3) be represented by an attorney.

(c) *Assisted Representation*. The court may, for good cause, allow an individual representing himself or herself to be assisted in court by a family member or other individual who is not being compensated.

RULE 500.5. COMPUTATION OF TIME; TIMELY FILING.

(a) *Computation of Time*. To compute a time period in these rules:

(1) exclude the day of the event that triggers the period;

(2) count every day, including Saturdays, Sundays, and legal holidays; and

(3) include the last day of the period, but

(A) if the last day is a Saturday, Sunday, or legal holiday, the time period is extended to the next day that is not a Saturday, Sunday, or legal holiday; and

(B) if the last day for filing falls on a day during which the court is closed before 5:00p.m., the time period is extended to the court's next business day.

(b) *Timely Filing by Mail*. Any document required to be filed by a given date is considered timely filed if deposited in the U.S. mail on or before that date, and received within 10 days of the due date. A legible postmark affixed by the United States Postal Service is evidence of the date of mailing.

(c) *Extensions*. The judge may, for good cause shown, extend any time period under these rules except those relating to new trial and appeal.

RULE 500.6. JUDGE TO DEVELOP THE CASE.

In order to develop the facts of the case, a judge may question a witness or party and may summon any person or party to appear as a witness when the judge considers it necessary to ensure a correct judgment and a speedy disposition.

RULE 500.7. EXCLUSION OF WITNESSES.

The court must, on a party's request, or may, on its own initiative, order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize the exclusion of:

(a) a party who is a natural person or the spouse of such natural person;

(b) an officer or employee designated as a representative of a party who is not a natural person; or

(c) a person whose presence is shown by a party to be essential to the presentation of the party's case.

RULE 500.8. SUBPOENAS.

(a) *Use*. A subpoena may be used by a party or the judge to command a person or entity to attend and give testimony at a hearing or trial. A person may not be required by subpoena to appear in a county that is more than ISO miles from where the person resides or is served.

(b) *Who Can Issue*. A subpoena may be issued by the clerk of the justice court or an attorney authorized to practice in the State of Texas, as an officer of the court.

(c) *Form*. Every subpoena must be issued in the name of the "State of Texas" and must:

(1) state the style of the suit and its case number;

(2) state the court in which the suit is pending;

(3) state the date on which the subpoena is issued;

(4) identify the person to whom the subpoena is directed;

(5) state the date, time, place, and nature of the action required by the person to whom the subpoena is directed;

(6) identify the party at whose instance the subpoena is issued, and the party's attorney of record, if any;

(7) state that "Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of court from which the subpoena is issued and may be punished by fine or confinement, or both"; and

(8) be signed by the person issuing the subpoena.

(d) *Service: Where, By Whom, How*. A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or by any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney of record. Proof of service must be made by filing either:

(1) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(2) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

(e) *Compliance Required*. A person commanded by subpoena to appear and give testimony must remain at the hearing or trial from day to day until discharged by the court or by the party summoning the witness. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(f) *Objection*. A person commanded to attend and give testimony at a hearing or trial may object or move for a protective order before the court at or before the time and place specified for compliance. A party causing a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on objections or motions for protection, the court must provide a person served with a subpoena an adequate time for compliance and protection from undue burden or expense. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

(g) *Enforcement*. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or of a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. A fine may not be imposed, nor a person served with a subpoena attached, for failure to comply with a subpoena without proof of service and proof by affidavit of the party requesting the subpoena or the party's attorney of record that all fees due the witness by law were paid or tendered.

RULE 500.9. DISCOVERY.

(a) *Pretrial Discovery*. Pretrial discovery is limited to that which the judge considers reasonable and necessary. Any requests for pretrial discovery must be presented to the court for approval by written motion. The motion must be served on the responding party. Unless a hearing is requested, the judge may rule on the motion without a hearing. The discovery request must not be served on the responding party unless the judge issues a signed order approving the request. Failure to comply with a discovery order can result in sanctions, including dismissal of the case or an order to pay the other party's discovery expenses.

(b) *Post-judgment Discovery*. Post-judgment discovery is not required to be filed with the court. The party requesting discovery must give the responding party at least 3 0 days to respond to a post-judgment discovery request. The responding party may file a written objection with the court within 30 days of receiving the request. If an objection is filed, the judge must hold a hearing to determine if the request is valid. If the objection is denied, the judge must order the party to respond to the request. If the objection is upheld, the judge may reform the request or dismiss it entirely.

(Adopted by Order Feb 12, 2013 and Order April 15, 2013, eff. Aug. 31, 2013.)

Rules of Civil Procedure 500-510 govern cases filed on or after August 31 , 2013, and cases pending on August 31 , 2013, except to the extent that in the opinion of the court their application in a case pending on August 31 , 2013, would not be feasible or would work injustice, in which event the formerly applicable procedure applies. An action taken before August 31 , 2013, in a case pending on August 31, 2013, that was done pursuant to any previously applicable procedure must be treated as valid. Where citation or other process was issued or served prior to August 31, 2013 , in compliance with any previously applicable procedure, the party served has the time provided for under the previously applicable procedure to answer or otherwise respond.

RULE 500.10. APPEARANCES AT COURT PROCEEDINGS.

(a) *Participant Method of Appearance*. A judge may allow or require a participant to appear at a court proceeding by videoconference, teleconference, or other available electronic means.

(b) *Judge Method of Appearance; Location*. A judge may appear at a court proceeding by videoconference, teleconference, or other available electronic means. However, even if appearing electronically, a judge must conduct the court proceeding from the judge's office at times prescribed by the commissioner's court, as provided by statute.

(c) *Factors*. In determining whether to allow or require electronic participation, the judge should consider factors such as:

(1) case type;

(2) the number of parties and witnesses;

(3) the type of evidence to be submitted, if any;

(4) technological restrictions such as lack of access to or proficiency in necessary technology;

(5) travel restrictions such as lack of transportation, distance, or inability to take off work;

(6) whether a method of appearance is best suited to provide necessary language access services for a person with limited English proficiency or accommodations for a person with a disability;

(7) any previous abuse of a method of appearance; and

(8) any agreement or objection by the parties.

(d) *Notice*. If the judge allows or requires a participant to appear electronically, the judge must provide reasonable notice of the electronic participation and include the notice in the papers of the case. The notice must contain the information needed for participants to participate in the proceeding, including instructions for joining the proceeding electronically, the court's designated contact information, and instructions for submitting evidence to be considered in the proceeding.

(e) *Open Courts*. If the judge conducts a court proceeding at the judge's office in which all other participants appear electronically, then the judge must:

(1) provide reasonable notice to the public of how to observe the court proceeding; and

(2) provide the public the opportunity to observe the court proceeding, unless the judge has determined that the proceeding must be closed to protect an overriding interest, considered all less-restrictive alternatives to closure, and made findings in a written order adequate to support closure.

(Adopted by Tex. Sup. Ct. Misc. Docket No. 22-9091, Oct. 14, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9004, Jan. 27, 2023, eff. Feb. 1, 2023.)

Notes and Comments

Comment to 2023 change: New Rule 500.10 clarifies procedures for appearances at court proceedings. Paragraph (a) governs the method of appearance for court "participants," which is defined in Rule 500.2. Under paragraph (b), a judge in any justice court proceeding may appear electronically, but the judge must preside over it from the judge's office at times prescribed by the commissioner's court. TEX. GOV'T CODE § 27.051(b). Nothing in paragraph (b) permits the judge to conduct a proceeding away from a location required by law. Paragraph (c) addresses factors that a judge should consider in determining the method of appearance. Paragraph (d) clarifies requirements for notices. Paragraph (e) recognizes the public's right to reasonable notice of and access to a fully electronic proceeding unless there is an overriding interest. A judge should rarely close a court proceeding from public observation, and in such an exceptional case, the judge must use the least restrictive measure to protect the overriding interest.

RULE 501. CITATION AND SERVICE.

RULE 501.1. CITATION.

(a) *Issuance*. When a petition is tiled with a justice court to initiate a suit, the clerk must promptly issue a citation and deliver the citation as directed by the plaintiff. The plaintiff is responsible for obtaining service on the defendant of the citation and a copy of the petition with any documents filed with the petition. Upon request, separate or additional citations must be issued by the clerk. The clerk must retain a copy of the citation in the court's file.

(b) *Form*. The citation must:

(1) be styled "The State of Texas";

(2) be signed by the clerk under seal of court or by the judge;

(3) contain the name, location, and address of the court;

(4) show the date of filing of the petition;

(5) show the date of issuance of the citation;

(6) show the file number and names of parties;

(7) be directed to the defendant;

(8) show the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff; and

(9) notify defendant that if the defendant fails to file an answer, judgment by default may be rendered for the relief demanded in the petition.

(c) *Notice*. The citation must include the following notice to the defendant in boldface type:

"You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

(d) *Copies*. The plaintiff must provide enough copies to be served on each defendant. If the plaintiff fails to do so, the clerk may make copies and charge the plaintiff the allowable copying cost.

RULE 501.2. SERVICE OF CITATION.

(a) *Who May Serve*. No person who is a party to or interested in the outcome of the suit may serve citation in that suit, and, unless otherwise authorized by written court order, only a sheriff or constable may serve a citation in an eviction case, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced by the person delivering the process. Other citations may be served by:

(1) a sheriff or constable;

(2) a process server certified under order of the Supreme Court;

(3) the clerk of the court, if the citation is served by registered or certified mail; or

(4) a person authorized by court order who is 18 years of age or older.

(b) *Method of Service*. Citation must be served by:

(1) delivering a copy of the citation with a copy of the petition attached to the defendant in person, after endorsing the date of delivery on the citation; or

(2) mailing a copy of the citation with a copy of the petition attached to the defendant by registered or certified mail, restricted delivery, with return receipt or electronic return receipt requested.

(c) *Service Fees*. A plaintiff must pay all fees for service unless the plaintiff has filed a Statement of Inability to Afford Payment of Court Costs with the court. If the plaintiff has filed a Statement, the plaintiff must arrange for the citation to be served by a sheriff, constable, or court clerk.

(d) *Service on Sunday*. A citation cannot be served on a Sunday except in attachment, garnishment, sequestration, or distress proceedings.

(e) *Alternative Service of Citation*. If the methods under (b) are insufficient to serve the defendant, the plaintiff, or the constable, sheriff, process server certified under order of the Supreme Court, or other person authorized to serve process, may make a request for alternative service. This request must include a sworn statement describing the methods attempted under (b) and stating the defendant's usual place of business or residence, or other place where the defendant can probably be found. The court may authorize the following types of alternative service:

(1) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also leaving a copy of the citation with petition attached at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age; or

(2) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also serving by any other method that the court finds is reasonably likely to provide the defendant with notice of the suit.

(f) *Service by Publication*. In the event that service of citation by publication is necessary, the process is governed by the rules in county and district court.

(Amended by Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016.)

[Statement of Inability to Afford Payment of Court Costs or an Appeal Bond as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by ; Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

RULE 501.3. DUTIES OF OFFICER OR PERSON RECEIVING CITATION; RETURN OF SERVICE.

(a) *Endorsement; Execution; Return*. The officer or authorized person to whom process is delivered must:

(1) endorse on the process the date and hour on which he or she received it;

(2) execute and return the same without delay; and

(3) complete a return of service, which may, but need not, be endorsed on or attached to the citation.

(b) *Contents of Return*. The return, together with any document to which it is attached, must include the following information:

(1) the case 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 service;

(10) if the person named in (9) is a process server certified under Supreme Court Order, 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) *Citation by Mail*. When the citation is served by registered or certified mail as authorized by Rule 501.2(b)(2), the return by the officer or authorized person must also contain the receipt with the addressee's signature.

(d) *Failure to Serve*. When the officer or authorized person has not served the citation, the return must 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 ascertainable.

(e) *Signature*. 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 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 (First) (Middle) (Last), my date of birth is (Month) (Day), (Year), and my address is (Street), (City), (State) (Zip Code), (Country). 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) *Alternative Service*. Where citation is executed by an alternative method as authorized by 501.2(e), proof of service must be made in the manner ordered by the court.

(g) *Filing Return*. The return and any document to which it is attached must be filed with the court and may be filed electronically or by fax, if those methods of filing are available.

(h) *Prerequisite for Default Judgment*. No default judgment may be granted in any case until 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 501.2(e), has been on tile with the clerk of the court 3 days, exclusive of the day of filing and the day of judgment.

RULE 501.4. SERVICE OF PAPERS OTHER THAN CITATION.

(a) *Method of Service*. Other than a citation or oral motions made during trial or when all parties are present, every notice required by these rules, and every pleading, plea, motion, application to the court for an order, or other form of request, must be served on all other parties in one of the following ways:

(1) In person. A copy may be delivered to the party to be served, or the party's duly authorized agent or attorney of record, in person or by agent.

(2) Mail or courier. A copy may be sent by courier-receipted delivery or by certified or registered mail, to the party's last known address. Service by certified or registered mail is complete when the document is properly addressed and deposited in the United States mail, postage prepaid.

(3) Fax. A copy may be faxed to the recipient's current fax number. Service by fax after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.

(4) Email. A copy may be sent to an email address expressly provided by the receiving party, if the party has consented to email service in writing. Service by email after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.

(5) Other. A copy may be delivered in any other manner directed by the court.

(b) *Timing*. If a document is served by mail, 3 days will be added to the length of time a party has to respond to the document. Notice of any court proceeding requested by a party must be served on all other parties not less than 3 days before the time specified for the court proceeding.

(c) *Who May Serve*. Documents other than a citation may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify.

(d) *Certificate of Service*. The party or the party's attorney of record must include in writing on all documents filed a signed statement describing the manner in which the document was served on the other party or parties and the date of service. A certificate by a party or the party's attorney of record, or the return of the officer, or the sworn statement of any other person showing service of a notice is proof of service.

(e) *Failure to Serve*. A party may offer evidence or testimony that a notice or document was not received, or, if service was by mail, that it was not received within 3 days from the date of mailing, and upon so finding, the court may extend the time for taking the action required of the party or grant other relief as it deems just.

(Adopted by Order Feb 12, 2013 and Order April 15, 2013, eff. Aug. 31, 2013. Amended by Tex. Sup. Ct. Misc. Docket No. 22-9091, Oct. 14, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9004, Jan. 27, 2023, eff. Feb. 1, 2023.)

Rules of Civil Procedure 500-510 govern cases filed on or after August 31 , 2013, and cases pending on August 31 , 2013, except to the extent that in the opinion of the court their application in a case pending on August 31 , 2013, would not be feasible or would work injustice, in which event the formerly applicable procedure applies. An action taken before August 31 , 2013, in a case pending on August 31, 2013, that was done pursuant to any previously applicable procedure must be treated as valid. Where citation or other process was issued or served prior to August 31, 2013 , in compliance with any previously applicable procedure, the party served has the time provided for under the previously applicable procedure to answer or otherwise respond.

RULE 502. INSTITUTION OF SUIT.

RULE 502.1. PLEADINGS AND MOTIONS MUST BE WRITTEN, SIGNED, AND FILED.

Except for oral motions made during trial or when all parties are present, every pleading, plea, motion, application to the court for an order, or other form of request must be written and signed by the party or its attorney and must be filed with the court. A document may be filed with the court by personal or commercial delivery, by mail, or electronically, if the court allows electronic filing. Electronic filing is governed by Rule 21.

(Amended by Order Aug. 16, 2013, eff. Jan. 1, 2014; Dec. 13, 2013, eff. Jan. 1, 2013.)

RULE 502.2. PETITION.

(a) *Contents.* To initiate a lawsuit, a petition must be filed with the court. A petition must contain:

(1) the name of the plaintiff;

(2) the name, address, telephone number, and fax number, if any, of the plaintiff's attorney, if applicable, or the address, telephone number, and fax number, if any, of the plaintiff;

(3) the name, address, and telephone number, if known, of the defendant;

(4) the amount of money, if any, the plaintiff seeks;

(5) a description and claimed value of any personal property the plaintiff seeks;

(6) a description of any other relief requested;

(7) the basis for the plaintiff's claim against the defendant; and

(8) if the plaintiff consents to email service of the answer and any other motions or pleadings, a statement consenting to email service and email contact information.

(b) Repealed by Misc. Docket No. 19-9017, eff. Feb. 26, 2019

[Justice Court Civil Case Information Sheet as provided in Misc. Docket No. 13-9049, Feb. 12, 2013, eff. Aug. 31, 2013; April 15, 2013, eff. Aug. 31, 2013 and applies to all cases filed on or after Aug. 31, 2013. Repealed by Misc. Docket No. 19-9017, eff. Feb. 26, 2019.]

RULE 502.3. FEES; INABILITY TO AFFORD FEES.

(a) *Fees and Statement of Inability to Afford Payment of Court Costs.* On filing the petition, the plaintiff must pay the appropriate filing fee and service fees, if any, with the court. A plaintiff who is unable to afford the fees must file a Statement of Inability to Afford Payment of Court Costs. The Statement must either be sworn to before a notary or made under penalty of perjury. Upon filing the Statement, the clerk must docket the action, issue citation, and provide any other customary services.

(b) *Supreme Court Form; Contents of Statement.* The plaintiff must use the form Statement approved by the Supreme Court, or the Statement must include the information required by the Court-approved form. The clerk must make the form available to any person for free without request.

(c) *Certificate of Legal-Aid Provider.* If the party is represented by an attorney who is providing legal services either directly or by referral from a legal-aid provider described in Rule 145(d), the attorney may file a certificate confirming that the provider screened the party for eligibility under the income and asset guidelines established by the provider. A Statement that is accompanied by the certificate of a legal-aid provider may not be contested under (d).

(d) *Contest.*

(1) Unless a certificate is filed under (c), the defendant may file a contest of the Statement at any time within 7 days after the day the defendant's answer is due. If the Statement attests to receipt of government entitlement based on indigence, the Statement may only be contested with regard to the veracity of the attestation.

(2) If contested, the judge must hold a hearing to determine the plaintiff's ability to afford the fees. At the hearing, the burden is on the plaintiff to prove the inability to afford fees.

(3) The judge may, regardless of whether the defendant contests the Statement, examine the Statement and conduct a hearing to determine the plaintiff's ability to afford fees.

(4) If the judge determines that the plaintiff is able to afford the fees, the judge must enter a written order listing the reasons for the determination, and the plaintiff must pay the fees in the time specified in the order or the case will be dismissed without prejudice.

(Amended by Tex. Sup. Ct. Misc. Docket No. 16-9056 and Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016; Tex. Sup. Ct. Misc. Docket No. 20-9154 and Tex. Sup. Ct. Misc. Docket No. 21-9077, eff. Sept. 1, 2021.)

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by ; Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

RULE 502.4. VENUE—WHERE A LAWSUIT MAY BE BROUGHT.

(a) *Applicable Law.* Laws specifying the venue—the county and precinct where a lawsuit may be brought—are found in Chapter 15, Subchapter E of the Texas Civil Practice and Remedies Code, which is available online and for examination during the court's business hours.

(b) *General Rule.* Generally, a defendant in a small claims case as described in Rule 500.3(a) or a debt claim case as described in Rule 500.3(b) is entitled to be sued in one of the following venues:

(1) the county and precinct where the defendant resides;

(2) the county and precinct where the incident, or the majority of incidents, that gave rise to the claim occurred;

(3) the county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed; or

(4) the county and precinct where the property is located, in a suit to recover personal property.

(c) *Non-Resident Defendant; Defendant's Residence Unknown.* If the defendant is a non-resident of Texas, or if defendant's residence is unknown, the plaintiff may file the suit in the county and precinct where the plaintiff resides.

(d) *Motion to Transfer Venue.* If a plaintiff files suit in an improper venue, a defendant may challenge the venue selected by filing a motion to transfer venue. The motion must be filed before trial, no later than 21 days after the day the defendant's answer is filed, and must contain a sworn statement that the venue chosen by the plaintiff is improper and a specific county and precinct of proper venue to which transfer is sought. If the defendant fails to name a county and precinct, the court must instruct the defendant to do so and allow the defendant 7 days to cure the defect. If the defendant fails to correct the defect, the motion will be denied, and the case will proceed in the county and precinct where it was originally filed.

(1) *Procedure.*

(A) Judge to Set Hearing. If a defendant files a motion to transfer venue, the judge must set a hearing on the motion.

(B) Response. A plaintiff may file a response to a defendant's motion to transfer venue.

(C) Hearing. The parties may present evidence at the hearing. A witness may testify at a hearing, either in person or, with permission of the court, by means of telephone or an electronic communication system.

(D) Judge's Decision. If the motion is granted, the judge must sign an order designating the court to which the case will be transferred. If the motion is denied, the case will be heard in the court in which the plaintiff initially filed suit.

(E) Review. Motions for rehearing and interlocutory appeals of the judge's ruling on venue are not permitted.

(F) Time for Trial of the Case. No trial may be held until at least the 14th day after the judge's ruling on the motion to transfer venue.

(G) Order. An order granting a motion to transfer venue must state the reason for the transfer and the name of the court to which the transfer is made. When such an order of transfer is made, the judge who issued the order must immediately make out a true and correct transcript of all the entries made on the docket in the case, certify the transcript, and send the transcript, with a certified copy of the bill of costs and the original papers in the case, to the court in the precinct to which the case has been transferred. The court receiving the case must then notify the plaintiff that the case has been received and, if the case is transferred to a different county, that the plaintiff has 14 days after receiving the notice to pay the filing fee in the new court, or file a Statement of Inability to Afford Payment of Court Costs. The plaintiff is not entitled to a refund of any fees already paid. Failure to pay the fee or file a Statement will result in dismissal of the case without prejudice.

(e) *Fair Trial Venue Change*. If a party believes it cannot get a fair trial in a specific precinct or before a specific judge, the party may file a sworn motion stating such, supported by the sworn statements of two other credible persons, and specifying if the party is requesting a change of location or a change of judge. Except for good cause shown, this motion must be filed no less than 7 days before trial. If the party seeks a change of judge, the judge must exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge must appoint a visiting judge to hear the case. If the party seeks a change in location, the case must be transferred to the nearest justice court in the county that is not subject to the same or some other disqualification. If there is only one justice of the peace precinct in the county, then the judge must exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge must appoint a visiting judge to hear the case. In cases where exclusive jurisdiction is within a specific precinct, as in eviction cases, the only remedy available is a change of judge. A party may apply for relief under this rule only one time in any given lawsuit.

(f) *Transfer of Venue by Consent*. On the written consent of all parties or their attorneys, filed with the court, venue must be transferred to the court of any other justice of the peace of the county, or any other county.

(Amended by Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016.)

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by ; Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

RULE 502.5. ANSWER.

(a) *Requirements*. A defendant must file with the court a written answer to a lawsuit as directed by the citation and must also serve a copy of the answer on the plaintiff. The answer must contain:

(1) the name of the defendant;

(2) the name, address, telephone number, and fax number, if any, of the defendant's attorney, if applicable, or the address, telephone number, and fax number, if any, of the defendant; and

(3) if the defendant consents to email service, a statement consenting to email service and email contact information.

(b) *General Denial*. An answer that denies all of the plaintiffs allegations without specifying the reasons is sufficient to constitute an answer or appearance and does not bar the defendant from raising any defense at trial.

(c) *Answer Docketed*. The defendant' s appearance must be noted on the court's docket.

(d) *Due Date*. Unless the defendant is served by publication, the defendant's answer is due by the end of the 1 4th day after the day the defendant was served with the citation and petition, but

(1) if the 14th day is a Saturday, Sunday, or legal holiday, the answer is due on the next day that is not a Saturday, Sunday, or legal holiday; and

(2) if the 14th day falls on a day during which the court is closed before 5:00 p.m., the answer is due on the court' s next business day.

(e) *Due Date When Defendant Served by Publication*. If a defendant is served by publication, the defendant' s answer is due by the end of the 42nd day after the day the citation was issued, but

(1) if the 42nd day is a Saturday, Sunday, or legal holiday, the answer is due on the next day that is not a Saturday, Sunday, or legal holiday; and

(2) if the 42nd day falls on a day during which the court is closed before 5:00 p.m., the answer is due on the court's next business day.

RULE 502.6. COUNTERCLAIM; CROSS-CLAIM; THIRD PARTY CLAIM.

(a) *Counterclaim*. A defendant may file a petition stating as a counterclaim any claim against a plaintiff that is within the jurisdiction of the justice court, whether or not related to the claims in the plaintiff s petition. The defendant must file a counterclaim petition as provided in Rule 502.2, and must pay a filing fee or provide a Statement of Inability to Afford Payment of Court Costs. The court need not generate a citation for a counterclaim and no answer to the counterclaim need be filed. The defendant must serve a copy of the counterclaim as provided by Rule 501.4.

(b) *Cross-Claim*. A plaintiff seeking relief against another plaintiff, or a defendant seeking relief against another defendant may file a cross-claim. The filing party must file a cross-claim petition as provided in Rule 502.2, and must pay a filing fee or provide a Statement of Inability to Afford Payment of Court Costs. A citation must be issued and served as provided by Rule 501.2 on any party that has not yet filed a petition or an answer, as appropriate. If the party filed against has filed a petition or an answer, the filing party must serve the cross-claim as provided by Rule 501.4.

(c) *Third Party Claim*. A defendant seeking to bring another party into a lawsuit who may be liable for all or part of the plaintiffs claim against the defendant may file a petition as provided in Rule 502.2, and must pay a filing fee or provide a Statement of Inability to Afford Payment of Court Costs. A citation must be issued and served as provided by Rule 501.2.

(Amended by Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016.)

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

RULE 502.7. AMENDING AND CLARIFYING PLEADINGS.

(a) *Amending Pleadings*. A party may withdraw something from or add something to a pleading, as long as the amended pleading is filed and served as provided by Rule 501.4 not less than 7 days before trial. The court may allow a pleading to be amended less than 7 days before trial if the amendment will not operate as a surprise to the opposing party.

(b) *Insufficient Pleadings*. A party may file a motion with the court asking that another party be required to clarify a pleading. The court must determine if the pleading is sufficient to place all parties on notice of the issues in the lawsuit, and may hold a hearing to make that determination. If the court determines a pleading is insufficient, the court must order the party to amend the pleading and set a date by which the party must amend. If a party fails to comply with the court's order, the pleading may be stricken.

(Adopted by Order Feb 12, 2013 and Order April 15, 2013, eff. Aug. 31, 2013.)

Rules of Civil Procedure 500-510 govern cases filed on or after August 31 , 2013, and cases pending on August 31 , 2013, except to the extent that in the opinion of the court their application in a case pending on August 31 , 2013, would not be feasible or would work injustice, in which event the formerly applicable procedure applies. An action taken before August 31 , 2013, in a case pending on August 31, 2013, that was done pursuant to any previously applicable procedure must be treated as valid. Where citation or other process was issued or served prior to August 31, 2013 , in compliance with any previously applicable procedure, the party served has the time provided for under the previously applicable procedure to answer or otherwise respond.

RULE 503. DEFAULT JUDGMENT; PRE-TRIAL MATTERS; TRIAL.

RULE 503.1. IF DEFENDANT FAILS TO ANSWER.

(a) *Default Judgment.* If the defendant fails to file an answer by the date stated in Rule 502.5, the judge must ensure that service was proper, and may hold a hearing for this purpose. If it is determined that service was proper, the judge must render a default judgment in the following manner:

(1) *Claim Based on Written Document*. If the claim is based on a written document signed by the defendant, and a copy of the document has been filed with the court and served on the defendant, along with a sworn statement from the plaintiff that this is a true and accurate copy of the document and the relief sought is owed, and all payments, offsets or credits due to the defendant have been accounted for, the judge must render judgment for the plaintiff in the requested amount, without any necessity for a hearing. The plaintiff's attorney may also submit affidavits supporting an award of attorney fees to which the plaintiff is entitled, if any.

(2) *Other Cases*. Except as provided in (1), a plaintiff who seeks a default judgment against a defendant must request a hearing, orally or in writing. The plaintiff must appear at the hearing and provide evidence of its damages. If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant. With the permission of the court, a party may appear at a hearing by means of telephone or an electronic communication system.

(b) *Appearance*. If a defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not enter a default judgment and the case must be set for trial as described in Rule 503.3.

(c) *Post-Answer Default*. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.

(d) *Notice*. The plaintiff requesting a default judgment must provide to the clerk in writing the last known mailing address of the defendant at or before the time the judgment is signed. When a default judgment is signed, the clerk must immediately mail written notice of the judgment to the defendant at the address provided by the plaintiff, and note the fact of such mailing on the docket. The notice must state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date the judgment was signed. Failure to comply with the provisions of this rule does not affect the finality of the judgment.

(e) *Form of Default Judgment*. A default judgment must comply with Rule 505.1.

(Amended by Order Tex. Sup. Ct. Misc. Docket No. 21-9152, Dec. 7, 2021 and Tex. Sup. Ct. Misc. Docket No. 22-9031, April 25, 2022, eff. May 1, 2022.)

RULE 503.2. SUMMARY DISPOSITION.

(a) *Motion*. A party may file a sworn motion for summary disposition of all or part of a claim or defense without a trial. The motion must set out all supporting facts. All documents on which the motion relies must be attached. The motion must be granted if it shows that:

(1) there are no genuinely disputed facts that would prevent a judgment in favor of the party;

(2) there is no evidence of one or more essential elements of a defense which the defendant must prove to defeat the plaintiff s claim; or

(3) there is no evidence of one or more essential elements of the plaintiffs claim.

(b) *Response*. The party opposing the motion may tile a sworn written response to the motion.

(c) *Hearing*. The court must not consider a motion for summary disposition until it has been on file for at least 14 days. The judge may consider evidence offered by the parties at the hearing. By agreement of the parties, the judge may decide the motion and response without a hearing.

(d) *Order*. The judge may enter judgment as to the entire case or may specify the facts that are established and direct such further proceedings in the case as are just. A judgement must comply with Rule 505.1.

(Amended by Order Tex. Sup. Ct. Misc. Docket No. 21-9152, Dec. 7, 2021 and Tex. Sup. Ct. Misc. Docket No. 22-9031, April 25, 2022, eff. May 1, 2022.)

RULE 503.3. SETTINGS AND NOTICE; POSTPONING TRIAL.

(a) *Settings and Notice*. After the defendant answers, the case will be set on a trial docket at the discretion of the judge. The court must send a notice of the date, time, and place of this setting to all parties at their address of record no less than 45 days before the setting date, unless the judge determines that an earlier setting is required in the interest of justice. Reasonable notice of all subsequent settings must be sent to all parties at their addresses of record.

(b) *Postponing Trial*. A party may file a motion requesting that the trial be postponed. The motion must state why a postponement is necessary. The judge, for good cause, may postpone any trial for a reasonable time.

RULE 503.4. PRETRIAL CONFERENCE.

(a) *Conference Set; Issues*. If all parties have appeared in a lawsuit, the court, at any party's request or on its own, may set a case for a pretrial conference. Reasonable notice must be sent to all parties at their addresses of record. Appropriate issues for the pretrial conference include:

(1) discovery;

(2) the amendment or clarification of pleadings;
(3) the admission of facts and documents to streamline the trial process;
(4) a limitation on the number of witnesses at trial;
(5) the identification of facts, if any, which are not in dispute between the parties;
(6) mediation or other alternative dispute resolution services;
(7) the possibility of settlement;
(8) trial setting dates that are amenable to the court and all parties;
(9) the appointment of interpreters, if needed;
(10) the application of a Rule of Civil Procedure not in Part V or a Rule of Evidence; and
(11) any other issue that the court deems appropriate.

(b) *Eviction Cases*. The court must not schedule a pretrial conference in an eviction case if it would delay trial.

RULE 503.5. ALTERNATIVE DISPUTE RESOLUTION.

(a) *State Policy*. The policy of this state is to encourage the peaceable resolution of disputes through alternative dispute resolution, including mediation, and the early settlement of pending litigation through voluntary settlement procedures. For that purpose, the judge may order any case to mediation or another appropriate and generally accepted alternative dispute resolution process.

(b) *Eviction Cases*. The court must not order mediation or any other alternative dispute resolution process in an eviction case if it would delay trial.

RULE 503.6. TRIAL.

(a) *Docket Called*. On the day of the trial setting, the judge must call all of the cases set for trial that day.

(b) *If Plaintiff Fails to Appear*. If the plaintiff fails to appear when the case is called for trial, the judge may postpone or dismiss the suit.

(c) *If Defendant Fails to Appear*. If the defendant fails to appear when the case is called for trial, the judge may postpone the case, or may proceed to take evidence. If the plaintiff proves its case, judgment must be awarded for the relief proven. If the plaintiff fails to prove its case, judgment must be rendered against the plaintiff.

(Adopted by Order Feb 12, 2013 and Order April 15, 2013, eff. Aug. 31, 2013.)

Rules of Civil Procedure 500-510 govern cases filed on or after August 31 , 2013, and cases pending on August 31 , 2013, except to the extent that in the opinion of the court their application in a case pending on August 31 , 2013, would not be feasible or would work injustice, in which event the formerly applicable procedure applies. An action taken before August 31 , 2013, in a case pending on August 31, 2013, that was done pursuant to any previously applicable procedure must be treated as valid. Where citation or other process was issued or served prior to August 31, 2013 , in compliance with any previously applicable procedure, the party served has the time provided for under the previously applicable procedure to answer or otherwise respond.

RULE 504. JURY.

RULE 504.1. JURY TRIAL DEMANDED.

(a) *Demand*. Any party is entitled to a trial by jury. A written demand for a jury must be filed no later than 1 4 days before the date a case is set for trial. If the demand is not timely, the right to a jury is waived unless the late filing is excused by the judge for good cause.

(b) *Jury Fee*. Unless otherwise provided by law, a party demanding a jury must pay a fee of $22.00 or must file a Statement of Inability to Afford Payment of Court Costs at or before the time the party files a written request for a jury.

(c) *Withdrawal of Demand*. If a party who demands a jury and pays the fee withdraws the demand, the case will remain on the jury docket unless all other parties present agree to try the case without a jury. A party that withdraws its jury demand is not entitled to a refund of the jury fee.

(d) *No Demand*. If no party timely demands a jury and pays the fee, the judge will try the case without a jury.

(Amended by Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016.)

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

RULE 504.2. EMPANELING THE JURY.

(a) *Drawing Jury and Oath*. If no method of electronic draw has been implemented, the judge must write the names of all prospective jurors present on separate slips of paper as nearly alike as may be, place them in a box, mix them well, and then draw the names one by one from the box. The judge must list the names drawn and deliver a copy to each of the parties or their attorneys.

(b) *Oath*. After the draw, the judge must swear the panel as follows: “You solemnly swear or affirm that you will give true and correct answers to all questions asked of you concerning your qualifications as a juror.”

(c) *Questioning the Jury*. The judge, the parties, or their attorneys will be allowed to question jurors as to their ability to serve impartially in the trial but may not ask the jurors how they will rule in the case. The judge will have discretion to allow or disallow specific questions and determine the amount of time each side will have for this process.

(d) *Challenge for Cause*. A party may challenge any juror for cause. A challenge for cause is an objection made to a juror alleging some fact, such as a bias or prejudice, that disqualifies the juror from serving in the case or that renders the juror unfit to sit on the jury. The challenge must be

made during jury questioning. The party must explain to the judge why the juror should be excluded from the jury. The judge must evaluate the questions and answers given and either grant or deny the challenge. When a challenge for cause has been sustained, the juror must be excused.

(e) *Challenges Not for Cause*. After the judge determines any challenges for cause, each party may select up to 3 jurors to excuse for any reason or no reason at all. But no prospective juror may be excused for membership in a constitutionally protected class.

(t) *The Jury*. After all challenges, the first 6 prospective jurors remaining on the list constitute the jury to try the case.

(g) *If Jury Is Incomplete*. If challenges reduce the number of prospective jurors below 6, the judge may direct the sheriff, constable, or clerk to summon others and allow them to be questioned and challenged by the parties as before, until at least 6 remain.

(h) *Jury Sworn*. When the jury has been selected, the judge must require them to take substantially the following oath: "You solemnly swear or affirm that you will render a true verdict according to the law and the evidence presented."

(Amended by Tex. Sup. Ct. Misc. Docket No. 23-9044, July 14, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9088, Nov. 7, 2023, eff. Sept. 1, 2023.)

RULE 504.3. JURY NOT CHARGED.

The judge must not charge the jury.

RULE 504.4. JURY VERDICT FOR SPECIFIC ARTICLES.

When the suit is for the recovery of specific articles and the jury finds for the plaintiff, the jury must assess the value of each article separately, according to the evidence presented at trial.

RULE 505. JUDGMENT; NEW TRIAL.

RULE 505.1. JUDGMENT.

(a) *Judgment Upon Jury Verdict*. Where a jury has returned a verdict, the judge must announce the verdict in open court, note it in the court's docket, and render judgment accordingly. The judge may render judgment on the verdict or, if the verdict is contrary to the law or the evidence, judgment notwithstanding the verdict.

(b) *Case Tried by Judge*. When a case has been tried before the judge without a jury, the judge must announce the decision in open court, note the decision in the court's docket, and render judgment accordingly.

(c) *Form*. A judgment must:

(1) clearly state the determination of the rights of the parties in the case;

(2) state who must pay the costs;

(3) be signed by the judge;

(4) be dated the date of the judge's signature;

(5) state:

(A) in an eviction case: "You may appeal this judgment by filing a bond, making a cash deposit, or filing a Statement of Inability to Afford Payment of Court Costs within 5 days after this judgment was signed. See Texas Rule of Civil Procedure 510.9(a).";

(B) in a repair and remedy case: "You may appeal this judgment by filing a notice of appeal within 21 days after this judgment was signed. See Texas Rule of Civil Procedure 509.8."; or

(C) in a case other than an eviction or repair and remedy case: "You may appeal this judgment by filing a bond, making a cash deposit, or filing a Statement of Inability to Afford Payment of Court Costs within 21 days after this judgment was signed. See Texas Rule of Civil Procedure 506."; and

(6) if it awards monetary damages, state: "If you are an individual (not a company), your money or property may be protected from being taken to pay judgment . Find out more by visiting https://texaslawhelp.org/exempt-property. / *Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio* https://texaslawhelp.org/exempt-property."

(d) *Costs*. The judge must award costs allowed by law to the successful party.

(e) *Judgment for Specific Articles*. Where the judgment is for the recovery of specific articles, the judgment must order that the plaintiff recover such specific articles, if they can be found, and if not, then their value as assessed by the judge or jury with interest at the prevailing post-judgment interest rate.

(Amended by Order Tex. Sup. Ct. Misc. Docket No. 21-9152, Dec. 7, 2021 and Tex. Sup. Ct. Misc. Docket No. 22-9031, April 25, 2022, eff. May 1, 2022; Tex. Sup. Ct. Misc. Docket No. 22-9091, Oct. 14, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9004, Jan. 27, 2023, eff. Feb. 1, 2023.)

RULE 505.2. ENFORCEMENT OF JUDGMENT.

Justice court judgments are enforceable in the same method as in county and district court, except as provided by law. When the judgment is for personal property, the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such cases, enforce its judgment by attachment or fine.

RULE 505.3. MOTION TO SET ASIDE; MOTION TO REINSTATE; MOTION FOR NEW TRIAL.

(a) *Motion to Reinstate after Dismissal*. A plaintiff whose case is dismissed may file a motion to reinstate the case no later than 1 4 days after the dismissal order is signed. The plaintiff must serve the defendant with a copy of the motion no later than the next business day using a method approved under Rule 50 1 .4. The court may reinstate the case for good cause shown.

(b) *Motion to Set Aside Default*. A defendant against whom a default judgment is granted may file a motion to set aside the judgment no later than 1 4 days after the judgment is signed. The defendant must serve the plaintiff with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The court may set aside the judgment and set the case for trial for good cause shown.

(c) *Motion for New Trial*. A party may file a motion for a new trial no later than 1 4 days after the judgment is signed. The party must serve all other parties with a copy of the motion no later than the next business day using a method approved under Rule 50 1 .4. The judge may grant a new trial upon a showing that justice was not done in the trial of the case. Only one new trial may be granted to either party.

(d) *Motion Not Required*. Failure to file a motion under this rule does not affect a party's right to appeal the underlying judgment.

(e) *Motion Denied as a Matter of Law*. If the judge has not ruled on a motion to set aside, motion to reinstate, or motion for new trial, the motion is automatically denied at 5:00 p.m. on the 21st day after the day the judgment was signed.

(Adopted by Order Feb 12, 2013 and Order April 15, 2013, eff. Aug. 31, 2013.)

Rules of Civil Procedure 500-510 govern cases filed on or after August 31 , 2013, and cases pending on August 31 , 2013, except to the extent that in the opinion of the court their application in a case pending on August 31 , 2013, would not be feasible or would work injustice, in which event the formerly applicable procedure applies. An action taken before August 31 , 2013, in a case pending on August 31, 2013, that was done pursuant to any previously applicable procedure must be treated as valid. Where citation or other process was issued or served prior to August 31, 2013 , in compliance with any previously applicable procedure, the party served has the time provided for under the previously applicable procedure to answer or otherwise respond.

RULE 506. APPEAL.

RULE 506.1. APPEAL.

(a) *How Taken; Time*. A party may appeal a judgment by filing a bond, making a cash deposit, or filing a Statement of Inability to Afford Payment of Court Costs with the justice court within 2 1 days after the judgment is signed or the motion to reinstate, motion to set aside, or motion for new trial, if any, is denied.

(b) *Amount of Bond; Sureties; Terms*. A plaintiff must file a $500 bond. A defendant must file a bond in an amount equal to twice the amount of the judgment. The bond must be supported by a surety or sureties approved by the judge. The bond must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(c) *Cash Deposit in Lieu of Bond*. In lieu of filing a bond, an appellant may deposit with the clerk of the court cash in the amount required of the bond. The deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(d) *Statement of Inability to Afford Payment of Court Costs*.

(1) Filing. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a Statement of Inability to Afford Payment of Court Costs. The Statement must be on the form approved by the Supreme Court or include the information required by the Court-approved for and may be the same one that was filed with the petition.

(2) Contest. The Statement may be contested as provided in Rule 502.3(d) within 7 days after the opposing party receives notice that the Statement was filed.

(3) Appeal If Contest Sustained. If the contest is sustained, the appellant may appeal that decision by filing notice with the justice court within 7 days of that court's written order. The justice court must then forward all related documents to the county court for resolution. The county court must set the matter for hearing within 1 4 days and hear the contest de novo, as if there had been no previous hearing, and if the appeal is granted, must direct the justice court to transmit to the clerk of the county court the transcript, records, and papers of the case, as provided in these rules.

(4) If No Appeal or If Appeal Overruled. If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within five days, post an appeal bond or make a cash deposit in compliance with this rule.

(e) *Notice to Other Parties Required*. If a Statement of Inability to Afford Payment of Court Costs is filed, the court must provide notice to all other parties that the statement was filed no later than the next business day. Within 7 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(f) *No Default on Appeal Without Compliance With Rule*. The county court to which an appeal is taken must not render default judgment against any party without first determining that the appellant has fully complied with this rule.

(g) *No Dismissal of Appeal Without Opportunity for Correction*. An appeal must not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing the appellant, after 7 days' notice from the court, the opportunity to correct such defect.

(h) *Appeal Perfected*. An appeal is perfected when a bond, cash deposit, or Statement of Inability to Afford Payment of Court Costs is filed in accordance with this rule.

(i) *Costs*. The appellant must pay the costs on appeal to a county court in accordance with Rule 1 43a.

(Amended by Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016.)

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

RULE 506.2. RECORD ON APPEAL.

When an appeal has been perfected from the justice court, the judge must immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case.

RULE 506.3. TRIAL DE NOVO.

The case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial.

RULE 506.4. WRIT OF CERTIORARI.

(a) *Application*. Except in eviction cases, after final judgment in a case tried in justice court, a party may apply to the county court for a writ of certiorari.

(b) *Grounds*. An application must be granted only if it contains a sworn statement setting forth facts showing that either:

(1) the justice court did not have jurisdiction; or

(2) the final determination of the suit worked an injustice to the applicant that was not caused by the applicant's own inexcusable neglect.

(c) *Bond, Cash Deposit, or Sworn Statement of Inability to Pay Required*. If the application is granted, a writ of certiorari must not issue until the applicant has filed a bond, made a cash deposit, or filed a Statement of Inability to Afford Payment of Court Costs that complies with Rule 145.

(d) *Time for Filing*. An application for writ of certiorari must be filed within 90 days after the date the final judgment is signed.

(e) *Contents of Writ*. The writ of certiorari must command the justice court to immediately make and certify a copy of the entries in the case on the docket, and immediately transmit the transcript of the proceedings in the justice court, together with the original papers and a bill of costs, to the proper court.

(f) *Clerk to Issue Writ and Citation*. When the application is granted and the bond, cash deposit, or sworn Statement of Inability to Afford Payment of Court Costs has been filed, the clerk must issue a writ of certiorari to the justice court and citation to the adverse party.

(g) *Stay of Proceedings*. When the writ of certiorari is served on the justice court, the court must stay further proceedings on the judgment and comply with the writ.

(h) *Cause Docketed*. The action must be docketed in the name of the original plaintiff, as plaintiff, and of the original defendant, as defendant.

(i) *Motion to Dismiss*. Within 30 days after the service of citation on the writ of certiorari, the adverse party may move to dismiss the certiorari for want of sufficient cause appearing in the affidavit, or for want of sufficient bond. If the certiorari is dismissed, the judgment must direct the justice court to proceed with the execution of the judgment below.

(j) *Amendment of Bond or Oath*. The affidavit or bond may be amended at the discretion of the court in which it is filed.

(k) *Trial De Novo*. The case must be tried de novo in the county court and judgment must be rendered as in cases appealed from justice courts. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial.

(Adopted by Order Feb 12, 2013 and Order April 15, 2013, eff. Aug. 31, 2013. Amended by Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016; Tex. Sup. Ct. Misc. Docket No. 20-9154 and Tex. Sup. Ct. Misc. Docket No. 21-9077, eff. Sept. 1, 2021.)

Rules of Civil Procedure 500-510 govern cases filed on or after August 31 , 2013, and cases pending on August 31 , 2013, except to the extent that in the opinion of the court their application in a case pending on August 31 , 2013, would not be feasible or would work injustice, in which event the formerly applicable procedure applies. An action taken before August 31 , 2013, in a case pending on August 31, 2013, that was done pursuant to any previously applicable procedure must be treated as valid. Where citation or other process was issued or served prior to August 31, 2013 , in compliance with any previously applicable procedure, the party served has the time provided for under the previously applicable procedure to answer or otherwise respond.

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

RULE 507. ADMINISTRATIVE RULES FOR JUDGES AND COURT PERSONNEL.

RULE 507.1. PLENARY POWER.

A justice court loses plenary power over a case when an appeal is perfected or if no appeal is perfected, 2 1 days after the later of the date judgment is signed or the date a motion to set aside, motion to reinstate, or motion for new trial, if any, is denied.

RULE 507.2. FORMS.

The court may provide forms to enable a party to file documents that comply with these rules. No party may be forced to use the court's forms.

RULE 507.3. DOCKET AND OTHER RECORDS.

(a) *Docket*. Each judge must keep a civil docket in a permanent record containing the following information:

(1) the title of all suits commenced before the court;

(2) the date when the first process was issued against the defendant, when returnable, and the nature of that process;

(3) the date when the parties, or either of them, appeared before the court, either with or without a citation;

(4) a description of the petition and any documents filed with the petition;

(5) every adjournment, stating at whose request and to what time;

(6) the date of the trial, stating whether the same was by a jury or by the judge;
(7) the verdict of the jury, if any;
(8) the judgment signed by the judge and the date the judgment was signed;
(9) all applications for setting aside judgments or granting new trials and the orders of the judge thereon, with the date;
(l0) the date of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs and, when any execution is returned, the date of the return and the manner in which it was executed; and
(11) all stays and appeals that may be taken, and the date when taken, the amount of the bond and the names of the sureties.

(b) *Other Records*. The judge must also keep copies of all documents filed; other dockets, books, and records as may be required by law or these rules; and a fee book in which all costs accruing in every suit commenced before the court are taxed.

(c) *Form of Records*. All records required to be kept under this rule may be maintained electronically.

RULE 507.4. ISSUANCE OF WRITS.

Every writ from the justice courts must be in writing and be issued and signed by the judge officially. The style thereof must be "The State of Texas." It must, except where otherwise specially provided by law or these rules, be directed to the person or party upon whom it is to be served, be made returnable to the court, and note the date of its issuance.

(Adopted by Order Feb 12, 2013 and Order April 15, 2013, eff. Aug. 31, 2013.)

Rules of Civil Procedure 500-510 govern cases filed on or after August 31 , 2013, and cases pending on August 31 , 2013, except to the extent that in the opinion of the court their application in a case pending on August 31 , 2013, would not be feasible or would work injustice, in which event the formerly applicable procedure applies. An action taken before August 31 , 2013, in a case pending on August 31, 2013, that was done pursuant to any previously applicable procedure must be treated as valid. Where citation or other process was issued or served prior to August 31, 2013 , in compliance with any previously applicable procedure, the party served has the time provided for under the previously applicable procedure to answer or otherwise respond.

RULE 508. DEBT CLAIM CASES.

RULE 508.1. APPLICATION.

Rule 508 applies to a claim for the recovery of a debt brought by an assignee of a claim, a financial institution, a debt collector or collection agency, or a person or entity primarily engaged in the business of lending money at interest.

RULE 508.2. PETITION.

(a) *Contents*. In addition to the information required by Rule 502.2, a petition filed in a lawsuit governed by this rule must contain the following information:
  (1) Credit Accounts. In a claim based upon a credit card, revolving credit, or open account, the petition must state:
    (A) the account name or credit card name;
    (B) the account number (which may be masked);
    (C) the date of issue or origination of the account, if known;
    (D) the date of charge-off or breach of the account, if known;
    (E) the amount owed as of a date certain; and
    (F) whether the plaintiff seeks ongoing interest.
  (2) Personal and Business Loans. In a claim based upon a promissory note or other promise to pay a specific amount as of a date certain, the petition must state:
    (A) the date and amount of the original loan;
    (B) whether the repayment of the debt was accelerated, if known;
    (C) the date final payment was due;
    (D) the amount due as of the final payment date;
    (E) the amount owed as of a date certain; and
    (F) whether plaintiff seeks ongoing interest.
  (3) Ongoing Interest. If a plaintiff seeks ongoing interest, the petition must state:
    (A) the effective interest rate claimed;
    (B) whether the interest rate is based upon contract or statute; and
    (C) the dollar amount of interest claimed as of a date certain.
  (4) Assigned Debt. If the debt that is the subject of the claim has been assigned or transferred, the petition must state:
    (A) that the debt claim has been transferred or assigned;
    (B) the date of the transfer or assignment;
    (C) the name of any prior holders of the debt; and
    (D) the name or a description of the original creditor.

RULE 508.3. DEFAULT JUDGMENT.

(a) *Generally*. If the defendant does not file an answer to a claim by the answer date or otherwise appear in the case, the judge must promptly render a default judgment upon the plaintiffs proof of the amount of damages. A default judgment must comply with Rule 505.1. When a default judgment is signed, the clerk must comply with Rule 503.1(d) and immediately mail written notice of the judgment to the defendant at the address provided by the plaintiff.

(b) *Proof of the Amount of Damages*.

(1) Evidence Must Be Served or Submitted. Evidence of plaintiff's damages must either be attached to the petition and served on the defendant or submitted to the court after defendant's failure to answer by the answer date.

(2) Form of Evidence. Evidence of plaintiff's damages may be offered in a sworn statement or in live testimony. The evidence offered may include documentary evidence.

(3) Establishment of the Amount of Damages. The amount of damages is established by evidence:

(A) that the account or loan was issued to the defendant and the defendant is obligated to pay it;

(B) that the account was closed or the defendant breached the terms of the account or loan agreement;

(C) of the amount due on the account or loan as of a date certain after all payment credits and offsets have been applied; and

(D) that the plaintiff owns the account or loan and, if applicable, how the plaintiff acquired the account or loan.

(4) Documentary Evidence Offered By Sworn Statement. Documentary evidence may be considered if it is attached to a sworn statement made by the plaintiff or its representative, a prior holder of the debt or its representative, or the original creditor or its representative, that attests to the following:

(A) the documents were kept in the regular course of business;

(B) it was the regular course of business for an employee or representative with knowledge of the act recorded to make the record or to transmit information to be included in such record;

(C) the documents were created at or near the time or reasonably soon thereafter; and

(D) the documents attached are the original or exact duplicates of the original.

(5) Consideration of Sworn Statement. A judge is not required to accept a sworn statement if the source of information or the method or circumstances of preparation indicate lack of trustworthiness. But a judge may not reject a sworn statement only because it is not made by the original creditor or because the documents attested to were created by a third party and subsequently incorporated into and relied upon by the business of the plaintiff.

(c) *Hearing*. The judge may enter a default judgment without a hearing if the plaintiff submits sufficient written evidence of its damages and should do so to avoid undue expense and delay. Otherwise, the plaintiff may request a default judgment hearing at which the plaintiff must appear, in person or by telephonic or electronic means, and prove its damages. If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant.

(d) *Appearance*. If the defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not render a default judgment and must set the case for trial.

(e) *Post-Answer Default*. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.

(Adopted by Order Feb 12, 2013 and Order April 15, 2013, eff. Aug. 31, 2013. Amended by Order Tex. Sup. Ct. Misc. Docket No. 21-9152, Dec. 7, 2021 and Tex. Sup. Ct. Misc. Docket No. 22-9031, April 25, 2022, eff. May 1, 2022.)

Rules of Civil Procedure 500-510 govern cases filed on or after August 31 , 2013, and cases pending on August 31 , 2013, except to the extent that in the opinion of the court their application in a case pending on August 31 , 2013, would not be feasible or would work injustice, in which event the formerly applicable procedure applies. An action taken before August 31 , 2013, in a case pending on August 31, 2013, that was done pursuant to any previously applicable procedure must be treated as valid. Where citation or other process was issued or served prior to August 31, 2013 , in compliance with any previously applicable procedure, the party served has the time provided for under the previously applicable procedure to answer or otherwise respond.

RULE 509. REPAIR AND REMEDY CASES.

RULE 509.1. APPLICABILITY OF RULE.

Rule 509 applies to a lawsuit filed in a justice court by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord' s duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant.

RULE 509.2. CONTENTS OF PETITION; COPIES; FORMS AND AMENDMENTS.

(a) *Contents of Petition*. The petition must be in writing and must include the following:

(1) the street address of the residential rental property;

(2) a statement indicating whether the tenant has received in writing the name and business street address of the landlord and landlord's management company;

(3) to the extent known and applicable, the name, business street address, and telephone number of the landlord and the landlord's management company, on-premises manager, and rent collector serving the residential rental property;

(4) for all notices the tenant gave to the landlord requesting that the condition be repaired or remedied:

(A) the date of the notice;

(B) the name of the person to whom the notice was given or the place where the notice was given;
(C) whether the tenant' s lease is in writing and requires written notice;
(D) whether the notice was in writing or oral;
(E) whether any written notice was given by certified mail, return receipt requested, or by registered mail; and
(F) whether the rent was current or had been timely tendered at the time notice was given;

(5) a description of the property condition materially affecting the physical health or safety of an ordinary tenant that the tenant seeks to have repaired or remedied;

(6) a statement of the relief requested by the tenant, including an order to repair or remedy a condition, a reduction in rent, actual damages, civil penalties, attorney's fees, and court costs;

(7) if the petition includes a request to reduce the rent:
(A) the amount of rent paid by the tenant, the amount of rent paid by the government, if known, the rental period, and when the rent is due; and
(B) the amount of the requested rent reduction and the date it should begin;

(8) a statement that the total relief requested does not exceed $20,000, excluding interest and court costs but including attorney's fees; and

(9) the tenant's name, address, and telephone number.

(b) *Copies*. The tenant must provide the court with copies of the petition and any attachments to the petition for service on the landlord.

(c) *Forms and Amendments*. A petition substantially in the form promulgated by the Supreme Court is sufficient. A suit may not be dismissed for a defect in the petition unless the tenant is given an opportunity to correct the defect and does not promptly correct it.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9070, May 26, 2020, eff. Sept. 1, 2020.)

RULE 509.3. CITATION: ISSUANCE; APPEARANCE DATE; ANSWER.

(a) *Issuance*. When the tenant files a written petition with a justice court, the judge must immediately issue citation directed to the landlord, commanding the landlord to appear before such judge at the time and place named in the citation.

(b) *Appearance Date; Answer*. The appearance date on the citation must not be less than 10 days nor more than 21 days after the petition is filed. For purposes of this rule, the appearance date on the citation is the trial date. The landlord may, but is not required to, file a written answer on or before the appearance date.

RULE 509.4. SERVICE AND RETURN OF CITATION; ALTERNATIVE SERVICE OF CITATION.

(a) *Service and Return of Citation*. The sheriff, constable, or other person authorized by Rule 50 1 .2 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 6 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 issued the citation. The citation must be issued, served, and returned in like manner as ordinary citations issued from a justice court.

(b) *Alternative Service of Citation*.

(1) If the petition does not include the landlord's name and business street address, or if, after making diligent efforts on at least two occasions, the officer or authorized person is unsuccessful in serving the citation on the landlord under (a), the officer or authorized person must serve the citation by delivering a copy of the citation, petition, and any attachments to:
(A) the landlord's management company if the tenant has received written notice of the name and business street address of the landlord's management company; or
(B) if (b)(I)(A) does not apply and the tenant has not received the landlord's name and business street address in writing, the landlord's authorized agent for service of process, which may be the landlord's management company, on-premise manager, or rent collector serving the residential rental property.

(2) If the officer or authorized person is unsuccessful in serving citation under (b)(1) after making diligent efforts on at least two occasions at either the business street address of the landlord's management company, if (b)(l)(A) applies, or at each available business street address of the landlord's authorized agent for service of process, if (b)(I)(B) applies, the officer or authorized person must execute and file in the justice court a sworn statement that the officer or authorized person made diligent efforts to serve the citation on at least two occasions at all available business street addresses of the landlord and, to the extent applicable, the landlord's management company, on-premises manager, and rent collector serving the residential rental property, providing the times, dates, and places of each attempted service. The judge may then authorize the officer or authorized person to serve citation by:
(A) delivering a copy of the citation, petition, and any attachments to someone over the age of 1 6 years, at any business street address listed in the petition, or, if nobody answers the door at a business street address, either placing the citation, petition, and any attachments through a door mail chute or slipping them under the front door, and if neither of these latter methods is practical, affixing the citation, petition, and any attachments to the front door or main entry to the business street address;
(B) within 24 hours of complying with (b)(2)(A), sending by first class mail a true copy of the citation, petition, and any attachments addressed to the landlord at the landlord's business street address provided in the petition; and
(C) noting on the return of the citation the date of delivery under (b)(2)(A) and the date of mailing under (b)(2)(B).

The delivery and mailing to the business street address under (b)(2)(A)-(B) must occur at least 6 days before the appearance date. At least one day before the appearance date, a return of service must be completed and filed in accordance with Rule 50 1 .3 with the court that issued the citation. It is not necessary for the tenant to request the alternative service authorized by this rule.

RULE 509.5. DOCKETING AND TRIAL; FAILURE TO APPEAR.

(a) *Docketing and Trial*. The case must be docketed and tried as other cases. The judge may develop the facts of the case in order to ensure justice.

(b) *Failure to Appear*.

(1) If the tenant appears at trial and the landlord has been duly served and fails to appear at trial, the judge may proceed to hear evidence. If the tenant establishes that the tenant is entitled to recover, the judge must render judgment against the landlord in accordance with the evidence.

(2) If the tenant fails to appear for trial, the judge may dismiss the lawsuit.

RULE 509.6. JUDGMENT: AMOUNT; FORM AND CONTENT; ISSUANCE AND SERVICE; FAILURE TO COMPLY.

(a) *Amount*. Judgment may be rendered against the landlord for failure to repair or remedy a condition at the residential rental property if the total judgment does not exceed $20,000, excluding interest and court costs but including attorney's fees. Any party who prevails in a lawsuit brought under these rules may recover the party's court costs and reasonable attorney's fees as allowed by law.

(b) *Form and Content*.

(1) The judgment must comply with Rule 505.1 and must include the names of the parties to the proceeding and the street address of the residential rental property where the condition is to be repaired or remedied.

(2) In the judgment, the judge may:

(A) order the landlord to take reasonable action to repair or remedy the condition;

(B) order a reduction in the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;

(C) award a civil penalty of one month's rent plus $500;

(D) award the tenant's actual damages; and

(E) award court costs and attorney's fees, excluding any attorney's fees for a claim for damages relating to a personal injury.

(3) If the judge orders the landlord to repair or remedy a condition, the judgment must include in reasonable detail the actions the landlord must take to repair or remedy the condition and the date when the repair or remedy must be completed.

(4) If the judge orders a reduction in the tenant's rent, the judgment must state:

(A) the amount of the rent the tenant must pay, if any;

(B) the frequency with which the tenant must pay the rent;

(C) the condition justifying the reduction of rent;

(D) the effective date of the order reducing rent;

(E) that the order reducing rent will terminate on the date the condition is repaired or remedied; and

(F) that on the day the condition is repaired or remedied, the landlord must give the tenant written notice, served in accordance with Rule 501.4, that the condition justifying the reduction of rent has been repaired or remedied and the rent will revert to the rent amount specified in the lease.

(c) *Issuance and Service*. The judge must issue the judgment. The judgment may be served on the landlord in open court or by any means provided in Rule 501 .4 at an address listed in the citation, the address listed on any answer, or such other address the landlord furnishes to the court in writing. Unless the judge serves the landlord in open court or by other means provided in Rule 50 1 .4, the sheriff, constable, or other authorized person who serves the landlord must promptly file a return of service in the justice court.

(d) *Failure to Comply*. If the landlord fails to comply with an order to repair or remedy a condition or reduce the tenant's rent, the failure is grounds for citing the landlord for contempt of court under Section 2 1 .002 of the Texas Government Code.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9070, May 26, 2020, eff. Sept. 1, 2020. Amended by Order Tex. Sup. Ct. Misc. Docket No. 21-9152, Dec. 7, 2021 and Tex. Sup. Ct. Misc. Docket No. 22-9031, April 25, 2022, eff. May 1, 2022.)

RULE 509.7. COUNTERCLAIMS.

Counterclaims and the joinder of suits against third parties are not permitted in suits under these rules. Compulsory counterclaims may be brought in a separate suit. Any potential causes of action, including a compulsory counterclaim, that are not asserted because of this rule are not precluded.

RULE 509.8. APPEAL: TIME AND MANNER; PERFECTION; EFFECT; COSTS; TRIAL ON APPEAL.

(a) *Time and Manner*. Either party may appeal the decision of the justice court to a statutory county court or, if there is no statutory county court with jurisdiction, a county court or district court with jurisdiction by filing a written notice of appeal with the justice court within 2 1 days after the date the judge signs the judgment. If the judgment is amended in any respect, any party has the right to appeal within 2 1 days after the date the judge signs the new judgment, in the same manner set out in this rule.

(b) *Perfection*. The posting of an appeal bond is not required for an appeal under this rule, and the appeal is considered perfected with the filing of a notice of appeal. Otherwise, the appeal is in the manner provided by law for appeal from a justice court.

(c) *Effect*. The timely filing of a notice of appeal stays the enforcement of any order to repair or remedy a condition or reduce the tenant's rent, as well as any other actions.

(d) *Costs*. The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.

(e) *Trial on Appeal*. On appeal, the parties are entitled to a trial de novo. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. Either party is entitled to trial by jury on timely request and payment of a fee, if required. An appeal of a judgment of a justice court under these rules takes precedence in the county court and may be held at any time after the eighth day after the date the transcript is filed in the county court.

RULE 509.9. EFFECT OF WRIT OF POSSESSION.

If a judgment for the landlord for possession of the residential rental property becomes final, any order to repair or remedy a condition is vacated and unenforceable.

(Adopted by Order Feb 12, 2013 and Order April 15, 2013, eff. Aug. 31, 2013.)

Rules of Civil Procedure 500-510 govern cases filed on or after August 31 , 2013, and cases pending on August 31 , 2013, except to the extent that in the opinion of the court their application in a case pending on August 31 , 2013, would not be feasible or would work injustice, in which event the formerly applicable procedure applies. An action taken before August 31 , 2013, in a case pending on August 31, 2013, that was done pursuant to any previously applicable procedure must be treated as valid. Where citation or other process was issued or served prior to August 31, 2013 , in compliance with any previously applicable procedure, the party served has the time provided for under the previously applicable procedure to answer or otherwise respond.

RULE 510. EVICTION CASES.

RULE 510.1. APPLICATION.

Rule 510 applies to a lawsuit to recover possession of real property under Chapter 24 of the Texas Property Code.

RULE 510.2. COMPUTATION OF TIME FOR EVICTION CASES.

Rule 500.5 applies to the computation of time in an eviction case. But if a document is filed by mail and not received by the court by the due date, the court may take any action authorized by these rules, including issuing a writ of possession requiring a tenant to leave the property.

RULE 510.3. PETITION.

(a) *Contents*. In addition to the requirements of Rule 502.2, a petition in an eviction case must be sworn to by the plaintiff and must contain:

(1) a description, including the address, if any, of the premises that the plaintiff seeks possession of;

(2) a description of the facts and the grounds for eviction;

(3) a description of when and how notice to vacate was delivered;

(4) the total amount of rent due and unpaid at the time of filing, if any; and

(5) a statement that attorney fees are being sought, if applicable.

(b) *Where Filed*. The petition must be filed in the precinct where the premises is located. If it is filed elsewhere, the judge must dismiss the case. The plaintiff will not be entitled to a refund of the filing fee, but will be refunded any service fees paid if the case is dismissed before service is attempted.

(c) *Defendants Named*. If the eviction is based on a written residential lease, the plaintiff must name as defendants all tenants obligated under the lease residing at the premises whom plaintiff seeks to evict. No judgment or writ of possession may issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition and served with citation.

(d) *Claim for Rent*. A claim for rent within the justice court's jurisdiction may be asserted in an eviction case.

(e) *Only Issue*. The court must adjudicate the right to actual possession and not title.

Counterclaims and the joinder of suits against third parties are not permitted in eviction cases. A claim that is not asserted because of this rule can be brought in a separate suit in a court of proper jurisdiction.

RULE 510.4. ISSUANCE, SERVICE, AND RETURN OF CITATION.

(a) *Issuance of Citation; Contents*. When a petition is filed, the court must immediately issue citation directed to each defendant. The citation must:

(1) be styled "The State of Texas";

(2) be signed by the clerk under seal of court or by the judge;

(3) contain the name, location, and address of the court;

(4) state the date of filing of the petition;

(5) state the date of issuance of the citation;

(6) state the file number and names of parties;

(7) state the plaintiffs cause of action and relief sought;

(8) be directed to the defendant;

(9) state the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff;

(10) state the day the defendant must appear in person for trial at the court issuing citation, which must not be less than I 0 days nor more than 21 days after the petition is filed;

(11) notify the defendant that if the defendant fails to appear in person for trial, judgment by default may be rendered for the relief demanded in the petition;

(12) inform the defendant that, upon timely request and payment of a jury fee no later than 3 days before the day set for trial, the case will be heard by a jury;

(13) contain all warnings required by Chapter 24 of the Texas Property Code; and

(14) include the following statement: "For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

(b) *Service and Return of Citation.*

(1) Who May Serve. Unless otherwise authorized by written court order, citation must be served by a sheriff or constable.

(2) Method of Service. The constable, sheriff, or other person authorized by written court order receiving the citation must execute it by delivering a copy with a copy of the petition attached to the defendant, or by leaving a copy with a copy of the petition attached with some person, other than the plaintiff, over the age of 1 6 years, at the defendant's usual place of residence, at least 6 days before the day set for trial.

(3) Return of Service. At least one day before the day set for trial, the constable, sheriff, or other person authorized by written court order must complete and file a return of service in accordance with Rule 501.3 with the court that issued the citation.

(c) *Alternative Service by Delivery to the Premises*.

(1) When Allowed. The citation may be served by delivery to the premises if:

(A) the constable, sheriff, or other person authorized by written court order is unsuccessful in serving the citation under (b);

(B) the petition lists all home and work addresses of the defendant that are known to the plaintiff and states that the plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located; and

(C) the constable, sheriff, or other person authorized files a sworn statement that it has made diligent efforts to serve such citation on at least two occasions at all addresses of the defendant in the county where the premises are located, stating the times and places of attempted service.

(2) Authorization. The judge must promptly consider a sworn statement filed under (1)(C) and determine whether citation may be served by delivery to the premises. The plaintiff is not required to make a request or motion for alternative service.

(3) Method. If the judge authorizes service by delivery to the premises, the constable, sheriff, or other person authorized by written court order must, at least 6 days before the day set for trial:

(A) deliver a copy of the citation with a copy of the petition attached to the premises by placing it through a door mail chute or slipping it under the front door; if neither method is possible, the officer may securely affix the citation to the front door or main entry to the premises; and

(B) deposit in the mail a copy of the citation with a copy of the petition attached, addressed to defendant at the premises and sent by first class mail.

(4) Notation on Return. The constable, sheriff, or other person authorized by written court order must note on the return of service the date the citation was delivered and the date it was deposited in the mail.

RULE 510.5. REQUEST FOR IMMEDIATE POSSESSION.

(a) *Immediate Possession Bond*. The plaintiff may, at the time of filing the petition or at any time prior to final judgment, file a possession bond to be approved by the judge in the probable amount of costs of suit and damages that may result to defendant in the event that the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages that are adjudged against plaintiff.

(b) *Notice to Defendant*. The court must notify a defendant that the plaintiff has filed a possession bond. The notice must be served in the same manner as service of citation and must inform the defendant that if the defendant does not file an answer or appear for trial, and judgment for possession is granted by default, an officer will place the plaintiff in possession of the property on or after the 7th day after the date defendant is served with the notice.

(c) *Time for Issuance and Execution of Writ*. If judgment for possession is rendered by default and a possession bond has been filed, approved, and served under this rule, a writ of possession must issue immediately upon demand and payment of any required fees. The writ must not be executed before the 7th day after the date defendant is served with notice under (b).

(d) *Effect of Appearance*. If the defendant files an answer or appears at trial, no writ of possession may issue before the 6th day after the date a judgment for possession is signed or the day following the deadline for the defendant to appeal the judgment, whichever is later.

RULE 510.6. TRIAL DATE; ANSWER; DEFAULT JUDGMENT.

(a) *Trial Date and Answer*. The defendant must appear for trial on the day set for trial in the citation. The defendant may, but is not required to, file a written answer with the court on or before the day set for trial in the citation.

(b) *Default Judgment*. If the defendant fails to appear at trial and fails to file an answer before the case is called for trial, and proof of service has been filed in accordance with Rule 510.4, the allegations of the petition must be taken as admitted and judgment by default rendered accordingly. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence and render judgment accordingly. Notice of a default judgment, as required by Rule 503.1(d), must be sent to the defendant. A default judgment must comply with Rule 505.1.

(c) *Notice of Default*. When a default judgment is signed, the clerk must comply with Rule 503.1(d) and immediately mail written notice of the judgment by first class mail to the defendant at the address provided by the plaintiff and, if different, at the address of the premises.

(Amended by Order Tex. Sup. Ct. Misc. Docket No. 21-9152, Dec. 7, 2021 and Tex. Sup. Ct. Misc. Docket No. 22-9031, April 25, 2022, eff. May 1, 2022.)

RULE 510.7. TRIAL.

(a) *Trial*. An eviction case will be docketed and tried as other cases. No eviction trial may be held less than 6 days after service under Rule 5 1 0.4 has been obtained.

(b) *Jury Trial Demanded*. Any party may file a written demand for trial by jury by making a request to the court at least 3 days before the trial date. The demand must be accompanied by payment of a jury fee or by filing a Statement of Inability to Afford Payment of Court Costs. If a jury is

demanded by either party, the jury will be impaneled and sworn as in other cases; and after hearing the evidence it will return its verdict in favor of the plaintiff or the defendant. If no jury is timely demanded by either party, the judge will try the case.

(c) *Limit on Postponement*. Trial in an eviction case must not be postponed for more than 7 days total unless both parties agree in writing.

(Amended by Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016.)

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

RULE 510.8. JUDGMENT; WRIT; NO NEW TRIAL.

(a) *Judgment Upon Jury Verdict*. Where a jury has returned a verdict, the judge may render judgment on the verdict or, if the verdict is contrary to the law or the evidence, judgment notwithstanding the verdict.

(b) *Judgment for Plaintiff*. If the judgment is in favor of the plaintiff, the judge must render judgment for plaintiff or possession of the premises, costs, delinquent rent as of the date of entry of judgment, if any, and attorney fees if recoverable by law.

(c) *Judgment for Defendant*. If the judgment is in favor of the defendant, the judge must render judgment for defendant against the plaintiff for costs and attorney fees if recoverable by law.

(d) *Writ*. If the judgment or verdict is in favor of the plaintiff, the judge must award a writ of possession upon demand of the plaintiff and payment of any required fees.

(1) Time to Issue. Except as provided by Rule 510.5, no writ of possession may issue before the 6th day after the date a judgment for possession is signed or the day following the deadline for the defendant to appeal the judgment, whichever is later. A writ of possession may not issue more than 60 days after a judgment for possession is signed. For good cause, the court may extend the deadline for issuance to 90 days after a judgment for possession is signed.

(2) Time to Execute. A writ of possession may not be executed after the 90th day after a judgment for possession is signed.

(3) Effect of Appeal. A writ of possession must not issue if an appeal is perfected and, if applicable, rent is paid into the registry, as required by these rules.

(e) *No Motion For New Trial*. No motion for new trial may be filed.

RULE 510.9. APPEAL.

(a) *How Taken; Time*. A party may appeal a judgment in an eviction case by filing a bond, making a cash deposit, or Statement of Inability to Afford Payment of Court Costs with the justice court within 5 days after the judgment is signed.

(b) *Amount of Security; Terms*. The justice court judge will set the amount of the bond or cash deposit to include the items enumerated in Rule 510.11. The bond or cash deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(c) *Statement of Inability to Afford Payment of Court Costs*.

(1) Filing. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead Statement of Inability to Afford Payment of Court Costs. The Statement must be on a form approved by the Supreme Court or include the information required by the Court-approved form.

(2) Contest. The Statement may be contested as provided in Rule 502.3(d) within 5 days after the opposing party receives notice that the Statement was filed.

(3) Appeal If Contest Sustained. If the contest is sustained, the appellant may appeal that decision by filing notice with the justice court within 5 days of that court's written order. The justice court must then forward all related documents to the county court for resolution. The county court must set the matter for hearing within 5 days and hear the contest de novo, as if there had been no previous hearing, and, if the appeal is granted, must direct the justice court to transmit to the clerk of the county court the transcript, records, and papers of the case, as provided in these rules.

(4) If No Appeal or If Appeal Overruled. If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within one business day, post an appeal bond or make a cash deposit in compliance with this rule.

(5) Payment of Rent in Nonpayment of Rent Appeals.

(A) Notice. If a defendant appeals an eviction for nonpayment of rent by filing a Statement of Inability to Afford Payment of Court Costs, the justice court must provide to the defendant a written notice at the time the Statement is filed that contains the following information in bold or conspicuous type:

(i) the amount of the initial deposit of rent, equal to one rental period's rent under the terms of the rental agreement, that the defendant must pay into the justice court registry;

(ii) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;

(iii) the calendar date by which the initial deposit must be paid into the justice court registry, which must be within 5 days of the date the Statement of Inability to Afford Payment of Court Costs is filed; and

(iv) a statement that failure to pay the required amount into the justice court registry by the required date may result in the court issuing a writ of possession without hearing.

(B) Defendant May Remain in Possession. A defendant who appeals an eviction for nonpayment of rent by filing a Statement of Inability to Afford Payment of Court Costs is entitled to stay in possession of the premises during the pendency of the appeal by complying with the following procedure:

(i) Within 5 days of the date that the defendant files a Statement of Inability to Afford Payment of Court Costs, it must pay into the justice court registry the amount set forth in the notice provided at the time the defendant filed the Statement. If the defendant was provided with notice and fails to pay the designated amount into the justice court registry within 5 days, and the transcript has not been transmitted to the county clerk, the plaintiff is entitled, upon request and payment of the applicable fee, to a writ of possession, which the justice court must issue immediately and without hearing.

(ii) During the appeal process as rent becomes due under the rental agreement, the defendant must pay the designated amount into the county court registry within 5 days of the rental due date under the terms of the rental agreement.

(iii) If a government agency is responsible for all or a portion of the rent, the defendant must pay only that portion of the rent determined by the justice court to be paid during appeal. Either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by filing a contest within 5 days after the judgment is signed. If a contest is filed, the justice court must notify the parties and hold a hearing on the contest within 5 days. If the defendant objects to the justice court's ruling at the hearing, the defendant is required to pay only the portion claimed to be owed by the defendant until the issue is tried in county court.

(iv) If the defendant fails to pay the designated amount into the court registry within the time limits prescribed by these rules, the plaintiff may file a sworn motion that the defendant is in default in county court. The plaintiff must notify the defendant of the motion and the hearing date. Upon a showing that the defendant is in default, the court must issue a writ of possession.

(v) The plaintiff may withdraw any or all rent in the county court registry upon sworn motion and hearing, prior to final determination of the case, showing just cause; dismissal of the appeal; or order of the court after final hearing.

(vi) All hearings and motions under this subparagraph are entitled to precedence in the county court.

(d) *Notice to Other Parties Required*. If a Statement of Inability to Afford Payment of Court Costsis filed, the court must provide notice to all other parties that the Statement was filed no later than the next business day. Within 5 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(e) *No Default on Appeal Without Compliance With Rule*. No judgment may be taken by default against the adverse party in the court to which the case has been appealed without first showing substantial compliance with this rule.

(f) *Appeal Perfected*. An appeal is perfected when a bond, cash deposit, or Statement of Inability to Afford Payment of Court Costs is filed in accordance with this rule.

(Amended by Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016.)

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

RULE 510.10. RECORD ON APPEAL; DOCKETING; TRIAL DE NOVO.

(a) *Preparation and Transmission of Record*. Unless otherwise provided by law or these rules, when an appeal has been perfected, the judge must stay all further proceedings on the judgment and must immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case together with any money in the court registry, including sums tendered pursuant to Rule 510.9(c)(5)(B).

(b) *Docketing; Notice*. The county clerk must docket the case and must immediately notify the parties of the date of receipt of the transcript and the docket number of the case. The notice must advise the defendant that it must file a written answer in the county court within 8 days if one was not filed in the justice court.

(c) *Trial De Novo*. The case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. The trial, as well as any hearings and motions, is entitled to precedence in the county court.

RULE 510.11. DAMAGES ON APPEAL.

On the trial of the case in the county court the appellant or appellee will be permitted to plead, prove and recover his damages, if any, suffered for withholding or defending possession of the premises during the pendency of the appeal. Damages may include but are not limited to loss of rentals during the pendency of the appeal and attorney fees in the justice and county courts provided, as to attorney fees, that the requirements of Section 24.006 of the Texas Property Code have been met. Only the party prevailing in the county court will be entitled to recover damages against the adverse party. The prevailing party will also be entitled to recover court costs and to recover against the sureties on the appeal bond in cases where the adverse party has executed an appeal bond.

RULE 510.12. JUDGMENT BY DEFAULT ON APPEAL.

An eviction case appealed to county court will be subject to trial at any time after the expiration of 8 days after the date the transcript is filed in the county court. If the defendant has filed a written answer in the justice court, it must be taken to constitute his appearance and answer in the county court and may be amended as in other cases. If the defendant made no answer in writing in the justice court and fails to file a written answer within 8 days after the transcript is filed in the county court, the allegations of the complaint may be taken as admitted and judgment by default may be entered accordingly.

RULE 510.13. WRIT OF POSSESSION ON APPEAL.

The writ of possession, or execution, or both, will be issued by the clerk of the county court according to the judgment rendered, and the same will be executed by the sheriff or constable, as in other cases. The judgment of the county court may not be stayed unless within 10 days from the judgment the appellant files a supersedeas bond in an amount set by the county court pursuant to Section 24.007 of the Texas Property Code.

(Adopted by Order Feb 12, 2013 and Order April 15, 2013, eff. Aug. 31, 2013.)

Rules of Civil Procedure 500-510 govern cases filed on or after August 31 , 2013, and cases pending on August 31 , 2013, except to the extent that in the opinion of the court their application in a case pending on August 31 , 2013, would not be feasible or would work injustice, in which event the formerly applicable procedure applies. An action taken before August 31 , 2013, in a case pending on August 31, 2013, that was done pursuant to any previously applicable procedure must be treated as valid. Where citation or other process was issued or served prior to August 31, 2013 , in compliance with any previously applicable procedure, the party served has the time provided for under the previously applicable procedure to answer or otherwise respond.

PART V.
IN RULES OF PRACTICE JUSTICE COURTS

RULES 523-591. [REPEALED.]

(Repealed by Order Feb 12, 2013 and Order April 15, 2013, eff. Aug. 31, 2013.)

PART VI.
RULES RELATING TO ANCILLARY PROCEEDINGS

SECTION 1.
ATTACHMENT

RULE 592. APPLICATION FOR WRIT OF ATTACHMENT AND ORDER.

Either at the commencement of a suit or at any time during its progress the plaintiff may file an application for the issuance of a writ of attachment. Such application shall be supported by affidavits of the plaintiff, his agent, his attorney, or other persons having knowledge of relevant facts. The application shall comply with all statutory requirements and shall state the grounds for issuing the writ and the specific facts relied upon by the plaintiff to warrant the required findings by the court. The writ shall not be quashed because two or more grounds are stated conjunctively or disjunctively. The application and any affidavits shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence; provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.

No writ shall issue except upon written order of the court after a hearing, which may be ex parte. The court, in its order granting the application, shall make specific findings of facts to support the statutory grounds found to exist, and shall specify the maximum value of property that may be attached, and the amount of bond required of plaintiff, and, further shall command that the attached property be kept safe and preserved subject to further orders of the court. Such bond shall be in an amount which, in the opinion of the court, will adequately compensate the defendant in the event plaintiff fails to prosecute his suit to effect, and to pay all damages and costs which may be adjudged against him for wrongfully suing out the writ of attachment. The court shall further find in its order the amount of bond required of defendant to replevy, which, unless the defendant chooses to exercise his option as provided in Rule 599, shall be the amount of plaintiff's claim, one year's accrual of interest if allowed by law on the claim, and the estimated costs of court. The order may direct the issuance of several writs at the same time, or in succession, to be sent to different counties.

(Amended by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 592A. BOND FOR ATTACHMENT.

No writ of attachment shall issue until the party applying therefor has filed with the officer authorized to issue such writ a bond payable to the defendant in the amount fixed by the court's order, with sufficient surety or sureties as provided by statute to be approved by such officer, conditioned that the plaintiff will prosecute his suit to effect and pay to the extent of the penal amount of the bond all damages and costs as may be adjudged against him for wrongfully suing out such writ of attachment.

After notice to the opposite party, either before or after the issuance of the writ, the defendant or plaintiff may file a motion to increase or reduce the amount of such bond, or to question the sufficiency of the sureties thereon, in the court in which such suit is pending. Upon hearing, the court shall enter its order with respect to such bond and sufficiency of the sureties.

(Adopted July 11, 1977, eff. Jan. 1, 1978.)

RULE 592B. FORM OF ATTACHMENT BOND.

The following form of bond may be used:

"The State of Texas,

"County of _____,

"We, the undersigned, _____ as principal, and _____ and _____ as sureties, acknowledge ourselves bound to pay to C.D. the sum of _____ dollars, conditioned

that the above bound plaintiff in attachment against the said C.D., defendant, will prosecute his said suit to effect, and that he will pay all such damages and costs to the extent of the penal amount of this bond as shall be adjudged against him for wrongfully suing out such attachment. Witness our hands this _____ day of _____, 19__."

(Renumbered from Rule 592 and amended by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 593. REQUISITES FOR WRIT.

A writ of attachment shall be directed to the sheriff or any constable within the State of Texas. It shall command him to attach and hold, unless replevied, subject to the further order of the court, so much of the property of the defendant, of a reasonable value in approximately the amount fixed by the court, as shall be found within his county.

(Amended by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 594. FORM OF WRIT.

The following form of writ may be issued:

"The State of Texas. "To the Sheriff or any Constable of any County of the State of Texas, greeting:

"We command you that you attach forthwith so much of the property of C.D., if it be found in your county, repleviable on security, as shall be of value sufficient to make the sum of _____ dollars, and the probable costs of suit, to satisfy the demand of A.B., and that you keep and secure in your hands the property so attached, unless replevied, that the same may be liable to further proceedings thereon to be had before our court in _____, County of _____. You will true return make of this writ on or before 10 a.m. of Monday, the _____ day of _____, 19__, showing how you have executed the same."

RULE 595. SEVERAL WRITS.

Several writs of attachment may, at the option of the plaintiff, be issued at the same time, or in succession and sent to different counties, until sufficient property shall be attached to satisfy the writ.

RULE 596. DELIVERY OF WRIT.

The writ of attachment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer issuing it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

RULE 597. DUTY OF OFFICER.

The sheriff or constable receiving the writ shall immediately proceed to execute the same by levying upon so much of the property of the defendant subject to the writ, and found within his county, as may be sufficient to satisfy the command of the writ.

RULE 598. LEVY, HOW MADE.

The writ of attachment shall be levied in the same manner as is, or may be, the writ of execution upon similar property.

RULE 598A. SERVICE OF WRIT ON DEFENDANT.

The defendant shall be served in any manner prescribed for service of citation, or as provided in Rule 21a, with a copy of the writ of attachment, the application, accompanying affidavits, and orders of the court as soon as practicable following the levy of the writ. There shall be prominently displayed on the face of the copy of the writ served on the defendant, in ten-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

"To _____, Defendant:

"You are hereby notified that certain properties alleged to be owned by you have been attached. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

(Adopted by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 599. DEFENDANT MAY REPLEVY.

At any time before judgment, should the attached property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ, payable to plaintiff, in the amount fixed by the court's order, or, at the defendant's option, for the value of the property sought to be replevied (to be estimated by the officer), plus one year's interest thereon at the legal rate from the date of the bond, conditioned that the defendant shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the officer or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that attached, for the property attached. Provided that there has been located sufficient property of the defendants to satisfy the order of attachment, the court may authorize substitution of one or more items of defendant's property for all or for part of the property attached. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from attachment shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of attachment or modification thereof shall be terminated. Attachment of substituted property shall be deemed to have existed from the date of levy on the original property attached, and no property on which liens have become affixed since the date of levy on the original property may be substituted.

(Amended by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 600. SALE OF PERISHABLE PROPERTY.

Whenever personal property which has been attached shall not have been claimed or replevied, the judge, or justice of the peace, out of whose court the writ was issued, may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property is in danger of serious and immediate waste or decay, or that the keeping of the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom.

RULE 601. TO PROTECT INTERESTS.

In determining whether the property attached is perishable, and the necessity or advantage of ordering a sale thereof, the judge or justice of the peace may act upon affidavits in writing or oral testimony, and may by a preliminary order entered of record, with or without notice to the parties as the urgency of the case in his opinion requires, direct the sheriff or constable to sell such property at public auction for cash, and thereupon the officer shall sell it accordingly.

RULE 602. BOND OF APPLICANT FOR SALE.

If the application for an order of sale be filed by any person or party other than the defendant from whose possession the property was taken by levy, the court shall not grant such order unless the applicant shall file with such court a bond payable to such defendant with two or more good and sufficient sureties, to be approved by said court, conditioned that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally and unjustly applied for, or be illegally and unjustly made.

RULE 603. PROCEDURE FOR SALE.

Such sale of attached perishable personal property shall be conducted in the same manner as sales of personal property under execution; provided, however, that the time of the sale, and at the time of advertisement thereof, may be fixed by the judge or justice of the peace at a time earlier than ten days according to the exigency of the case, and in such event notice thereof shall be given in such manner as directed by the order.

RULE 604. RETURN OF SALE.

The officer making such sale of perishable property shall promptly pay the proceeds of such sale to the clerk of such court or justice of the peace, as the case may be, and shall make written return of the order of sale signed by him officially, stating the time and place of the sale, the name of the purchaser, and the amount of money received, with an itemized account of the expenses attending the sale. Such return shall be filed with the papers of the case.

RULE 605. JUDGE MAY MAKE NECESSARY ORDERS.

When the perishable personal property levied on under the attachment writ has not been claimed or replevied, the judge or justice of the peace may make such orders, either in term time or vacation, as may be necessary for its preservation or use.

RULE 606. RETURN OF WRIT.

The officer executing the writ of attachment shall return the writ, with his action endorsed thereon, or attached thereto, signed by him officially, to the court from which it issued, at or before 10 o'clock a.m. of the Monday next after the expiration of fifteen days from the date of issuance of the writ. Such return shall describe the property attached with sufficient certainty to identify it, and state when the same was attached, and whether any personal property attached remains still in his hands, and, if not, the disposition made of the same. When property has been replevied he shall deliver the replevy bond to the clerk or justice of the peace to be filed with the papers of the cause.

RULE 607. REPORT OF DISPOSITION OF PROPERTY.

When the property levied on is claimed, replevied or sold, or otherwise disposed of after the writ has been returned, the officer having the custody of the same shall immediately make a report in writing, signed by him officially, to the clerk, or justice of the peace, as the case may be, showing such disposition of the property. Such report shall be filed among the papers of the cause.

RULE 608. DISSOLUTION OR MODIFICATION OF WRIT OF ATTACHMENT.

A defendant whose property has been attached or any intervening party who claims an interest in such property, may by sworn written motion, seek to vacate, dissolve, or modify the writ, and the order directing its issuance, for any grounds or cause, extrinsic or intrinsic. Such motion shall admit or deny each finding of the order directing the issuance of the writ except where the movant is unable to admit or deny the finding, in which case movant shall set forth the reasons why he cannot admit or deny. Unless the parties agree to an extension of time, the motion shall be heard promptly, after reasonable notice to the plaintiff (which may be less than three days), and the issue shall be determined not later than ten days after the motion is filed. The filing of the motion shall stay any further proceedings under the writ, except for any orders concerning the care, preservation, or sale of perishable property, until a hearing is had and the issue is determined. The writ shall be dissolved unless at such hearing, the plaintiff shall prove the grounds relied upon for its issuance, but the court may modify its previous order granting the writ and the writ issued pursuant thereto. The movant shall, however, have the burden to prove that the reasonable value of the property attached exceeds the amount necessary to secure the debt, interest for one year, and probable costs. He shall also have the burden to prove the facts to justify substitution of property.

The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court may make all such orders, including orders concerning the care, preservation, or disposition of the property (or the proceeds therefrom if the same has been sold), as justice may require. If the movant has given a replevy bond, an order to vacate or dissolve the writ shall vacate the replevy bond and discharge the sureties thereon, and if the court modifies its order or the writ issued pursuant thereto, it shall make such further orders with respect to the bond as may be consistent with its modification.

(Amended by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 609. AMENDMENT.

Clerical errors in the affidavit, bond, or writ of attachment, or the officer's return thereof, may upon application in writing to the judge or justice of the court in which the suit is filed, and after notice to the opponent, be amended in such manner and on such terms as the judge or justice shall authorize by an order entered in the minutes of the court or noted on the docket of the justice of the peace, provided the amendment does not change or add to the grounds of such attachment as stated in the affidavit, and provided such amendment appears to the judge or justice to be in furtherance of justice.

SECTION 2.
DISTRESS WARRANT

RULE 610. APPLICATION FOR DISTRESS WARRANT AND ORDER.

Either at the commencement of a suit or at any time during its progress the plaintiff may file an application for the issuance of a distress warrant with the justice of the peace. Such application may be supported by affidavits of the plaintiff, his agent, his attorney, or other persons having knowledge of relevant facts, but shall include a statement that the amount sued for is rent, or advances described by statute, or shall produce a writing signed by the tenant to that effect, and shall further swear that such warrant is not sued out for the purpose of vexing and harassing the defendant. The application shall comply with all statutory requirements and shall state the grounds for issuing the warrant and the specific facts relied upon by the plaintiff to warrant the required findings by the justice of the peace. The warrant shall not be quashed because two or more grounds are stated conjunctively or disjunctively. The application and any affidavits shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.

No warrant shall issue before final judgment except on written order of the justice of the peace after a hearing, which may be ex parte. Such warrant shall be made returnable to a court having jurisdiction of the amount in controversy. The justice of the peace in his order granting the application shall make specific findings of fact to support the statutory grounds found to exist, and shall specify the maximum value of property that may be seized, and the amount of bond required of plaintiff, and, further shall command that property be kept safe and preserved subject to further orders of the court having jurisdiction. Such bond shall be in an amount which, in the opinion of the court, shall adequately compensate defendant in the event plaintiff fails to prosecute his suit to effect, and pay all damages and costs as shall be adjudged against him for wrongfully suing out the warrant. The justice of the peace shall further find in his order the amount of bond required to replevy, which, unless the defendant chooses to exercise his option as provided

in Rule 614, shall be the amount of plaintiff's claim, one year's accrual of interest if allowed by law on the claim, and the estimated costs of court. The order may direct the issuance of several warrants at the same time, or in succession, to be sent to different counties.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 611. BOND FOR DISTRESS WARRANT.

No distress warrant shall issue before final judgment until the party applying therefor has filed with the justice of the peace authorized to issue such warrant a bond payable to the defendant in an amount approved by the justice of the peace, with sufficient surety or sureties as provided by statute, conditioned that the plaintiff will prosecute his suit to effect and pay all damages and costs as may be adjudged against him for wrongfully suing out such warrant.

After notice to the opposite party, either before or after the issuance of the warrant, the defendant or plaintiff may file a motion to increase or reduce the amount of such bond, or to question the sufficiency of the sureties thereon, in a court having jurisdiction of the subject matter. Upon hearing, the court shall enter its order with respect to such bond and sufficiency of the sureties.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 612. REQUISITES FOR WARRANT.

A distress warrant shall be directed to the sheriff or any constable within the State of Texas. It shall command him to attach and hold, unless replevied, subject to the further orders of the court having jurisdiction, so much of the property of the defendant, not exempt by statute, of reasonable value in approximately the amount fixed by the justice of the peace, as shall be found within his county.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 613. SERVICE OF WARRANT ON DEFENDANT.

The defendant shall be served in any manner prescribed for service of citation, or as provided in Rule 21a, with a copy of the distress warrant, the application, accompanying affidavits, and orders of the justice of the peace as soon as practicable following the levy of the warrant. There shall be prominently displayed on the face of the copy of the warrant served on the defendant, in 10-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

To _____, Defendant:

You are hereby notified that certain properties alleged to be owned by you have been seized. If you claim any rights in such property, you are advised: "YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WARRANT."

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 614. DEFENDANT MAY REPLEVY.

At any time before judgment, should the seized property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by a court having jurisdiction of the amount in controversy payable to plaintiff in double the amount of the plaintiff's debt, or, at the defendant's option for not less than the value of the property sought to be replevied, plus one year's interest thereon at the legal rate from the date of the bond conditioned that the defendant shall satisfy to the extent of the penal amount of the bond any judgment which may be rendered against him in such action.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties and estimated value of the property, by a court having jurisdiction of the amount in controversy. The court's determination may be made upon the basis of affidavits if uncontroverted setting forth such facts as would be admissible in evidence, otherwise the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the order of the justice of the peace, and such order of the court shall supersede and control with respect to such matters.

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that attached, for the property seized. Provided that there has been located sufficient property of the defendant's to satisfy the order of seizure, the court may authorize substitution of one or more items of defendant's property for all or part of the property seized. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from seizure shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of seizure or modification thereof shall be terminated. Seizure of substituted property shall be deemed to have existed from the date of levy on the original property seized, and no property on which liens have become affixed since the date of levy on the original property may be substituted.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 614a. DISSOLUTION OR MODIFICATION OF DISTRESS WARRANT.

A defendant whose property has been seized or any intervening claimant who claims an interest in such property, may by sworn written motion, seek to vacate, dissolve, or modify the seizure, and the order directing its issuance, for any grounds or cause, extrinsic or intrinsic. Such motion shall admit or deny each finding of the order directing the issuance of the warrant except where the movant is unable to admit or deny the finding, in which case movant shall set forth the reasons why he cannot admit or deny. Unless the parties agree to an extension of time, the motion shall be heard promptly, after reasonable notice to the plaintiff (which may be less than three days), and the issue shall be determined not later than 10 days after the motion is filed. The filing of the motion shall stay any further proceedings under the warrant, except for any orders concerning the care, preservation, or sale of any perishable property, until a hearing is had, and the issue is determined. The warrant shall be dissolved unless, at such hearing, the plaintiff shall prove the specific facts alleged and the grounds relied upon for its issuance, but the court may modify the order of the justice of the peace granting the warrant and the warrant issued pursuant thereto. The movant shall however have the burden to prove that the reasonable value of the property seized exceeds the amount necessary to secure the debt, interest for one year, and probable costs. He shall also have the burden to prove the facts to justify substitution of property.

The court's determination may be made upon the basis of affidavits setting forth such facts as would be admissible in evidence, but additional evidence, if tendered by either party shall be received and considered. The court may make all such orders, including orders concerning the care, preservation, or disposition of the property (or the proceeds therefrom if the same has been sold), as justice may require. If the movant has given a replevy bond, an order to vacate or dissolve the warrant shall vacate the replevy bond and discharge the sureties thereon, and if the court modifies the order of the justice of the peace of the warrant issued pursuant thereto, it shall make such further orders with respect to the bond as may be consistent with its modification.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 615. SALE OF PERISHABLE PROPERTY.

Whenever personal property which has been levied on under a distress warrant shall not have been claimed or replevied, the judge, or justice of the peace, to whose court such writ is made returnable may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property is in danger of serious and immediate waste or decay, or that the keeping of the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom.

RULE 616. TO PROTECT INTERESTS.

In determining whether the property levied upon is perishable, and the necessity or advantage of ordering a sale thereof, the judge or justice of the peace may act upon affidavits in writing or oral testimony, and may by a preliminary order entered of record with or without notice to the parties as the urgency of the case in his opinion requires, direct the sheriff or constable to sell such property at public auction for cash, and thereupon the sheriff or constable shall sell it accordingly. If the application for an order of sale be filed by any person or party other than the defendant from whose possession the property was taken by levy, the court shall not grant such order, unless the applicant shall file with such court a bond payable to such defendant, with two or more good and sufficient sureties, to be approved by said court, conditioned that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally and unjustly applied for, or be illegally and unjustly made.

RULE 617. PROCEDURE FOR SALE.

Such sale of perishable personal property shall be conducted in the same manner as sales of personal property under execution; provided, however, that the time of the sale, and the time of advertisement thereof, may be fixed by the judge or justice of the peace at a time earlier than ten days, according to the exigency of the case, and in such event notice thereof shall be given in such manner as directed by the order.

RULE 618. RETURN OF SALE.

The officer making such sale of perishable property shall promptly pay the proceeds of such sale to the clerk of such court or to the justice of the peace, as the case may be, and shall make written return of the order of sale, signed by him officially, stating the time and place of the sale, the name of the purchaser, and the amount of money received, with an itemized account of the expenses attending the sale. Such return shall be filed with the papers of the case.

RULE 619. CITATION FOR DEFENDANT.

The justice at the time he issues the warrant shall issue a citation to the defendant requiring him to answer before such justice at the first day of the next succeeding term of court, stating the time and place of holding the same, if he has jurisdiction to finally try the cause, and upon its being returned served, to proceed to judgment as in ordinary cases; and, if he has not such jurisdiction, the citation shall require the defendant to answer before the court to which the warrant was made returnable at or before ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of service thereof, stating the place of holding the court, and shall be returned with the other papers to such court. If the defendant has removed from the county without service, the proper officer shall state this fact in his return on the citation; and the court shall proceed to try the case ex parte, and may enter judgment.

RULE 620. PETITION.

When the warrant is made returnable to the district or county court, the plaintiff shall file his petition within ten days from the date of the issuance of the writ.

SECTION 3.
EXECUTIONS

RULE 621. ENFORCEMENT OF JUDGMENT.

The judgments of the district, county, and justice courts shall be enforced by execution or other appropriate process. Such execution or other process shall be returnable in thirty, sixty, or ninety days as requested by the plaintiff, his agent or attorney.

RULE 621a. DISCOVERY AND ENFORCEMENT OF JUDGMENT.

At any time after rendition of judgment, and so long as said judgment has not been suspended by a supersedeas bond or by order of a proper court and has not become dormant as provided by Article 3773, V.A.T.S., the successful party may, for the purpose of obtaining information to aid in the enforcement of such judgment, initiate and maintain in the trial court in the same suit in which said judgment was rendered any discovery proceeding authorized by these rules for pre-trial matters. Also, at any time after rendition of judgment, either party may, for the purpose of obtaining information relevant to motions allowed by Texas Rules of Appellate Procedure 47 and 49 initiate and maintain in the trial court in the same suit in which said judgment was rendered any discovery proceeding authorized by these rules for pre-trial matters. The rules governing and related to such pre-trial discovery proceedings shall apply in like manner to discovery proceedings after judgment. The rights herein granted to the parties shall inure to their successors or assignees, in whole or in part. Judicial supervision of such discovery proceedings after judgment shall be the same as that provided by law or these rules for pre-trial discovery and proceedings insofar as applicable.

(Adopted by Order July 21, 1970, eff. Jan. 1, 1971. Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 622. EXECUTION.

An execution is a process of the court from which it is issued. The clerk of the district or county court or the justice of the peace, as the case may be, shall tax the costs in every case in which a final judgment has been rendered and shall issue execution to enforce such judgment and collect such costs. The execution and subsequent executions shall not be addressed to a particular county, but shall be addressed to any sheriff or any constable within the State of Texas.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941.)

RULE 623. ON DEATH OF EXECUTOR.

When an executor, administrator, guardian or trustee of an express trust dies, or ceases to be such executor, administrator, guardian or trustee after judgment, execution shall issue on such judgment in the name of his successor, upon an affidavit of such death or termination being filed with the clerk of the court or the justice of the peace, as the case may be, together with the certificate of the appointment of such successor under the hand and seal of the clerk of the court wherein the appointment was made.

RULE 624. ON DEATH OF NOMINAL PLAINTIFF.

When a person in whose favor a judgment is rendered for the use of another dies after judgment, execution shall issue in the name of the party for whose use the suit was brought upon an affidavit of such death being filed with the clerk of the court or the justice of the peace.

RULE 625. ON MONEY OF DECEASED.

If a sole defendant dies after judgment for money against him, execution shall not issue thereon, but the judgment may be proved up and paid in due course of administration.

RULE 626. ON PROPERTY OF DECEASED.

In any case of judgment other than a money judgment, where the sole defendant, or one or more of several joint defendants, shall die after judgment, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of a representative of such decedent under the hand and seal of the clerk of the court wherein such appointment was made, the proper process on such judgment shall issue against such representative.

RULE 627. TIME FOR ISSUANCE.

If no supersedeas bond or notice of appeal, as required of agencies exempt from filing bonds, has been filed and approved, the clerk of the court or justice of the peace shall issue the execution upon such judgment upon application of the successful party or his attorney after the expiration of thirty days from the time a final judgment is signed. If a timely motion for new trial or in arrest of judgment is filed, the clerk shall issue the execution upon the judgment on application of the party or his attorney after the expiration of thirty days from the time the order overruling the motion is signed or from the time the motion is overruled by operation of law.

(Amended by Order July 22, 1975, eff. Jan. 1, 1976; June 10, 1980, eff. Jan. 1, 1981; Dec. 5, 1983, eff. April 1, 1984.)

RULE 628. EXECUTION WITHIN THIRTY DAYS.

Such execution may be issued at any time before the thirtieth day upon the filing of an affidavit by the plaintiff in the judgment or his agent or attorney that the defendant is about to remove his personal property subject to execution by law out of the county, or is about to transfer or secrete such personal property for the purpose of defrauding his creditors.

(Amended by Order July 22, 1976, eff. Jan. 1, 1976.)

RULE 629. REQUISITES OF EXECUTION.

The style of the execution shall be "The State of Texas." It shall be directed to any sheriff or any constable within the State of Texas. It shall be signed by the clerk or justice officially, and bear the seal of the court, if issued out of the district or county court, and shall require the officer to execute it according to its terms, and to make the costs which have been adjudged against the defendant in execution and the further costs of executing the writ. It shall describe the judgment, stating the court in which, and the time when, rendered, and the names of the parties in whose favor and against whom the judgment was rendered. A correct copy of the bill of costs taxed against the defendant in execution shall be attached to the writ. It shall require the officer to return it within thirty, sixty, or ninety days, as directed by the plaintiff or his attorney.

(Amended by Order Sept. 20, 1941, eff. Dec. 2, 1941.)

RULE 630. EXECUTION ON JUDGMENT FOR MONEY.

When an execution is issued upon a judgment for a sum of money, or directing the payment simply of a sum of money, it must specify in the body thereof the sum recovered or directed to be paid and the sum actually due when it is issued and the rate of interest upon the sum due. It must require the officer to satisfy the judgment and costs out of the property of the judgment debtor subject to execution by law.

RULE 631. EXECUTION FOR SALE OF PARTICULAR PROPERTY.

An execution issued upon a judgment for the sale of particular estates or personal property or real estate, must particularly describe the property, and shall direct the officer to make the sale by previously giving the public notice of the time and place of sale required by law and these rules.

RULE 632. EXECUTION FOR DELIVERY OF CERTAIN PROPERTY.

An execution issued upon a judgment for the delivery of the possession of a chattel or personal property, or for the delivery of the possession of real property, shall particularly describe the property, and designate the party to whom the judgment awards the possession. The writ shall require the officer to deliver the possession of the property to the party entitled thereto.

RULE 633. EXECUTION FOR POSSESSION OR VALUE OF PERSONAL PROPERTY.

If the judgment be for the recovery of personal property or its value, the writ shall command the officer, in case a delivery thereof cannot be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein, out of any property of the party against whom judgment was rendered, liable to execution.

RULE 634. EXECUTION SUPERSEDED.

The clerk or justice of the peace shall immediately issue a writ of supersedeas suspending all further proceedings under any execution previously issued when a supersedeas bond is afterward filed and approved within the time prescribed by law or these rules.

RULE 635. STAY OF EXECUTION IN JUSTICE COURT.

At any time within ten days after the rendition of any judgment in a justice court, the justice may grant a stay of execution thereof for three months from the date of such judgment, if the person against whom such judgment was rendered shall, with one or more good and sufficient sureties, to be approved by the justice, appear before him and acknowledge themselves and each of them bound to the successful party in such judgment for the full amount thereof, with interest and costs, which acknowledgment shall be entered in writing on the docket, and signed by the persons binding themselves as sureties; provided, no such stay of execution shall be granted unless the party applying therefor shall first file an affidavit with the justice that he has

not the money with which to pay such judgment, and that the enforcement of same by execution prior to three months would be a hardship upon him and would cause a sacrifice of his property which would not likely be caused should said execution be stayed. Such acknowledgment shall be entered by the justice on his docket and shall constitute a judgment against the defendant and such sureties, upon which execution shall issue in case the same is not paid on or before the expiration of such day.

RULE 636. INDORSEMENTS BY OFFICER.

The officer receiving the execution shall indorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person he shall number them as received.

RULE 637. LEVY OF EXECUTION.

When an execution is delivered to an officer he shall proceed without delay to levy the same upon the property of the defendant found within his county not exempt from execution, unless otherwise directed by the plaintiff, his agent or attorney. The officer shall first call upon the defendant, if he can be found, or, if absent, upon his agent within the county, if known, to point out property to be levied upon, and the levy shall first be made upon the property designated by the defendant, or his agent. If in the opinion of the officer the property so designated will not sell for enough to satisfy the execution and costs of sale, he shall require an additional designation by the defendant. If no property be thus designated by the defendant, the officer shall levy the execution upon any property of the defendant subject to execution.

RULE 638. PROPERTY NOT TO BE DESIGNATED.

A defendant in execution shall not point out property which he has sold, mortgaged or conveyed in trust, or property exempt from forced sale.

RULE 639. LEVY.

In order to make a levy on real estate, it shall not be necessary for the officer to go upon the ground but it shall be sufficient for him to indorse such levy on the writ. Levy upon personal property is made by taking possession thereof, when the defendant in execution is entitled to the possession. Where the defendant in execution has an interest in personal property, but is not entitled to the possession thereof, a levy is made thereon by giving notice thereof to the person who is entitled to the possession, or one of them where there are several.

RULE 640. LEVY ON STOCK RUNNING AT LARGE.

A levy upon livestock running at large in a range, and which cannot be herded and penned without great inconvenience and expense, may be made by designating by reasonable estimate the number of animals and describing them by their marks and brands, or either; such levy shall be made in the presence of two or more credible persons, and notice thereof shall be given in writing to the owner or his herder or agent, if residing within the county and known to the officer.

RULE 641. LEVY ON SHARES OF STOCK.

A levy upon shares of stock of any corporation or joint stock company for which a certificate is outstanding is made by the officer seizing and taking possession of such certificate. Provided, however, that nothing herein shall be construed as restricting any rights granted under Section 8.317 of the Texas Uniform Commercial Code.

(Amended by Order Aug. 18, 1947, eff. Dec. 31, 1947; July 21, 1970, eff. Jan. 1, 1971.)

RULE 642. [REPEALED]

(Repealed by Order July 22, 1975, eff. Jan. 1, 1976.)

RULE 643. LEVY ON GOODS PLEDGED OR MORTGAGED.

Goods and chattels pledged, assigned or mortgaged as security for any debt or contract, may be levied upon and sold on execution against the person making the pledge, assignment or mortgage subject thereto; and the purchaser shall be entitled to the possession when it is held by the pledgee, assignee or mortgagee, on complying with the conditions of the pledge, assignment or mortgage.

RULE 644. MAY GIVE DELIVERY BOND.

Any personal property taken in execution may be returned to the defendant by the officer upon the delivery by the defendant to him of a bond, payable to the plaintiff, with two or more good and sufficient sureties, to be approved by the officer, conditioned that the property shall be delivered to the officer at the time and place named in the bond, to be sold according to law, or for the payment to the officer of a fair value thereof, which shall be stated in the bond.

RULE 645. PROPERTY MAY BE SOLD BY DEFENDANT.

Where property has been replevied, as provided in the preceding rule, the defendant may sell or dispose of the same, paying the officer the stipulated value thereof.

RULE 646. FORFEITED DELIVERY BOND.

In case of the non-delivery of the property according to the terms of the delivery bond, and nonpayment of the value thereof, the officer shall forthwith indorse the bond "Forfeited" and return the same to the clerk of the court or the justice of the peace from which the execution issued; whereupon, if the judgment remain unsatisfied in whole or in part, the clerk or justice shall issue execution against the principal debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery bond shall be taken, which instruction shall be indorsed by the clerk or justice on the execution.

RULE 646a. SALE OF REAL PROPERTY.

Real property taken by virtue of any execution shall be sold at public auction, at the courthouse door of the county, unless the court orders that such sale be at the place where the real property is situated, on the first Tuesday of the month, between the hours of ten o'clock, a.m. and four o'clock, p.m.

(Adopted by Order July 26, 1960, eff. Jan. 1, 1961.)

RULE 647. NOTICE OF SALE OF REAL ESTATE.

The time and place of sale of real estate under execution, order of sale, or venditioni exponas, shall be advertised by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale, in some newspaper published in said county. The first of said publications shall appear not less than twenty days immediately preceding the day of sale. Said notice shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy, and the time and place of sale, it shall also contain a brief description of the property to be sold, and shall give the number of acres, original survey, locality in the county, and the name by which the land is most generally known, but it shall not be necessary for it to contain field notes. Publishers of newspapers shall charge the legal rate of Two (2) Cents per word for the first insertion of such publication and One (1) Cent per word for such subsequent insertions, or such newspapers shall be entitled to charge for such publication at a rate equal to but not in excess of the published word or line rate of that newspaper for such class of advertising. If there be no newspaper published in the county, or none which will publish the notice of sale for the compensation herein fixed, the officer shall then post such notice in writing in three public places in the county, one of which shall be at the courthouse door of such county, for at least twenty days successively next before the day of sale. The officer making the levy shall give the defendant, or his attorney, written notice of such sale, either in person or by mail, which notice shall substantially conform to the foregoing requirements.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941.)

RULE 648. "COURTHOUSE DOOR" DEFINED.

By the term "courthouse door" of a county is meant either of the principal entrances to the house provided by the proper authority for the holding of the district court. If from any cause there is no such house, the door of the house where the district court was last held in that county shall be deemed to be the courthouse door. Where the courthouse, or house used by the court, has been destroyed by fire or other cause, and another has not been designated by the proper authority, the place where such house stood shall be deemed to be the courthouse door.

RULE 649. SALE OF PERSONAL PROPERTY.

Personal property levied on under execution shall be offered for sale on the premises where it is taken in execution, or at the courthouse door of the county, or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place. Personal property susceptible of being exhibited shall not be sold unless the same be present and subject to the view of those attending the sale, except shares of stock in joint stock or incorporated companies, and in cases where the defendant in execution has merely an interest without right to the exclusive possession in which case the interest of defendant may be sold and conveyed without the presence or delivery of the property. When a levy is made upon livestock running at large on the range, it is not necessary that such stock, or any part thereof, be present at the place of sale, and the purchaser at such sale is authorized to gather and pen such stock and select therefrom the number purchased by him.

RULE 650. NOTICE OF SALE OF PERSONAL PROPERTY.

Previous notice of the time and place of the sale of any personal property levied on under execution shall be given by posting notice thereof for ten days successively immediately prior to the day of sale at the courthouse door of any county and at the place where the sale is to be made.

RULE 651. WHEN EXECUTION NOT SATISFIED.

When the property levied upon does not sell for enough to satisfy the execution, the officer shall proceed anew, as in the first instance, to make the residue.

RULE 652. PURCHASER FAILING TO COMPLY.

If any person shall bid off property at any sale made by virtue of an execution, and shall fail to comply with the terms of the sale, he shall be liable to pay the plaintiff in execution twenty per cent on the value of the property thus bid off, besides costs, to be recovered on motion, five days notice of such motion being given to such purchaser; and should the property on a second sale bring less than on the former, he shall be liable to pay to the defendant in execution all loss which he sustains thereby, to be recovered on motion as above provided.

RULE 653. RESALE OF PROPERTY.

When the terms of the sale shall not be complied with by the bidder the levying officer shall proceed to sell the same property again on the same day, if there be sufficient time, but if not, he shall readvertise and sell the same as in the first instance.

RULE 654. RETURN OF EXECUTION.

The levying officer shall make due return of the execution, in writing and signed by him officially, stating concisely what such officer has done in pursuance of the requirements of the writ and of the law. The return shall be filed with the clerk of the court or the justice of the peace as the case may be. The execution shall be returned forthwith if satisfied by the collection of the money or if ordered by the plaintiff or his attorney indorsed thereon.

RULE 655. RETURN OF EXECUTION BY MAIL.

When an execution is placed in the hands of an officer of a county other than the one in which the judgment is rendered, return may be made by mail; but money cannot be thus sent except by direction of the party entitled to receive the same or his attorney of record.

RULE 656. EXECUTION DOCKET.

The clerk of each court shall keep an execution docket in which he shall enter a statement of all executions as they are issued by him, specifying the names of the parties, the amount of the judgment, the amount due thereon, the rate of interest when it exceeds six per cent, the costs, the date of issuing the execution, to whom delivered, and the return of the officer thereon, with the date of such return. Such docket entries shall be taken and deemed to be a record. The clerk shall keep an index and cross-index to the execution docket. When execution is in favor or against several persons, it shall be indexed in the name of each person. Any clerk who shall fail to keep said execution docket and index thereto, or shall neglect to make the entries therein, shall be liable upon his official bond to any person injured for the amount of damages sustained by such neglect.

SECTION 4.
GARNISHMENT

RULE 657. JUDGMENT FINAL FOR GARNISHMENT.

In the case mentioned in subsection 3, section 63.001, Civil Practice and Remedies Code, the judgment whether based upon a liquidated demand or an unliquidated demand, shall be deemed final and subsisting for the purpose of garnishment from and after the date it is signed, unless a supersedeas bond shall have been approved and filed in accordance with Texas Rule of Appellate Procedure 47.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981; July 15, 1987, eff. Jan. 1, 1988.)

RULE 658. APPLICATION FOR WRIT OF GARNISHMENT AND ORDER.

Either at the commencement of a suit or at any time during its progress the plaintiff may file an application for a writ of garnishment. Such application shall be supported by affidavits of the plaintiff, his agent, his attorney, or other person having knowledge of relevant facts. The application shall comply with all statutory requirements and shall state the grounds for issuing the writ and the specific facts relied upon by the plaintiff to warrant the required findings by the court. The writ shall not be quashed because two or more grounds are stated conjunctively or disjunctively. The application and any affidavits shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence; provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.

No writ shall issue before final judgment except upon written order of the court after a hearing, which may be ex parte. The court in its order granting the application shall make specific findings of facts to support the statutory grounds found to exist, and shall specify the maximum value of property or indebtedness that may be garnished and the amount of bond required of plaintiff. Such bond shall be in an amount which, in the opinion of the court, shall adequately compensate defendant in the event plaintiff fails to prosecute his suit to effect, and pay all damages and costs as shall be adjudged against him for wrongfully suing out the writ of garnishment. The court shall further find in its order the amount of bond required of defendant to replevy, which, unless defendant exercises his option as provided under Rule 664, shall be the amount of plaintiff's claim, one year's accrual of interest if allowed by law on the claim, and the estimated costs of court. The order may direct the issuance of several writs at the same time, or in succession, to be sent to different counties.

(Amended by Order Aug. 18, 1947, eff. Dec. 31, 1947; July 11, 1977, eff. Jan. 1, 1978.)

RULE 658a. BOND FOR GARNISHMENT.

No writ of garnishment shall issue before final judgment until the party applying therefor has filed with the officer authorized to issue such writ a bond payable to the defendant in the amount fixed by the court's order, with sufficient surety or sureties as provided by statute, conditioned that the plaintiff will prosecute his suit to effect and pay to the extent of the penal amount of the bond all damages and costs as may be adjudged against him for wrongfully suing out such writ of garnishment.

After notice to the opposite party, either before or after the issuance of the writ, the defendant or plaintiff may file a motion to increase or reduce the amount of such bond, or to question the sufficiency of the sureties. Upon hearing, the court shall enter its order with respect to such bond and the sufficiency of the sureties.

Should it be determined from the garnishee's answer if such is not controverted that the garnishee is indebted to the defendant, or has in his hands effects belonging to the defendant, in an amount or value less than the amount of the debt claimed by the plaintiff, then after notice to the defendant the court in which such garnishment is pending upon hearing may reduce the required amount of such bond to double the sum of the garnishee's indebtedness to the defendant plus the value of the effects in his hands belonging to the defendant.

(Adopted by Order July 26, 1960, eff. Jan. 1, 1961. Amended by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 659. CASE DOCKETED.

When the foregoing requirements of these rules have been complied with, the judge, or clerk, or justice of the peace, as the case may be, shall docket the case in the name of the plaintiff as plaintiff and of the garnishee as defendant; and shall immediately issue a writ of garnishment directed to the garnishee commanding him to appear before the court out of which the same is issued at or before 10 o'clock a.m. of the Monday next following the expiration of twenty days from the date the writ was served, if the writ is issued out of the district or county court, or the Monday next after the expiration of ten days from the date the writ was served, if the writ is issued out of the justice court. The writ shall command the garnishee to answer under oath upon such return date what, if anything, he is indebted to the defendant, and was when the writ was served, and what effects, if any, of the defendant he has in his possession, and had when such writ was served, and what other persons, if any, within his knowledge, are indebted to the defendant or have effects belonging to him in their possession.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941; Aug. 18, 1947, eff. Dec. 31, 1947; July 11, 1977, eff. Jan. 1, 1978.)

RULE 660. [REPEALED]

(Repealed by Order Aug. 18, 1947, eff. Dec. 31, 1947.)

RULE 661. FORM OF WRIT.

The following form of writ may be used:

"The State of Texas.

"To E.F., Garnishee, greeting:

"Whereas, in the _____ Court of _____ County (if a justice court, state also the number of the precinct), in a certain cause wherein A.B. is plaintiff and C.D. is defendant, the plaintiff, claiming an indebtedness against the said C.D. of _____ dollars, besides interest and costs of suit, has applied for a writ of garnishment against you, E.F.; therefore you are hereby commanded to be and appear before said court at _____ in said county (if the writ is issued from the county or district court, here proceed: `at 10 o'clock a.m. on the Monday next following the expiration of twenty days from the date of service hereof.' If the writ is issued from a justice of the peace court, here proceed: `at or before 10 o'clock a.m. on the Monday next after the expiration of ten days from the date of service hereof.' In either event, proceed as follows:) then and there to answer upon oath what, if anything, you are indebted to the said C.D., and were when this writ was served upon you, and what effects, if any, of the said C.D. you have in your possession, and had when this writ was served, and what other persons, if any, within your knowledge, are indebted to the said C.D. or have effects belonging to him in their possession. You are further commanded NOT to pay to defendant any debt or to deliver to him any effects, pending further order of this court. Herein fail not, but make due answer as the law directs."

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941; Aug. 18, 1947 eff. Dec. 31, 1947: July 11, 1977. eff. Jan. 1, 1978.)

RULE 662. DELIVERY OF WRIT.

The writ of garnishment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer who issued it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

RULE 663. EXECUTION AND RETURN OF WRIT.

The sheriff or constable receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof as of other citations.

RULE 663a. SERVICE OF WRIT AND OTHER DOCUMENTS ON DEFENDANT.

The defendant must be served as provided in Rule 21a or Rule 501.4, as applicable, with a copy of the writ of garnishment, the application, accompanying affidavits, and orders of the court as soon as practicable after service of the writ on the garnishee. The face of the writ served on the defendant must display in at least twelve-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following notice:

"To _____, Defendant: / *A* _____, *Demandado*:

Your money or property has been frozen or seized ("garnished") because _____ (the "Garnishor") has filed a garnishment proceeding. That means they are trying to get your money or property from _____ (the "Garnishee"), the company or person who has it, to pay a debt you owe. / *Su dinero o propiedad le han sido inmovilizados o incautados ("embargados") porque _____, (el "Embargante"), ha entablado ante tribunales un auto procesal de embargo con la intención de obtener su dinero o propiedad de _____, (el "Embargado"), que es la compañía o persona física que los tiene, y como pago de lo que usted le adeuda*.

If you are an individual (not a company), your money or property may be protected ("exempt") from garnishment under federal or state law. Under Texas Rule of Civil Procedure 679b, the Garnishor must send you in the next few days a "Notice of Protected Property Rights" approved by the Supreme Court. Read that notice carefully for more information on what property can be protected and how to get your protected money or property back. You can ask the court to get your money or property back by turning in ("filing") the "Protected Property Claim Form" that will be sent with the Notice of Protected Property Rights. / *Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos ("eximidos") de ser embargados de acuerdo a lo dispuesto en las leyes federales o estatales. Bajo la Norma de Derecho Procesal Civil Número 679b, el Embargante debe enviarle en los próximos días una "Notificación Sobre Derechos de Propiedad Protegida" aprobada por el Tribunal Supremo de Justicia. Lea con cuidado esta notificación para que obtenga mayor información sobre qué dinero y propiedades están protegidos y cómo recuperarlos. Puede solicitar que se le regresen sus propiedades y dinero que están protegidos entregando ("presentando") ante el tribunal el "Formulario de Reclamo de Propiedad Protegida" que le será enviado junto con la "Notificación Sobre Derechos de Propiedad Protegida*".

You may also file a "motion to dissolve" or "motion to modify" this writ of garnishment with the court because your money or property is exempt from garnishment. You can also get your money back if you file a "replevy bond," which is cash or other security in an amount set by the court. / *Usted también pudiera presentar por escrito una "petición de disolución" o "petición de modificación" de este auto procesal de embargo, ya que su dinero y propiedad están exentos de dicho embargo. También puede recuperar su dinero si presenta ante tribunales una "fianza reivindicatoria", la cual es una garantía en efectivo o con fiador en una cantidad impuesta por el tribunal*.

You can find out more about exemptions and the garnishment process by visiting https://texaslawhelp.org/exempt-property. / Obtenga mayor información sobre las exenciones y el proceso judicial de embargo, visitando el sitio https://texaslawhelp.org/exempt-property.

You are encouraged to get a lawyer to help you. For information on free and low-cost legal services, visit www.texascourts.gov/programs-services/legal-aid [https://www.txcourts.gov/programs-services/legal-aid/] or call the legal aid offices that serve your area: Texas RioGrande Legal Aid at (888) 988-9996, Lone Star Legal Aid at (800) 733-8394, and Legal Aid of Northwest Texas at (888) 529-5277. You can also call the State Bar of Texas at (800) 252-9690. / *Se le recomienda que consiga a un abogado que le ayude. Para información sobre cómo obtener servicios de asesoría legal gratuitos o a un bajo costo, visite el sitio www.texascourts.gov/programs-services/legal-aid o llame a la oficina de asistencia legal que presta servicios en su área: Texas RioGrande Legal Aid al (888) 988-9996; Lone Star Legal Aid al (800) 733-8394; y Legal Aid of Northwest Texas at (888) 529-5277. También puede llamar al Servicio de Información de Abogados en el Colegio de Abogados de Texas al (800) 252-9690*."

(Adopted by Order July 11, 1977, eff. Jan. 1, 1978. Amended by Order Tex. Sup. Ct. Misc. Docket No. 21-9152, Dec. 7, 2021 and Tex. Sup. Ct. Misc. Docket No. 22-9031, April 25, 2022, eff. May 1, 2022.)

Comment to 2022 change: Rule 663a is amended to implement section 22.0042 of the Texas Government Code and to conform with new Rule 679b. A plaintiff serving a writ of garnishment on the defendant under this rule must also serve the defendant with the Notice of Protected Property Rights, the Instructions for Protected Property Claim Form, and the Protected Property Claim Form approved by the Supreme Court, as required by new Rule 679b. Other clarifying and stylistic changes have been made.

RULE 664. DEFENDANT MAY REPLEVY.

At any time before judgment, should the garnished property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ, payable to plaintiff, in the amount fixed by the court's order, or, at the defendant's option, for the value of the property or indebtedness sought to be replevied (to be estimated by the officer), plus one year's interest thereon at the legal rate from the date of the bond, conditioned that the defendant, garnishee, shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the officer or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that garnished, for the property garnished. Provided that there has been located sufficient property of the defendant's to satisfy the order of garnishment, the court may authorize substitution of one or more items of defendant's property for all or for part of the property garnished. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from garnishment shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of garnishment or modification thereof shall be terminated. Garnishment of substituted property shall be deemed to have existed from date of garnishment on the original property garnished, and no property on which liens have become affixed since the date of garnishment of the original property may be substituted.

(Amended by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 664a. DISSOLUTION OR MODIFICATION OF WRIT OF GARNISHMENT.

A defendant whose property or account has been garnished or any intervening party who claims an interest in such property or account, may file a motion to dissolve or modify the writ of garnishment, the order directing its issuance, or both for any grounds or cause, extrinsic or intrinsic. The motion must be sworn and must admit or deny each finding stated in the order directing the issuance of the writ. If the movant is unable to admit or deny a finding, the movant must state the reasons why the movant cannot admit or deny. If the movant seeks to dissolve or modify the writ or order based on personal property exemptions and provides the same information as in the Personal Property Claim Form approved by the Supreme Court, the court must follow the procedures provided by Rule 679b.

A motion to dissolve or modify based on other grounds must be heard promptly, after reasonable notice to the plaintiff (which may be less than three days), and must be determined within ten days after the motion is filed, unless extended for good cause shown. The filing of the motion stays any further proceedings under the writ, except for any orders concerning the care, preservation, or sale of any perishable property, until a hearing is had, and the issue is determined. The writ must be dissolved unless, at such hearing, the plaintiff proves the statutory grounds relied upon for the writ's issuance, but the court may modify its previous order granting the writ and the writ. The movant, however, has the burden to prove that the reasonable value of the property garnished exceeds the amount necessary to secure the debt, interest for one year, and probable costs. The movant also has the burden to prove facts to justify substitution of property.

The court's determination may be made upon the basis of sworn statements, if not challenged, setting forth such facts as would be admissible in evidence; otherwise, the parties must submit evidence. The court may make all such orders, including orders concerning the care, preservation, disposition, release, or substitution of property (or its proceeds if the property has been sold), as justice may require. If the movant has given a replevy bond, an order to dissolve the writ must vacate the replevy bond and discharge the sureties thereon. If the court modifies its order or the writ, it must make such further orders with respect to the bond as may be consistent with its modification.

(Adopted by Order July 11, 1977, eff. Jan. 1, 1978. Amended by Order Tex. Sup. Ct. Misc. Docket No. 21-9152, Dec. 7, 2021 and Tex. Sup. Ct. Misc. Docket No. 22-9031, April 25, 2022, eff. May 1, 2022.)

Comment to 2022 change: Rule 664a is amended to implement section 22.0042 of the Texas Government Code and to conform with new Rule 679b. Other clarifying and stylistic changes have been made.

RULE 665. ANSWER TO WRIT.

The answer of the garnishee shall be under oath, in writing and signed by him, and shall make true answers to the several matters inquired of in the writ of garnishment.

RULE 666. GARNISHEE DISCHARGED.

If it appears from the answer of the garnishee that he is not indebted to the defendant, and was not so indebted when the writ of garnishment was served upon him, and that he has not in his possession any effects of the defendant and had not when the writ was served, and if he has either denied that any other persons within his knowledge are indebted to the defendant or have in their possession effects belonging to the defendant, or else has named such persons, should the answer of the garnishee not be controverted as hereinafter provided, the court shall enter judgment discharging the garnishee.

(Amended by Order Aug. 18, 1947, eff. Dec. 31, 1947.)

RULE 667. JUDGMENT BY DEFAULT.

If the garnishee fails to file an answer to the writ of garnishment at or before the time directed in the writ, it shall be lawful for the court, at any time after judgment shall have been rendered against the defendant, and on or after appearance day, to render judgment by default, as in other civil cases, against such garnishee for the full amount of such judgment against the defendant together with all interest and costs that may have accrued in the main case and also in the garnishment proceedings. The answer of the garnishee may be filed as in any other civil case at any time before such default judgment is rendered.

RULE 668. JUDGMENT WHEN GARNISHEE IS INDEBTED.

Should it appear from the answer of the garnishee or should it be otherwise made to appear and be found by the court that the garnishee is indebted to the defendant in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against the garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount is in excess of the amount of the

plaintiff's judgment against the defendant with interest and costs, in which case, judgment shall be rendered against the garnishee for the full amount of the judgment already rendered against the defendant, together with interest and costs of the suit in the original case and also in the garnishment proceedings. If the garnishee fail or refuse to pay such judgment rendered against him, execution shall issue thereon in the same manner and under the same conditions as is or may be provided for the issuance of execution in other cases.

RULE 669. JUDGMENT FOR EFFECTS.

Should it appear from the garnishee's answer, or otherwise, that the garnishee has in his possession, or had when the writ was served, any effects of the defendant liable to execution, including any certificates of stock in any corporation or joint stock company, the court shall render a decree ordering sale of such effects under execution in satisfaction of plaintiff's judgment and directing the garnishee to deliver them, or so much thereof as shall be necessary to satisfy plaintiff's judgment, to the proper officer for that purpose.

(Amended by Order Aug. 18, 1947, eff. Dec. 31, 1947.)

RULE 670. REFUSAL TO DELIVER EFFECTS.

Should the garnishee adjudged to have effects of the defendant in his possession, as provided in the preceding rule, fail or refuse to deliver them to the sheriff or constable on such demand, the officer shall immediately make return of such failure or refusal, whereupon on motion of the plaintiff, the garnishee shall be cited to show cause upon a date to be fixed by the court why he should not be attached for contempt of court for such failure or refusal. If the garnishee fails to show some good and sufficient excuse for such failure or refusal, he shall be fined for such contempt and imprisoned until he shall deliver such effects.

RULE 671. [REPEALED]

(Repealed by Order Aug. 18, 1947, eff. Dec. 31, 1947.)

RULE 672. SALE OF EFFECTS.

The sale so ordered shall be conducted in all respects as other sales of personal property under execution; and the officer making such sale shall execute a transfer of such effects or interest to the purchaser, with a brief recital of the judgment of the court under which the same was sold.

(Amended by Order Aug. 18, 1947, eff. Dec. 31, 1947.)

RULE 673. MAY TRAVERSE ANSWER.

If the plaintiff should not be satisfied with the answer of any garnishee, he may controvert the same by his affidavit stating that he has good reason to believe, and does believe, that the answer of the garnishee is incorrect, stating in what particular he believes the same to be incorrect. The defendant may also, in like manner, controvert the answer of the garnishee.

RULE 674. TRIAL OF ISSUE.

If the garnishee whose answer is controverted, is a resident of the county in which the proceeding is pending, an issue shall be formed under the direction of the court and tried as in other cases.

RULE 675. DOCKET AND NOTICE.

The clerk of the court or the justice of the peace, on receiving certified copies filed in the county of the garnishee's residence under the provisions of the statutes, shall docket the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant, and issue a notice to the garnishee, stating that his answer has been so controverted, and that such issue will stand for trial on the docket of such court. Such notice shall be directed to the garnishee, be dated and tested as other process from such court, and served by delivering a copy thereof to the garnishee. It shall be returnable, if issued from the district or county court, at ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of its service; and if issued from the justice court, to the next term of such court convening after the expiration of twenty days after the service of such notice.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941.)

RULE 676. ISSUE TRIED AS IN OTHER CASES.

Upon the return of such notice served, an issue shall be formed under the direction of the court and tried as in other cases.

RULE 677. COSTS.

Where the garnishee is discharged upon his answer, the costs of the proceeding, including a reasonable compensation to the garnishee, shall be taxed against the plaintiff; where the answer of the garnishee has not been controverted and the garnishee is held thereon, such costs shall be taxed against the defendant and included in the execution provided for in this section; where the answer is contested, the costs shall abide the issue of such contest.

RULE 678. GARNISHEE DISCHARGED ON PROOF.

It shall be a sufficient answer to any claim of the defendant against the garnishee founded on an indebtedness of such garnishee, or on the possession by him of any effects, for the garnishee to show that such indebtedness has been paid, or such effects, including any certificates of stock in any incorporated or joint stock company, have been delivered to any sheriff or constable as provided for in Rule 669.

(Amended by Order Aug. 18, 1947, eff. Dec. 31, 1947.)

RULE 679. AMENDMENT.

Clerical errors in the affidavit, bond, or writ of garnishment or the officer's return thereof, may upon application in writing to the judge or justice of the court in which the suit is filed, and after notice to the opponent, be amended in such manner and on such terms as the judge or justice shall authorize by an order entered in the minutes of the court (or noted on the docket of the justice of the peace), provided such amendment appears to the judge or justice to be in furtherance of justice.

SECTION 4a. ADDITIONAL POST-JUDGMENT COLLECTION RULES

RULE 679a. TURNOVER UNDER CIVIL PRACTICE AND REMEDIES CODE § 31.00.

(a) *Order Appointing Turnover Receiver in Justice Courts*. If a justice of the peace issues an order appointing a receiver under section 31.002 of the Civil Practice and Remedies Code to collect a judgment owed by an individual judgment debtor, the justice of the peace must use the Order Appointing Receiver approved by the Supreme Court, except on good cause shown in a written order.

(b) *Order Appointing Turnover Receiver in All Courts*. A court that issues an order appointing a receiver under section 31.002 of the Civil Practice and Remedies Code to collect a judgment owed by an individual judgment debtor may use the Order Appointing Receiver approved by the Supreme Court and must state in any other order appointing a receiver:

> "**Personal Property Rights of Judgment Debtor:** Receiver must comply with Texas Rule of Civil Procedure 679b.
>
> **Receiver to Hold Property**: Receiver must not disburse funds to Judgment Creditor or sell property within 14 days after serving Judgment Debtor with the Notice of Protected Property Rights, the Instructions for Protected Property Claim Form, and the Protected Property Claim Form approved by the Supreme Court, or within 17 days if service was by mail. If the Judgment Debtor asserts an exemption, Receiver may only disburse funds to Judgment Creditor or sell property with Judgment Debtor's written consent or a court order."

(Adopted by Order Tex. Sup. Ct. Misc. Docket No. 21-9152, Dec. 7, 2021 and Tex. Sup. Ct. Misc. Docket No. 22-9031, April 25, 2022, eff. May 1, 2022.)

RULE 679b. PERSONAL PROPERTY EXEMPTIONS IN POST-JUDGMENT PROCEEDINGS.

(a) *Exemption Notice*.

(1) *Notice Required*. If a post-judgment turnover order, order appointing a receiver under section 31.002 of the Civil Practice and Remedies Code, writ of garnishment, writ of execution, or other post-judgment order results in the freeze or seizure of personal property of an individual judgment debtor, the receiver or judgment creditor must serve the judgment debtor with the Notice of Protected Property Rights, the Instructions for Protected Property Claim Form, and the Protected Property Claim Form approved by the Supreme Court. Before service, the receiver or judgment creditor must fill in the case style and list the "Interested Persons to Notify" in the Protected Property Claim Form.

(2) *Service Timing*. The receiver or judgment creditor must serve the documents in (1) within three business days after the receiver or judgment creditor has notice that the judgment debtor's property has been frozen or seized, whichever is first.

(3) *Service Method*. The documents in (1) must be served as provided in Rule 21a or Rule 501.4, as applicable.

(4) *Repeat Service Not Required*. Nothing in this rule requires the receiver or judgment creditor to serve the judgment debtor with the documents in (1) more than once.

(b) *Suspension Period*.

(1) *General Rule*. A receiver or officer must not sell the judgment debtor's personal property or distribute proceeds to the judgment creditor within 14 days after service of the documents in (a)(1), or within 17 days if service was by mail.

(2) *No Effect on Noticing Sale*. Nothing in this rule prohibits a receiver or officer from noticing the sale of the judgment debtor's personal property during the suspension period if the sale date is after the suspension period's expiration.

(c) *Effect of Filing Protected Property Claim Form; Hearing; Exemption Determination*.

(1) *Hearing and Suspension Required*. If the judgment debtor files a Protected Property Claim Form or another sworn document containing the same information:

(a) the court must hold a hearing on the exemption claim; and

(b) the receiver or officer must not sell the judgment debtor's personal property or distribute its proceeds to the judgment creditor until the court determines the judgment debtor's exemption claim.

(2) *Hearing Notice*. Each party is entitled to reasonable notice of the hearing.

(3) *Burden of Proof*. At the hearing, the judgment debtor must prove the exemption claim and the value of the personal property exempt. The judgment debtor may satisfy this burden through a sworn statement if the sworn statement is not challenged. A "sworn" statement is one that is signed before a notary or made under penalty of perjury. A signed Protected Property Claim Form is a "sworn" statement.

(4) *Time for Determining Exemption Claim*. The court must determine the judgment debtor's exemption claim within 10 days after the judgment debtor files the exemption claim. The court may extend the time for determining the exemption claim on good cause shown.

(5) *Release of Property*. If the court determines that the judgment debtor's personal property is exempt, the court must order its release within three business days.

2022 Comment: Rule 679b is a new rule implementing section 22.0042 of the Texas Government Code, which calls for expedited procedures that allow a judgment debtor to assert an exemption to the seizure of personal property by a judgment creditor or receiver appointed under section 31.002 of the Civil Practice and Remedies Code. Rule 306a, various rules in Part V, Rule 663a, and Rule 664a are also amended to implement section 22.0042 of the Texas Government Code.

(Adopted by Order Tex. Sup. Ct. Misc. Docket No. 21-9152, Dec. 7, 2021 and Tex. Sup. Ct. Misc. Docket No. 22-9031, April 25, 2022, eff. May 1, 2022.)

SECTION 5.
INJUNCTIONS

RULE 680. TEMPORARY RESTRAINING ORDER.

No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice, and shall expire by its terms within such time after signing, not to exceed fourteen days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. No more than one extension may be granted unless subsequent extensions are unopposed. In case a temporary restraining order is granted without notice, the application for a temporary injunction shall be set down for hearing at the earliest possible date and takes precedence of all matters except older matters of the same character; and when the application comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Every restraining order shall include an order setting a certain date for hearing on the temporary or permanent injunction sought.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

RULE 681. TEMPORARY INJUNCTIONS: NOTICE.

No temporary injunction shall be issued without notice to the adverse party.

RULE 682. SWORN PETITION.

No writ of injunction shall be granted unless the applicant therefor shall present his petition to the judge verified by his affidavit and containing a plain and intelligible statement of the grounds for such relief.

(Amended by Order March 31, 1941, eff. Sept. 1, 1941.)

RULE 683. FORM AND SCOPE OF INJUNCTION OR RESTRAINING ORDER.

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance, shall be specific in terms shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Every order granting a temporary injunction shall include an order setting the cause for trial on the merits with respect to the ultimate relief sought. The appeal of a temporary injunction shall constitute no cause for delay of the trial.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 684. APPLICANT'S BOND.

In the order granting any temporary restraining order or temporary injunction, the court shall fix the amount of security to be given by the applicant. Before the issuance of the temporary restraining order or temporary injunction the applicant shall execute and file with the clerk a bond to the adverse party, with two or more good and sufficient sureties, to be approved by the clerk, in the sum fixed by the judge, conditioned that the applicant will abide the decision which may be made in the cause, and that he will pay all sums of money and costs that may be adjudged against him if the restraining order or temporary injunction shall be dissolved in whole or in part.

Where the temporary restraining order or temporary injunction is against the State, a municipality, a State agency, or a subdivision of the State in its governmental capacity, and is such that the State, municipality, State agency, or subdivision of the State in its governmental capacity, has no pecuniary interest in the suit and no monetary damages can be shown, the bond shall be allowed in the sum fixed by the judge, and the liability of the applicant shall be for its face amount if the restraining order or temporary injunction shall be dissolved in whole or in part. The discretion of the trial court in fixing the amount of the bond shall be subject to review. Provided that under equitable circumstances and for good cause shown by affidavit or otherwise the court rendering judgment on the bond may allow recovery for less than its full face amount, the action of the court to be subject to review.

(Amended by Order June 16, 1943, eff. Dec. 31, 1943; Oct. 12, 1949, eff. March 1, 1950; June 10, 1980, eff. Jan. 1, 1981.)

RULE 685. FILING AND DOCKETING.

Upon the grant of a temporary restraining order or an order fixing a time for hearing upon an application for a temporary injunction, the party to whom the same is granted shall file his petition therefor, together with the order of the judge, with the clerk of the proper court; and, if such orders do not pertain to a pending suit in said court, the cause shall be entered on the docket of the court in its regular order in the name of the party applying for the writ as plaintiff and of the opposite party as defendant.

RULE 686. CITATION.

Upon the filing of such petition and order not pertaining to a suit pending in the court, the clerk of such court shall issue a citation to the defendant as in other civil cases, which shall be served and returned in like manner as ordinary citations issued from said court; provided, however, that when a temporary restraining order is issued and is accompanied with a true copy of plaintiff's petition, it shall not be necessary for the citation in the original suit to be accompanied with a copy of plaintiffs petition, nor contain a statement of the nature of plaintiffs demand, but it shall be sufficient for said citation to refer to plaintiff's claim as set forth in a true copy of plaintiffs petition which accompanies the temporary restraining order; and provided further that the court may have a hearing upon an application for a temporary restraining order or temporary injunction at such time and upon such reasonable notice given in such manner as the court may direct.

(Amended by Order June 16, 1943, eff. Dec. 31, 1943; Aug. 18, 1947, eff. Dec. 31, 1947.)

RULE 687. REQUISITES OF WRIT.

The writ of injunction shall be sufficient if it contains substantially the following requisites:

(a) Its style shall be, "The State of Texas."

(b) It shall be directed to the person or persons enjoined.

(c) It must state the names of the parties to the proceedings, plaintiff and defendant, and the nature of the plaintiff's application, with the action of the judge thereon.

(d) It must command the person or persons to whom it is directed to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.

(e) If it is a temporary restraining order, it shall state the day and time set for hearing, which shall not exceed fourteen days from the date of the court's order granting such temporary restraining order; but if it is a temporary injunction, issued after notice, it shall be made returnable at or before ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of service thereof, as in the case of ordinary citations.

(f) It shall be dated and signed by the clerk officially and attested with the seal of his office and the date of its issuance must be indorsed thereon.

(Amended by Order April 24, 1990, eff. Sept. 1, 1990.)

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.

(Amended by Order Oct. 17, 2011, eff. Jan. 1, 2012; Order Dec. 12, 2011, eff. Jan. 1, 2012.)

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 officer must complete and file a return in accordance with Rule 107.

(Amended by Order Oct. 17, 2011, eff. Jan. 1, 2012; Order Dec. 12, 2011, eff. Jan. 1, 2012.)

RULE 690. THE ANSWER.

The defendant to an injunction proceeding may answer as in other civil actions; but no injunction shall be dissolved before final hearing because of the denial of the material allegations of the plaintiff's petition, unless the answer denying the same is verified by the oath of the defendant.

RULE 691. BOND ON DISSOLUTION.

Upon the dissolution of an injunction restraining the collection of money, by an interlocutory order of the court or judge, made in term time or vacation, if the petition be continued over for trial, the court or judge shall require of the defendant in such injunction proceedings a bond, with two or more good and sufficient sureties, to be approved by the clerk of the court, payable to the complainant in double the amount of the sum enjoined, and conditioned to refund to the complainant the amount of money, interest and costs which may be collected of him in the suit or proceeding enjoined if such injunction is made perpetual on final hearing. If such injunction is so perpetuated, the court, on motion of the complainant, may enter judgment against the principal and sureties in such bond for such amount as may be shown to have been collected from such defendant.

RULE 692. DISOBEDIENCE.

Disobedience of an injunction may be punished by the court or judge, in term time or in vacation, as a contempt. In case of such disobedience, the complainant, his agent or attorney, may file in the court in which such injunction is pending or with the judge in vacation, his affidavit stating what person is guilty of such disobedience and describing the acts constituting the same; and thereupon the court or judge shall cause to be issued an attachment for such person, directed to the sheriff or any constable of any county, and requiring such officer to arrest the person therein named if found within his county and have him before the court or judge at the time and place named in such writ; or said court or judge may issue a show cause order, directing and requiring such person to appear on such date as may be designated and show cause why he should not be adjudged in contempt of court. On return of such attachment or show cause order, the judge shall proceed to hear proof; and if satisfied that such person has disobeyed the injunction, either directly or indirectly, may commit such person to jail without bail until he purges himself of such contempt, in such manner and form as the court or judge may direct.

(Amended by Order June 16, 1943, eff. Dec. 31, 1943.)

RULE 693. PRINCIPLES OF EQUITY APPLICABLE.

The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with these rules or the provisions of the statutes.

RULE 693a. BOND IN DIVORCE CASE.

In a divorce case the court in its discretion may dispense with the necessity of a bond in connection with an ancillary injunction in behalf of one spouse against the other.

(Adopted by Order June 16, 1943, eff. Dec. 31, 1943.)

SECTION 6.
MANDAMUS

RULE 694. NO MANDAMUS WITHOUT NOTICE.

No mandamus shall be granted by the district or county court on ex parte hearing, and any peremptory mandamus granted without notice shall be abated on motion.

SECTION 7.
RECEIVERS

RULE 695. NO RECEIVER OF IMMOVABLE PROPERTY APPOINTED WITHOUT NOTICE.

Except where otherwise provided by statute, no receiver shall be appointed without notice to take charge of property which is fixed and immovable. When an application for appointment of a receiver to take possession of property of this type is filed, the judge or court shall set the same down for hearing and notice of such hearing shall be given to the adverse party by serving notice thereof not less than three days prior to such hearing. If the order finds that the defendant is a nonresident or that his whereabouts is unknown, the notice may be served by affixing the same in a conspicuous manner and place upon the property or if that is impracticable it may be served in such other manner as the court or judge may require.

(Amended by Order June 16, 1943, eff. Dec. 31, 1943.)

RULE 695a. BOND, AND BOND IN DIVORCE CASE.

No receiver shall be appointed with authority to take charge of property until the party applying therefor has filed with the clerk of the court a good and sufficient bond, to be approved by such clerk, payable to the defendant in the amount fixed by the court, conditioned for the payment of all damages and cost in such suit, in case it should be decided that such receiver was wrongfully appointed to take charge of such property. The amount of such bond shall be fixed at a sum sufficient to cover all such probable damages and costs. In a divorce case the court or judge, as a matter of discretion, may dispense with the necessity of a bond.

(Adopted by Order June 16, 1940, eff. Dec. 31, 1943.)

SECTION 8.
SEQUESTRATION

RULE 696. APPLICATION FOR WRIT OF SEQUESTRATION AND ORDER.

Either at the commencement of a suit or at any time during its progress the plaintiff may file an application for a writ of sequestration. The application shall be supported by affidavits of the plaintiff, his agent, his attorney, or other persons having knowledge of relevant facts. The application shall comply with all statutory requirements and shall state the grounds for issuing the writ, including the description of the property to be sequestered with such certainty that it may be identified and distinguished from property of a like kind, giving the value of each article of the property and the county in which it is located, and the specific facts relied upon by the plaintiff to warrant the required findings by the court. The writ shall not be quashed because two or more grounds are stated conjunctively or disjunctively. The application and any affidavits shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence, provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.

No writ shall issue except upon written order of the court after a hearing, which may be ex parte. The court, in its order granting the application, shall make specific findings of facts to support the statutory grounds found to exist, and shall describe the property to be sequestered with such certainty that it may be identified and distinguished from property of a like kind, giving the value of each article of the property and the county in which it is located. Such order shall further specify the amount of bond required of plaintiff which shall be in an amount which, in the opinion of the court, shall adequately compensate defendant in the event plaintiff fails to prosecute his suit to effect and pay all damages and costs as shall be adjudged against him for wrongfully suing out the writ of sequestration including the elements of damages stated in Sections 62.044 and 62.045, Civil Practice and Remedies Code. The court shall further find in its order the amount of bond required of defendant to replevy, which shall be in an amount equivalent to the value of the property sequestered or to the amount of plaintiff's claim and one year's accrual of interest if allowed by law on the claim, whichever is the lesser amount, and the estimated costs of court. The order may direct the issuance of several writs at the same time, or in succession, to be sent to different counties.

(Amended by Order July 11, 1977, eff. Jan. 1, 1978; July 15, 1987, eff. Jan. 1, 1988.)

RULE 697. PETITION.

If the suit be in the district or county court, no writ of sequestration shall issue, unless a petition shall have been first filed therein, as in other suits in said courts.

RULE 698. BOND FOR SEQUESTRATION.

No writ of sequestration shall issue until the party applying therefor has filed with the officer authorized to issue such writ a bond payable to the defendant in the amount fixed by the court's order, with sufficient surety or sureties as provided by statute to be approved by such officer, conditioned that the plaintiff will prosecute his suit to effect and pay to the extent of the penal amount of the bond all damages and costs as may be adjudged against him for wrongfully suing out such writ of sequestration, and plaintiff may further condition the bond pursuant to the provisions of Rule 708, in which case he shall not be required to give additional bond to replevy unless so ordered by the court.

After notice to the opposite party, either before or after the issuance of the writ, the defendant or plaintiff may file a motion to increase or reduce the amount of such bond, or to question the sufficiency of the sureties thereon, in the court in which such suit is pending. Upon hearing, the court shall enter its order with respect to such bond and sufficiency of the sureties as justice may require.

(Amended by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 699. REQUISITES OF WRIT.

The writ of sequestration shall be directed "To the Sheriff or any Constable within the State of Texas" (not naming a specific county) and shall command him to take into his possession the property, describing the same as it is described in the application or affidavits, if to be found in his county, and to keep the same subject to further orders of the court, unless the same is replevied. There shall be prominently displayed on the face of the writ, in ten-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

(Amended by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 700. AMENDMENT.

Clerical errors in the affidavit, bond, or writ of sequestration or the officer's return thereof may upon application in writing to the judge of the court in which the suit is filed and after notice to the opponent, be amended in such manner and on such terms as the judge shall authorize by an order entered in the minutes of the court, provided the amendment does not change or add to the grounds of such sequestration as stated in the affidavit, and provided such amendment appears to the judge to be in furtherance of justice.

RULE 700a. SERVICE OF WRIT ON DEFENDANT.

The defendant shall be served in any manner provided for service of citation or as provided in Rule 21a, with a copy of the writ of sequestration, the application, accompanying affidavits, and orders of the court as soon as practicable following the levy of the writ. There shall also be prominently displayed on the face of the copy of the writ served on defendant, in ten-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

"To _____, Defendant:

"You are hereby notified that certain properties alleged to be claimed by you have been sequestered. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

(Adopted by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 701. DEFENDANT MAY REPLEVY.

At any time before judgment, should the sequestered property not have been previously claimed, replevied, or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond, with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ, payable to plaintiff in the amount fixed by the court's order, conditioned as provided in Rule 702 or Rule 703.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the officer or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

(Amended by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 702. BOND FOR PERSONAL PROPERTY.

If the property to be replevied be personal property, the condition of the bond shall be that the defendant will not remove the same out of the county, or that he will not waste, ill-treat, injure, destroy, or dispose of the same, according to the plaintiff's affidavit, and that he will have such property, in the same condition as when it is replevied, together with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof, or the difference between its value at the time of replevy and the time of judgment and of the fruits, hire or revenue of the same in case he shall be condemned to do so.

RULE 703. BOND FOR REAL ESTATE.

If the property be real estate, the condition of such bond shall be that the defendant will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned so to do.

RULE 704. RETURN OF BOND AND ENTRY OF JUDGMENT.

The bond provided for in the three preceding rules shall be returned with the writ to the court from whence the writ issued. In case the suit is decided against the defendant, final judgment shall be rendered against all the obligors in such bond, jointly and severally, for the value of the property replevied as of the date of the execution of the replevy bond, and the value of the fruits, hire, revenue, or rent thereof, as the case may be.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 705. DEFENDANT MAY RETURN SEQUESTERED PROPERTY.

Within ten days after final judgment for personal property the defendant may deliver to the plaintiff, or to the officer who levied the sequestration or to his successor in office the personal property in question, and such officer shall deliver same to plaintiff upon his demand therefor; or such defendant shall deliver such property to the officer demanding same under execution issued therefor upon a judgment for the title or possession of the same; and such officer shall receipt the defendant for such property; provided, however, that such delivery to the plaintiff or to such officer shall be without prejudice to any rights of the plaintiff under the replevy bond given by the defendant. Where a mortgage or other lien of any kind is foreclosed upon personal property sequestered and replevied, the defendant shall deliver such property to the officer calling for same under order of sale issued upon a judgment foreclosing such mortgage or other lien, either in the county of defendant's residence or in the county where sequestered, as demanded by such officer; provided, however, that such delivery by the defendant shall be without prejudice to any rights of the plaintiff under the replevy bond given by the defendant.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941.)

RULE 706. DISPOSITION OF THE PROPERTY BY OFFICER.

When the property is tendered back by the defendant to the officer who sequestered the same or to the officer calling for same under an order of sale, such officer shall receive said property and hold or dispose of the same as ordered by the court; provided, however, that such return to and receipt of same by the officer and any sale or disposition of said property by the officer under order or judgment of the court shall not affect or limit any rights of the plaintiff under the bond provided for in Rule 702.

(Amended by Order Sept. 20, 1941, eff. Dec. 31, 1941.)

RULE 707. EXECUTION.

If the property be not returned and received, as provided in the two preceding rules, execution shall issue upon said judgment for the amount due thereon, as in other cases.

RULE 708. PLAINTIFF MAY REPLEVY.

When the defendant fails to replevy the property within ten days after the levy of the writ and service of notice on defendant, the officer having the property in possession shall at any time thereafter and before final judgment, deliver the same to the plaintiff upon his giving bond payable to defendant in a sum of money not less than the amount fixed by the court's order, with sufficient surety or sureties as provided by statute to be approved by such officer. If the property to be replevied be personal property, the condition of the bond shall be that he will have such property, in the same condition as when it is replevied, together with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof, or the difference between its value at the time of replevy and the time of judgment (regardless of the cause of such difference in value, and of the fruits, hire or revenue of the same in case he shall be condemned to do so). If the property be real estate, the condition of such bond shall be that the plaintiff will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned to do so.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence, otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the officer or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

(Amended by Order July 11, 1977, eff. Jan. 1, 1978; Dec. 5, 1983, eff. April 1, 1984.)

RULE 709. WHEN BOND FORFEITED.

The bond provided for in the preceding rule shall be returned by the officer to the court issuing the writ immediately after he has approved same, and in case the suit is decided against the plaintiff, final judgment shall be entered against all the obligors in such bond, jointly and severally for the value of the property replevied as of the date of the execution of the replevy bond, and the value of the fruits, hire, revenue or rent thereof as the case may

be. The same rules which govern the discharge or enforcement of a judgment against the obligors in the defendant's replevy bond shall be applicable to and govern in case of a judgment against the obligors in the plaintiff's replevy bond.

RULE 710. SALE OF PERISHABLE GOODS.

If after the expiration of ten days from the levy of a writ of sequestration the defendant has failed to replevy the same, if the plaintiff or defendant shall make affidavit in writing that the property levied upon, or any portion thereof, is likely to be wasted or destroyed or greatly depreciated in value by keeping, and if the officer having possession of such property shall certify to the truth of such affidavit, it shall be the duty of the judge or justice of the peace to whose court the writ is returnable, upon the presentation of such affidavit and certificate, either in term time or vacation, to order the sale of said property or so much thereof as is likely to be so wasted, destroyed or depreciated in value by keeping, but either party may replevy the property at any time before such sale.

RULE 711. ORDER OF SALE FOR.

The judge or justice granting the order provided for in the preceding rule shall issue an order directed to the officer having such property in possession, commending such officer to sell such property in the same manner as under execution.

RULE 712. RETURN OF ORDER.

The officer making such sale shall, within five days thereafter, return the order of sale to the court from whence the same issued, with his proceedings thereon, and shall, at the time of making such return, pay over to the clerk or justice of the peace the proceeds of such sale.

RULE 712a. DISSOLUTION OR MODIFICATION OF WRIT OF SEQUESTRATION.

A defendant whose property has been sequestered or any intervening party who claims an interest in such property, may by sworn written motion, seek to vacate, dissolve, or modify the writ and the order directing its issuance, for any grounds or cause, extrinsic or intrinsic, including a motion to reduce the amount of property sequestered when the total amount described and authorized by such order exceeds the amount necessary to secure the plaintiffs claim, one year's interest if allowed by law on the claim, and costs. Such motion shall admit or deny each finding of the order directing the issuance of the writ except where the movant is unable to admit or deny the finding, in which case movant shall set forth the reasons why he cannot admit or deny. Unless the parties agree to an extension of time, the motion shall be heard promptly, after reasonable notice to the plaintiff (which may be less than three days), and the issue shall be determined not later than ten days after the motion is filed. The filing of the motion shall stay any further proceedings under the writ, except for any orders concerning the care, preservation, or sale of any perishable property, until a hearing is had, and the issue is determined. The writ shall be dissolved unless, at such hearing, the plaintiff shall prove the grounds relied upon for its issuance, but the court may modify its previous order granting the writ and the writ issued pursuant thereto. The movant shall, however, have the burden to prove that the reasonable value of the property sequestered exceeds the amount necessary to secure the debt, interest for one year, and probable costs.

The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court may make all such orders, including orders concerning the care, preservation, or disposition of the property (or the proceeds therefrom if the same has been sold) as justice may require. If the movant has given a replevy bond, an order to vacate or dissolve the writ shall vacate the replevy bond and discharge the sureties thereon, and if the court modifies its order or the writ issued pursuant thereto, it shall make such further orders with respect to the bond as may be consistent with its modification.

(Adopted by Order July 11, 1977, eff. Jan. 1, 1978.)

RULE 713. SALE ON DEBT NOT DUE.

If the suit in which the sequestration issued be for a debt or demand not yet due, and the property sequestered be likely to be wasted, destroyed or greatly depreciated in value by keeping, the judge or justice of the peace shall, under the regulations hereinbefore provided, order the same to be sold, giving credit on such sale until such debt or demand shall become due.

RULE 714. PURCHASER'S BOND.

In the case of a sale as provided for in the preceding rule, the purchaser of the property shall execute his bond, with two or more good and sufficient sureties, to be approved by the officer making the sale, and payable to such officer, in a sum not less than double the amount of the purchase money, conditioned that such purchaser shall pay such purchase money at the expiration of the time given.

RULE 715. RETURN OF BOND.

The bond provided for in the preceding rule shall be returned by the officer taking the same to the clerk or justice of the peace from whose court the order of sale issued, with such order, and shall be filed among the papers in the cause.

RULE 716. RECOVERY ON BOND.

In case the purchaser does not pay the purchase money at the expiration of the time given, judgment shall be rendered against all the obligors in such bond for the amount of such purchase money, interest thereon and all costs incurred in the enforcement and collection of the same; and execution shall issue thereon in the name of the plaintiff in the suit, as in other cases, and the money when collected shall be paid to the clerk or justice of the peace to abide the final decision of the cause.

SECTION 9.
TRIAL OF THE RIGHT OF PROPERTY

RULE 717. CLAIMANT MUST MAKE AFFIDAVIT.

Whenever a distress warrant, writ of execution, sequestration, attachment, or other like writ is levied upon personal property, and such property, or any part thereof, shall be claimed by any claimant who is not a party to such writ, such claimant may make application that such claim is made in good faith, and file such application with the court in which such suit is pending. Such application may be supported by affidavits of the claimant, his agent, his attorney, or other persons having knowledge of relevant facts. The application shall comply with all statutory requirements and shall state the grounds for such claim and the specific facts relied upon by the claimant to warrant the required findings by the court.

The claim shall not be quashed because two or more grounds are stated conjunctively or disjunctively. The application and any affidavits shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.

No property shall be delivered to the claimant except on written order of the court after a hearing pursuant to Rule 718. The court in its order granting the application shall make specific findings of facts to support the statutory grounds found to exist and shall specify the amount of the bond required of the claimant.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 718. PROPERTY DELIVERED TO CLAIMANT.

Any claimant who claims an interest in property on which a writ has been levied may, by sworn written motion, seek to obtain possession of such property. Such motion shall admit or deny each finding of the order directing the issuance of the writ except where the claimant is unable to admit or deny the finding, in which case claimant shall set forth the reasons why he cannot admit or deny. Such motion shall also contain the reasons why the claimant has superior right or title to the property claimed as against the plaintiff in the writ. Unless the parties agree to an extension of time, the motion shall be heard promptly, after reasonable notice to the plaintiff (which may be less than three days), and the issue shall be determined not later than 10 days after the motion is filed. The filing of the motion shall stay any further proceedings under the writ, except for any orders concerning the care, preservation, or sale of any perishable property, until a hearing is had, and the issue is determined. The claimant shall have the burden to show superior right or title to the property claimed as against the plaintiff and defendant in the writ.

The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence, but additional evidence, if tendered by either party shall be received and considered. The court may make all such orders, including orders concerning the care, preservation, or disposition of the property, or the proceeds therefrom if the same has been sold, as justice may require, and if the court modifies its order or the writ issued pursuant thereto, it shall make such further orders with respect to the bond as may be consistent with its modification.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 719. BOND.

No property shall be put in the custody of the claimant until the claimant has filed with the officer who made the levy, a bond in an amount fixed by the court's order equal to double the value of the property so claimed, payable to the plaintiff in the writ, with sufficient surety or sureties as provided by statute to be approved by such officer, conditioned that the claimant will return the same to the officer making the levy, or his successor, in as good condition as he received it, and shall also pay the reasonable value of the use, hire, increase and fruits thereof from the date of said bond, or, in case he fails so to return said property and pay for the use of the same, that he shall pay the plaintiff the value of said property, with legal interest thereon from the date of the bond, and shall also pay all damages and costs that may be awarded against him for wrongfully suing out such claim.

The plaintiff or claimant may file a motion to increase or reduce the amount of such bond, or to question the sufficiency of the sureties thereon, in the court in which such suit is pending. Upon hearing, the court shall enter its order with respect to such bond and sufficiency of the sureties.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 720. RETURN OF BOND.

Whenever any person shall claim property and shall duly make the application and give the bond, if the writ under which the levy was made was issued by a justice of the peace or a court of the county where such levy was made, the officer receiving such application and bond shall endorse on the writ that such claim has been made and application and bond given, and by whom; and shall also endorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond with a copy of the writ to the proper court having jurisdiction to try such claim.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 721. OUT-COUNTY LEVY.

Whenever any person shall claim property and shall make the application and give the bond as provided for herein, if the writ under which such levy was made was issued by a justice of the peace or a court of another county than that in which such levy was made, then the officer receiving such bond shall endorse on such bond the value of the property as assessed by himself. and shall forthwith return such bond with a copy of the writ, to the proper court having jurisdiction to try such claim.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 722. RETURN OF ORIGINAL WRIT.

The officer taking such bond shall also endorse on the original writ, if in his possession, that such claim has been made and application and bond given, stating by whom, the names of the surety or sureties, and to what justice or court the bond has been returned; and he shall forthwith return such original writ to the tribunal from which it issued.

(Adopted by Order June 10, 1980, eff. Jan 1, 1981.)

RULE 723. DOCKETING CAUSE.

Whenever any bond for the trial of the right of property shall be returned, the clerk of the court, or such justice of the peace, shall docket the same in the original writ proceeding in the name of the plaintiff in the writ as the plaintiff, and the claimant of the property as intervening claimant.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 724. ISSUE MADE UP.

After the claim proceedings have been docketed, and on the hearing day set by the court, then the court, or the justice of the peace, as the case may be shall enter an order directing the making and joinder of issues by the parties. Such issues shall be in writing and signed by each party or his attorney. The plaintiff shall make a brief statement of the authority and right by which he seeks to subject the property levied on to the process, and it shall be sufficient for the claimant and other parties to make brief statements of the nature of their claims thereto.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 725. JUDGMENT BY DEFAULT.

If the plaintiff appears and the claimant fails to appear or neglects or refuses to join issue under the direction of the court or justice within the time prescribed for pleading, the plaintiff shall have judgment by default.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 726. JUDGMENT OF NON-SUIT.

If the plaintiff does not appear, he shall be nonsuited.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 727. PROCEEDINGS.

The proceedings and practice on the trial shall be as nearly as may be the same as in other cases before such court or justice.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 728. BURDEN OF PROOF.

If the property was taken from the possession of the claimant pursuant to the original writ, the burden of proof shall be on the plaintiff in the writ. If it was taken from the possession of the defendant in such writ, or any other person than the claimant, the burden of proof shall be on the claimant.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 729. COPY OF WRIT EVIDENCE.

In all trials of the right of property, under the provisions of this section in any county other than that in which the writ issued under which the levy was made, the copy of the writ herein required to be returned by the officer making the levy shall be received in evidence in like manner as the original could be.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 730. FAILURE TO ESTABLISH TITLE.

Where any claimant has obtained possession of property, and shall ultimately fail to establish his right thereto, judgment may be rendered against him and his sureties for the value of the property, with legal interest thereon from the date of such bond. Such judgment shall be rendered in favor of the plaintiff or defendant in the writ, or of the several plaintiffs or defendants, if more than one, and shall fix the amount of the claim of each.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 731. EXECUTION SHALL ISSUE.

If such judgment should not be satisfied by a return of the property, then after the expiration of ten days from the date of the judgment, execution shall issue thereon in the name of the plaintiff or defendant for the amount of the claim, or of all the plaintiffs or defendants for the sum of their several claims, provided the amount of such judgment shall inure to the benefit of any person who shall show superior right or title to the property claimed as against the claimant; but if such judgment be for a less amount than the sum of the several plaintiffs' or defendants' claims, then the respective rights and priorities of the several plaintiffs or defendants shall be fixed and adjusted in the judgment.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 732. RETURN OF PROPERTY BY CLAIMANT.

If, within ten days from the rendition of said judgment, the claimant shall return such property in as good condition as he received it, and pay for the use of the same together with the damages and costs, such delivery and payment shall operate as a satisfaction of such judgment.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 733. CLAIM IS A RELEASE OF DAMAGES.

A claim made to the property, under the provisions of this section, shall operate as a release of all damages by the claimant against the officer who levied upon said property.

(Adopted by Order June 10, 1980, eff. Jan. 1, 1981.)

RULE 734. LEVY ON OTHER PROPERTY.

Proceedings for the trial of right of property under these rules shall in no case prevent the plaintiff in the writ from having a levy made upon any other property of the defendant.

(Amended by Order June 10, 1980, eff. Jan. 1, 1981.)

PART VII.
RULES RELATING 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, dedicatory 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 tax lien transfer 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 loan agreement, contract, or lien that may be foreclosed using Rule 736 procedures may also be foreclosed by judgment in an action for judicial foreclosure.

(Adopted by Order Oct. 17, 2011, eff. Jan. 1, 2012; Order Dec. 30, 2011, eff. Jan 1, 2012.)

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 loan agreement, contract, or 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. P. 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 loan agreement, contract, or lien sought to be foreclosed;

(i) for a home equity loan, reverse mortgage, or home equity line of credit, each person obligated to pay the loan agreement, contract, or lien sought to be foreclosed and each mortgagor, if any, of the loan agreement, contract, or lien sought to be foreclosed;

(ii) for a tax lien transfer or property tax loan, each person obligated to pay the loan agreement, contract, or lien sought to be foreclosed, each mortgagor, if any, of the loan agreement, contract, or lien sought to be foreclosed, each owner of the property, and the holder of any recorded preexisting first lien secured by the property;

(iii) for a property owners' association assessment, each person obligated to pay the loan agreement, contract, or lien sought to be foreclosed who has a current ownership interest in the property.

(2) Identify the property encumbered by the loan agreement, contract, or 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 loan agreement, contract, or lien sought to be foreclosed;

(D) each mortgagor, if any, of the loan agreement, contract, or 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) if the default is monetary, the number of unpaid scheduled payments,

(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 total amount required to pay off the loan agreement, contract or 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 tax lien transfer or property tax loan, state all allegations required to be contained in the application in accordance with section 32.06(c-1)(1) of the Tax Code.

(5) Conspicuously state:

(A) that legal action is not being sought against the occupant of the property unless the occupant is also names as a respondent in the application; and

(B) 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 loan agreement, contract, or 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 or dedicatory instrument 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 tax lien transfer or property tax loan:

(i) the property owner's sworn document required under section 32.06(-1) of the Tax Code; and

(ii) the taxing authority's certified statement attesting to the transfer of the lien, required under section 32.06(b) of the Tax Code.

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 mailing address] at the address of the property sought to be foreclosed that is stated in the application.

(2) Concurrently with service, 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. For a citation mailed by the clerk in accordance with (b)(1), 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.

(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 affidavits 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 736.3. The petitioner need not appear in court to obtain a default order.

(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. Otherwise, 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 so long as the automatic stay is effective.

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.

(Adopted by Order Jan. 27, 1998. Amended by Order May 15, 1998, eff. May 15, 1998; Order effective April 15, 2000; Order Oct. 17, 2011, eff. Jan. 1, 2012; Order Dec. 30, 2011, eff. Jan 1, 2012.)

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)(10) of the Business and Commerce Code.

Forms for Expedited Foreclosure Proceedings (Pursuant to the Act of May 27, 2013, 83rd Leg., R.S., c. 1044 (HB 2978) and section 22.018 of the Texas Government Code, the Supreme Court of Texas approves the following set of forms for use in expedited foreclosure proceedings under Texas Rule of Civil Procedure 736.)

RULES 737-755. [REPEALED.]

(Repealed by Order Feb 12, 2013, eff. Aug. 31, 2013; Order April 15, 2013, eff. Aug. 31, 2013.)

SECTION 4.
PARTITION REAL ESTATE

RULE 756. PETITION.

The plaintiff's petition shall state:

(a) The names and residence, if known, of each of the other joint owners, or joint claimants, of such property.

(b) The share or interest which the plaintiff and the other joint owners, or joint claimants, of same own or claim so far as known to the plaintiff.

(c) The land sought to be partitioned shall be so described as that the same may be distinguished from any other and the estimated value thereof stated.

RULE 757. CITATION AND SERVICE.

Upon the filing of a petition for partition, the clerk shall issue citation for each of the joint owners, or joint claimants, named therein, as in other cases, and such citations shall be served in the manner and for the time provided for the service of citations in other cases.

RULE 758. WHERE DEFENDANT IS UNKNOWN OR RESIDENCE IS UNKNOWN.

If the plaintiff, his agent or attorney, at the commencement of any suit, or during the progress thereof, for the partition of land, shall make affidavit that an undivided portion of the land described in plaintiff's petition in said suit is owned by some person unknown to affiant, or that the place of residence of any known party owning an interest in land sought to be partitioned is unknown to affiant, the Clerk of the Court shall issue citation for publication, conforming to the requirements of Rules 114 and 115, and served in accordance with the directions of Rule 116. In case of unknown residence or party, the affidavit shall include a statement that after due diligence plaintiff and the affiant have been unable to ascertain the name or locate the residence of such party, as the case may be, and in such case it shall be the duty of the court trying the action to inquire into the sufficiency of the diligence so stated before granting any judgment.

(Amended by Order July 20, 1954, eff. Jan. 1, 1955; Dec. 19, 1984, eff. April 1, 1985.)

RULE 759. JUDGMENT WHERE DEFENDANT CITED BY PUBLICATION.

When the defendant has been duly cited by publication in accordance with the preceding rule, and no appearance is entered within the time prescribed for pleadings, the court shall appoint an attorney to defend in behalf of such owner or owners, and proceed as in other causes where service is made by publication. It shall be the special duty of the court in all cases to see that its decree protects the rights of the unknown parties thereto. The judge of the court shall fix the fee of the attorney so appointed, which shall be entered and collected as costs against said unknown owner or owners.

RULE 760. COURT SHALL DETERMINE, WHAT.

Upon the hearing of the cause, the court shall determine the share or interest of each of the joint owners or claimants in the real estate sought to be divided, and all questions of law or equity affecting the title to such land which may arise.

RULE 761. APPOINTMENT OF COMMISSIONERS.

The court shall determine before entering the decree of partition whether the property, or any part thereof, is susceptible of partition; and, if the court determines that the whole, or any part of such property is susceptible of partition, then the court for that part of such property held to be susceptible of partition shall enter a decree directing the partition of such real estate, describing the same, to be made in accordance with the respective shares or interests of each of such parties entitled thereto, specify in such decree the share or interest of each party, and shall appoint three or more competent and disinterested persons as commissioners to make such partition in accordance with such decree and the law, a majority of which commissioners may act.

RULE 762. WRIT OF PARTITION.

The clerk shall issue a writ a partition, directed to the sheriff or any constable of the county, commanding such sheriff or constable to notify each of the commissioners of their appointment as such, and shall accompany such writ with a certified copy of the decree of the court directing the partition.

RULE 763. SERVICE OF WRIT OF PARTITION.

The writ of partition shall be served by reading the same to each of the persons named therein as commissioners, and by delivering to any one of them the accompanying certified copy of the decree of the court.

RULE 764. MAY APPOINT SURVEYOR.

The court may, should it be deemed necessary, appoint a surveyor to assist the commissioners in making the partition, in which case the writ of partition shall name such surveyor, and shall be served upon him by reading the same to him.

RULE 765. RETURN OF WRIT.

A writ of partition, unless otherwise directed by the court, shall be made returnable twenty days from date of service on the commissioner last served; and the officer serving it shall endorse thereon the time and manner of such service.

RULE 766. SHALL PROCEED TO PARTITION.

The commissioners, or a majority of them, shall proceed to partition the real estate described in the decree of the court, in accordance with the directions contained in such decree and with the provisions of law and these rules.

RULE 767. MAY CAUSE SURVEY.

If the commissioners deem it necessary, they may cause to be surveyed the real estate to be partitioned into several tracts or parcels.

RULE 768. SHALL DIVIDE REAL ESTATE.

The commissioners shall divide the real estate to be partitioned into as many shares as there are persons entitled thereto, as determined by the court, each share to contain one or more tracts or parcels, as the commissioners may think proper, having due regard in the division to the situation, quantity and advantages of each share, so that the shares may be equal in value, as nearly as may be, in proportion to the respective interests of the parties entitled. The commissioners shall then proceed by lot to set apart to each of the parties entitled one of said shares, as determined by the decrees of the court.

RULE 769. REPORT OF COMMISSIONERS.

When the commissioners have completed the partition, they shall report the same in writing and under oath to the court, which report shall show:

(a) The property divided, describing the same.

(b) The several tracts or parcels into which the same was divided by them, describing each particularly

(c) The number of shares and the land which constitutes each share, and the estimated value of each share.

(d) The allotment of each share.

(e) The report shall be accompanied by such field notes and maps as may be necessary to make the same intelligible. The clerk shall immediately mail written notice of the filing of the report to all parties.

(Amended by Order April 24, 1990, eff. Sept. 1, 1990.)

RULE 770. PROPERTY INCAPABLE OF DIVISION.

Should the court be of the opinion that a fair and equitable division of the real estate, or any part thereof, cannot be made, it shall order a sale of so much as is incapable of partition, which sale shall be for cash, or upon such other terms as the court may direct, and shall be made as under execution or by private or public sale through a receiver, if the court so order, and the proceeds thereof shall be returned into court and be partitioned among the persons entitled thereto, according to their respective interests.

(Amended by Order Oct. 12, 1949, eff. March 1, 1950.)

RULE 771. OBJECTIONS TO REPORT.

Either party to the suit may file objections to any report of the commissioners in partition within thirty days of the date the report is filed, and in such case a trial of the issues thereon shall be had as in other cases. If the report be found to be erroneous in any material respect, or unequal and unjust, the same shall be rejected, and other commissioners shall be appointed by the Court, and the same proceedings had as in the first instance.

(Amended by Order April 24, 1990, eff. Sept. 1, 1990.)

SECTION 5.
PARTITION OF PERSONAL PROPERTY

RULE 772. PROCEDURE.

An action seeking partition of personal property as authorized by Section 23.001, Texas Property Code, shall be commenced in the same manner as other civil suits, and the several owners or claimants of such property shall be cited as in other cases.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988.)

RULE 773. VALUE ASCERTAINED.

The separate value of each article of such personal property, and the allotment in kind to which each owner is entitled, shall be ascertained by the court, with or without a jury.

RULE 774. DECREE OF COURT EXECUTED.

When partition in kind of personal property is ordered by the judgment of the court, a writ shall be issued in accordance with such judgment, commanding the sheriff or constable of the county where the property may be to put the parties forthwith in possession of the property allotted to each respectively.

RULE 775. PROPERTY SOLD.

When personal property will not admit of a fair and equitable partition, the court shall ascertain the proportion to which each owner thereof is entitled, and order the property to be sold, and execution shall be issued to the sheriff or any constable of the county where the property may be describing such property and commanding such officer to sell the same as in other cases of execution, and pay over the proceeds of sale to the parties entitled thereto, in the proportion ascertained by the judgment of the court.

SECTION 6. PARTITION:
MISCELLANEOUS PROVISIONS

RULE 776. CONSTRUCTION.

No provision of the statutes or rules relating to partition shall affect the mode of proceeding prescribed by law for the partition of estates of decedents among the heirs and legatees, nor preclude partition in any other manner authorized by the rules of equity, which rules shall govern in proceedings for partition in all respects not provided for by law or these rules.

RULE 777. PLEADING AND PRACTICE.

The same rules of pleading, practice and evidence which govern in other civil actions shall govern in suits for partition, when not in conflict with any provisions of the law or these rules relating to partition.

RULE 778. COSTS.

The court shall adjudge the costs in a partition suit to be paid by each party to whom a share has been allotted in proportion to the value of such share.

SECTION 7.
QUO WARRANTO

RULE 779. JOINDER OF PARTIES.

When it appears to the court or judge that the several rights of divers parties to the same office or franchise may properly be determined on one information, the court or judge may give leave to join all such persons in the same information in order to try their respective rights to such office or franchise.

RULE 780. CITATION TO ISSUE.

When such information is filed, the clerk shall issue citation as in civil actions, commanding the defendant to appear and answer the relator in an information in the nature of a quo warranto.

RULE 781. PROCEEDINGS AS IN CIVIL CASES.

Every person or corporation who shall be cited as hereinbefore provided shall be entitled to all the rights in the trial and investigation of the matters alleged against him, as in cases of trial of civil cases in this State. Either party may prosecute an appeal or writ of error from any judgment rendered, as in other civil cases, subject, however, to the provisions of Rule 42, Texas Rules of Appellate Procedure, and the appellate court shall give preference to such case, and hear and determine the same as early as practicable.

(Amended by Order Aug. 18, 1947, eff. Dec. 31, 1947; April 24, 1990, eff. Sept. 1, 1990.)

RULE 782. REMEDY CUMULATIVE.

The remedy and mode of procedure hereby prescribed shall be construed to be cumulative of any now existing.

SECTION 8.
TRESPASS TO TRY TITLE

RULE 783. REQUISITES OF PETITION.

The petition shall state:

(a) The real names of the plaintiff and defendant and their residences, if known.

(b) A description of the premises by metes and bounds, or with sufficient certainty to identify the same, so that from such description possession thereof may be delivered, and state the county or counties in which the same are situated.

(c) The interest which the plaintiff claims in the premises, whether it be a fee simple or other estate; and, if he claims an undivided interest, the petition shall state the same and the amount thereof.

(d) That the plaintiff was in possession of the premises or entitled to such possession.

(e) That the defendant afterward unlawfully entered upon and dispossessed him of such premises, stating the date, and withholds from him the possession thereof.

(f) If rents and profits or damages are claimed, such facts as show the plaintiff to be entitled thereto and the amount thereof.

(g) It shall conclude with a prayer for the relief sought.

RULE 784. THE POSSESSOR SHALL BE DEFENDANT.

The defendant in the action shall be the person in possession if the premises are occupied, or some person claiming title thereto in case they are unoccupied.

RULE 785. MAY JOIN AS DEFENDANTS, WHEN.

The plaintiff may join as a defendant with the person in possession, any other person who, as landlord, remainderman, reversioner or otherwise, may claim title to the premises, or any part thereof, adversely to the plaintiff.

RULE 786. WARRANTOR, ETC., MAY BE MADE A PARTY.

When a party is sued for lands, the real owner or warrantor may make himself, or may be made, a party defendant in the suit, and shall be entitled to make such defense as if he had been the original defendant in the action.

RULE 787. LANDLORD MAY BECOME DEFENDANT.

When such action shall be commenced against a tenant in possession, the landlord may enter himself as the defendant, or he may be made a party on motion of such tenant; and he shall be entitled to make the same defense as if the suit had been originally commenced against him.

RULE 788. MAY FILE PLEA OF "NOT GUILTY" ONLY.

The defendant in such action may file only the plea of "not guilty," which shall state in substance that he is not guilty of the injury complained of in the petition filed by the plaintiff against him, except that if he claims an allowance for improvements, he shall state the facts entitling him to the same.

RULE 789. PROOF UNDER SUCH PLEA.

Under such plea of "not guilty" the defendant may give in evidence any lawful defense to the action except the defense of limitations, which shall be specially pleaded.

RULE 790. ANSWER TAKEN AS ADMITTING POSSESSION.

Such plea or any other answer to the merits shall be an admission by the defendant, for the purpose of that action, that he was in possession of the premises sued for, or that he claimed title thereto at the time of commencing the action, unless he states distinctly in his answer the extent of his possession or claim, in which case it shall be an admission to such extent only.

RULE 791. MAY DEMAND ABSTRACT OF TITLE.

After answer filed, either party may, by notice in writing, duly served on the opposite party or his attorney of record, not less than ten days before the trial of the cause, demand an abstract in writing of the claim or title to the premises in question upon which he relies.

RULE 792. TIME TO FILE ABSTRACT.

Such abstract of title shall be filed with the papers of the cause that within thirty days after the service of the notice, or within such further time that the court on good cause shown may grant; and in default thereof, the court may, after notice and hearing prior to the beginning of trial, order that no written instruments which are evidence of the claim or title of such opposite party be given on trial.

(Amended by Order July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990.)

RULE 793. ABSTRACT SHALL STATE, WHAT.

The abstract mentioned in the two preceding rules shall state:

(a) The nature of each document or written instrument intended to be used as evidence and its date;

(b) If a contract or conveyance, its date, the parties thereto and the date of the proof of acknowledgment, and before what officer the same was made; and

(c) Where recorded, stating the book and page of the record.

(d) If not recorded in the county when the trial is had, copies of such instrument, with the names of the subscribing witnesses, shall be included. If such unrecorded instrument be lost or destroyed it shall be sufficient to state the nature of such instrument and its loss or destruction.

RULE 794. AMENDED ABSTRACT.

The court may allow either party to file an amended abstract of title, under the same rules, which authorize the amendment of pleadings so far as they are applicable; but in all cases the documentary evidence of title shall at the trial be confined to the matters contained in the abstract of title.

RULE 795. RULES IN OTHER CASES OBSERVED.

The trial shall be conducted according to the rules of pleading, practice and evidence in other cases in the district court and conformable to the principles of trial by ejectment, except as otherwise provided by these rules.

RULE 796. SURVEYOR APPOINTED, ETC.

The judge of the court may, either in term time or in vacation, at his own discretion, or on motion of either party to the action appoint a surveyor, who shall survey the premises in controversy pursuant to the order of the court, and report his action under oath to such court. If said report be not rejected for good cause shown, the same shall be admitted as evidence on the trial.

RULE 797. SURVEY UNNECESSARY, WHEN.

Where there is no dispute as to the lines or boundaries of the land in controversy, or where the defendant admits that he is in possession of the lands or tenements included in the plaintiff's claim, or title, an order of survey shall be unnecessary.

RULE 798. COMMON SOURCE OF TITLE.

It shall not be necessary for the plaintiff to deraign title beyond a common source. Proof of a common source may be made by the plaintiff by certified copies of the deeds showing a chain of title to the defendant emanating from and under such common source. Before any such certified copies shall be read in evidence, they shall be filed with the papers of the suit three days before the trial, and the adverse party served with notice of such filing as

in other cases. Such certified copies shall not be evidence of title in the defendant unless offered in evidence by him. The plaintiff may make any legal objection to such certified copies, or the originals thereof, when introduced by the defendant.

RULE 799. JUDGMENT BY DEFAULT.

If the defendant, who has been personally served with citation according to law or these rules fails to appear and answer by himself or attorney within the time prescribed by law or these rules for other actions in the district court, then judgment by default may be entered against him and in favor of the plaintiff for the title to the premises, or the possession thereof, or for both, according to the petition, and for all costs, without any proof of title by the plaintiff.

RULE 800. PROOF EX PARTE.

If the defendant has been cited only by publication, and fails to appear and answer by himself, or by attorney of his own selection, or if any defendant, having answered, fails to appear by himself or attorney when the case is called for trial on its merits, the plaintiff shall make such proof as will entitle him prima facie to recover, whereupon the proper judgment shall be entered.

RULE 801. WHEN DEFENDANT CLAIMS PART ONLY.

Where the defendant claims part of the premises only, the answer shall be equivalent to a disclaimer of the balance.

RULE 802. WHEN PLAINTIFF PROVES PART.

Where the defendant claims the whole premises, and the plaintiff shows himself entitled to recover part, the plaintiff shall recover such part and costs.

RULE 803. MAY RECOVER A PART.

When there are two or more plaintiffs or defendants any one or more of the plaintiffs may recover against one or more of the defendants the premises, or any part thereof, or any interest therein, or damages, according to the rights of the parties.

RULE 804. THE JUDGMENT.

Upon the finding of the jury, or of the court where the case is tried by the court, in favor of the plaintiff for the whole or any part of the premises in controversy, the judgment shall be that the plaintiff recover of the defendant the title or possession, or both, as the case may be, of such premises, describing them, and where he recovers the possession, that he have his writ of possession.

RULE 805. DAMAGES.

Where it is alleged and proved that one of the parties is in possession of the premises, the court or jury, if they find for the adverse party, shall assess the damages for the use and occupation of the premises. If special injury to the property be alleged and proved, the damages for such injury shall also be assessed, and the proper judgment shall be entered therefor, on which execution may issue.

RULE 806. CLAIM FOR IMPROVEMENTS.

When the defendant or person in possession has claimed an allowance for improvements in accordance with Sections 22.021-22.024, Texas Property Code, the claim for use and occupation and damages mentioned in the preceding rule shall be considered and acted on in connection with such claim by the defendant or person in possession.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

RULE 807. JUDGMENT WHEN CLAIM FOR IMPROVEMENTS IS MADE.

When a claim for improvements is successfully made under Sections 22.021 PROP.-22.024, Texas Property Code, the judgment shall recite the estimated value of the premises without the improvements, and shall also include the conditions, stipulations and directions contained in Sections 22.021-22.024., Texas Property Code so far as applicable to the case before the court.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

RULE 808. THESE RULES SHALL NOT GOVERN, WHEN.

Nothing in Sections 22.001-22.045, Texas Property Code, shall be so construed as to alter, impair or take away the rights of parties, as arising under the laws in force before the introduction of the common law, but the same shall be decided by the principles of the law under which the same accrued, or by which the same were regulated or in any manner affected.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

RULE 809. THESE RULES SHALL NOT GOVERN, WHEN.

Nothing in these rules relating to trespass to try title shall be so construed as to alter, impair or take away the rights of parties, as arising under the laws in force before the introduction of the common law, but the same shall be decided by the principles of the law under which the same accrued, or by which the same were regulated or in any manner affected.

SECTION 9.
SUITS AGAINST NON-RESIDENTS

RULE 810. REQUISITES OF PLEADINGS.

The petition in actions authorized by section 17.003, Civil Practice and Remedies Code, shall state the real names of the plaintiff and defendant, and shall describe the property involved with sufficient certainty to identify the same, the interest which the plaintiff claims, and such proceedings shall be had in such action as may be necessary to fully settle and determine the question of right or title in and to said property between the parties to said suit, and to decree the title or right of the party entitled thereto; and the court may issue the appropriate order to carry such decree, judgment or order into effect; and whenever such petition has been duly filed and citation thereon has been duly served by publication as required by Rules 114-116, the plaintiff may, at any time prior to entering the decree by leave of court first had and obtained, file amended and supplemental pleadings that do not subject additional property to said suit without the necessity of reciting the defendants so cited as aforesaid.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

RULE 811. SERVICE BY PUBLICATION IN ACTIONS UNDER SECTION 17.003 CIV. PRAC. & REM, CIVIL PRACTICE AND REMEDIES CODE.

In actions authorized by Section 17.003, Civil Practice and Remedies Code, service on the defendant or defendants may be made by publication as is provided by Rules 114-116 or by service of notice of the character and in the manner provided by Rule 108.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984; July 15, 1987, eff. Jan. 1, 1988.)

RULE 812. NO JUDGMENT BY DEFAULT.

No judgment by default shall be taken in such case when service has been had by publication, but in such case the facts entitling the plaintiff to judgment shall be exhibited to the court on the trial; and a statement of facts shall be filed as provided by law and these rules in suits against nonresidents of this State served by publication, where no appearance has been made by them.

(Amended by Order Oct. 12, 1949, eff. March 1, 1950.)

RULE 813. SUIT TO EXTINGUISH LIEN.

If said suit shall be for the extinguishment of a lien or claim for money on said property that may be held by the defendant, the amount thereof, with interest, shall be ascertained by the court; and the same deposited in the registry of the court, subject to the drawn by the parties entitled thereto; but in such case no decree shall be entered until said sum is deposited; which fact shall be noted in said decree.

PART VIII.
CLOSING RULES

RULE 814. EFFECTIVE DATE.

These rules shall take effect on September 1st, 1941. They shall govern all proceedings in actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure shall apply. All things properly done under any previously existing rule or statutes prior to the taking effect of these rules shall be treated as valid. Where citation or other process is issued and served in compliance with existing rules or laws prior to the taking effect of these rules, the party upon whom such citation or other process has been served shall have the time provided for under such previously existing rules or laws in which to comply therewith.

RULE 815. SUBSTANTIVE RIGHTS UNAFFECTED.

These rules shall not be construed to enlarge or diminish any substantive rights or obligations of any parties to any civil action.

RULE 816. JURISDICTION AND VENUE UNAFFECTED.

These rules shall not be construed to extend or limit the jurisdiction of the courts of the State of Texas nor the venue of actions therein.

RULE 817. [RENUMBERED]

(Renumbered as rule 3a Dec. 5, 1983, eff. April 1, 1984.)

RULE 818. REFERENCE TO FORMER STATUTES.

Wherever any statute or rule refers to any practice or procedure in any law, laws, statute or statutes, or to a title, chapter, section, or article of the statutes, or contains any reference of any such nature, and the matter referred to has been supplanted in whole or in part by these rules, every such reference shall be deemed to be to the pertinent part or parts of these rules.

RULE 819. PROCEDURE CONTINUED.

All procedure prescribed by statutes of the State of Texas not specifically listed in the accompanying enumeration of repealed articles shall, insofar as the same is not inconsistent with the provisions of these rules, continue in accordance with the provisions of such statutes as rules of court. In case of inconsistency between the provisions of these rules and any statutory procedure not specifically listed as repealed, these rules shall apply.

RULE 820. WORKERS' COMPENSATION LAW.

All portions of the Workers' Compensation Law, Articles 8306-8309-1, Revised Civil Statutes, and amendments thereto, which relate to matters of practice and procedure are hereby adopted and retained in force and effect as rules of court.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 821. PRIOR COURT RULES REPEALED.

These rules shall supersede all Court Rules heretofore promulgated for any court; and all of said prior Court Rules are hereby repealed; provided, however, any rules of procedure heretofore adopted by a particular county or district court or by any Court of Appeals which were not of general application but were solely to regulate procedure in the particular court promulgating such rules are to remain in force and effect insofar as they are not inconsistent with these rules.

(Amended by Order Dec. 5, 1983, eff. April 1, 1984.)

RULE 822. TITLE.

These rules may be known and cited as the Texas Rules of Civil Procedure.

Texas Rules of Evidence

ARTICLE I.
GENERAL PROVISIONS

Rule 101. Title, Scope, and Applicability of the Rules; Definitions

(a) Title. These rules may be cited as the Texas Rules of Evidence.

(b) Scope. These rules apply to proceedings in Texas courts except as otherwise provided in subdivisions (d)-(f).

(c) Rules on Privilege. The rules on privilege apply to all stages of a case or proceeding.

(d) Exception for Constitutional or Statutory Provisions or Other Rules. Despite these rules, a court must admit or exclude evidence if required to do so by the United States or Texas Constitution, a federal or Texas statute, or a rule prescribed by the United States or Texas Supreme Court or the Texas Court of Criminal Appeals. If possible, a court should resolve by reasonable construction any inconsistency between these rules and applicable constitutional or statutory provisions or other rules.

(e) Exceptions. These rules—except for those on privilege—do not apply to:

- **(1)** the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;
- **(2)** grand jury proceedings; and
- **(3)** the following miscellaneous proceedings:
  - **(A)** an application for habeas corpus in extradition, rendition, or interstate detainer proceedings;
  - **(B)** an inquiry by the court under Code of Criminal Procedure article 46B.004 to determine whether evidence exists that would support a finding that the defendant may be incompetent to stand trial;
  - **(C)** bail proceedings other than hearings to deny, revoke, or increase bail;
  - **(D)** hearings on justification for pretrial detention not involving bail;
  - **(E)** proceedings to issue a search or arrest warrant; and
  - **(F)** direct contempt determination proceedings.

(f) Exception for Justice Court Cases. These rules do not apply to justice court cases except as authorized by Texas Rule of Civil Procedure 500.3.

(g) Exception for Military Justice Hearings. The Texas Code of Military Justice, Tex. Gov't Code §§ 432.001-432.195, governs the admissibility of evidence in hearings held under that Code.

(h) Definitions. In these rules:

- **(1)** "civil case" means a civil action or proceeding;
- **(2)** "criminal case" means a criminal action or proceeding, including an examining trial;
- **(3)** "public office" includes a public agency;
- **(4)** "record" includes a memorandum, report, or data compilation;
- **(5)** a "rule prescribed by the United States or Texas Supreme Court or the Texas Court of Criminal Appeals" means a rule adopted by any of those courts under statutory authority;
- **(6)** "unsworn declaration" means an unsworn declaration made in accordance with Tex. Civ. Prac. & Rem. Code § 132.001; and
- **(7)** a reference to any kind of written material or any other medium includes electronically stored information.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 2015 Restyling: The reference to "hierarchical governance" in former Rule 101(c) has been deleted as unnecessary. The textual limitation of former Rule 101(c) to criminal cases has been eliminated. Courts in civil cases must also admit or exclude evidence when required to do so by constitutional or statutory provisions or other rules that take precedence over these rules. Likewise, the title to former Rule 101(d) has been changed to more accurately indicate the purpose and scope of the subdivision.

Comment to 1998 change: "Criminal proceedings" rather than "criminal cases" is used since that was the terminology used in the prior Rules of Criminal Evidence. In subpart (b), the reference to "trials before magistrates" comes from prior Criminal Rule 1101(a). In the prior Criminal Rules, both Rule 101 and Rule 1101 dealt with the same thing—the applicability of the rules. Thus, Rules 101(c) and (d) have been written to incorporate the provisions of former Criminal Rule 1101 and that rule is omitted.

Rule 102. Purpose

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 103. Rulings on Evidence

(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

- **(1)** if the ruling admits evidence, a party, on the record:
  - **(A)** timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) Not Needing to Renew an Objection. When the court hears a party's objections outside the presence of the jury and rules that evidence is admissible, a party need not renew an objection to preserve a claim of error for appeal.

(c) Court's Statement About the Ruling; Directing an Offer of Proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court must allow a party to make an offer of proof as soon as practicable. In a jury trial, the court must allow a party to make the offer outside the jury's presence and before the court reads its charge to the jury. At a party's request, the court must direct that an offer of proof be made in question-and-answer form. Or the court may do so on its own.

(d) Preventing the Jury from Hearing Inadmissible Evidence. To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(e) Taking Notice of Fundamental Error in Criminal Cases. In criminal cases, a court may take notice of a fundamental error affecting a substantial right, even if the claim of error was not properly preserved.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015; Tex. Sup. Ct. Misc. Docket No. 20-9011, Jan. 20, 2020 and Tex. Ct. Crim App. Misc. Docket No. 20-012, June 1, 2020, eff. June 1, 2020.)

Comment to 1998 change. The exception to the requirement of an offer of proof for matters that were apparent from the context within which questions were asked, found in paragraph (a)(2), is now applicable to civil as well as criminal cases.

Rule 104. Preliminary Questions

(a) In General. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

(b) Relevance That Depends on a Fact. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(c) Conducting a Hearing So That the Jury Cannot Hear It. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

(1) the hearing involves the admissibility of a confession in a criminal case;

(2) a defendant in a criminal case is a witness and so requests; or

(3) justice so requires.

(d) Cross-Examining a Defendant in a Criminal Case. By testifying outside the jury's hearing on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

(e) Evidence Relevant to Weight and Credibility. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 105. Evidence That Is Not Admissible Against Other Parties or for Other Purposes

(a) Limiting Admitted Evidence. If the court admits evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—the court, on request, must restrict the evidence to its proper scope and instruct the jury accordingly.

(b) Preserving a Claim of Error.

(1) ***Court Admits the Evidence Without Restriction.*** A party may claim error in a ruling to admit evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—only if the party requests the court to restrict the evidence to its proper scope and instruct the jury accordingly.

(2) ***Court Excludes the Evidence.*** A party may claim error in a ruling to exclude evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—only if the party limits its offer to the party against whom or the purpose for which the evidence is admissible.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 106. Remainder of or Related Writings or Recorded Statements

If a party introduces all or part of a writing or recorded statement, an adverse party may introduce, at that time, any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time. "Writing or recorded statement" includes depositions.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 107. Rule of Optional Completeness

If a party introduces part of an act, declaration, conversation, writing, or recorded statement, an adverse party may inquire into any other part on the same subject. An adverse party may also introduce any other act, declaration, conversation, writing, or recorded statement that is necessary to explain or allow the trier of fact to fully understand the part offered by the opponent. "Writing or recorded statement" includes a deposition.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 1998 change: This rule is the former Criminal Rule 107 except that the example regarding "when a letter is read" has been relocated in the rule so as to more accurately indicate the provision it explains. While this rule appeared only in the prior criminal rules, it is made applicable to civil cases because it accurately reflects the common law rule of optional completeness in civil cases.

ARTICLE II.
JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) Taking Notice. The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) Timing. The court may take judicial notice at any stage of the proceeding.

(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) Instructing the Jury. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 202. Judicial Notice of Other States' Law

(a) Scope. This rule governs judicial notice of another state's, territory's, or federal jurisdiction's:

- Constitution;
- public statutes;
- rules;
- regulations;
- ordinances;
- court decisions; and
- common law.

(b) Taking Notice. The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(c) Notice and Opportunity to Be Heard.

(1) ***Notice.*** The court may require a party requesting judicial notice to notify all other parties of the request so they may respond to it.

(2) ***Opportunity to Be Heard.*** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the matter to be noticed. If the court takes judicial notice before a party has been notified, the party, on request, is still entitled to be heard.

(d) Timing. The court may take judicial notice at any stage of the proceeding.

(e) Determination and Review. The court—not the jury—must determine the law of another state, territory, or federal jurisdiction. The court's determination must be treated as a ruling on a question of law.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 203. Determining Foreign Law

(a) Raising a Foreign Law Issue. A party who intends to raise an issue about a foreign country's law must:

(1) give reasonable notice by a pleading or other writing; and

(2) at least 30 days before trial, supply all parties a copy of any written materials or sources the party intends to use to prove the foreign law.

(b) Translations. If the materials or sources were originally written in a language other than English, the party intending to rely on them must, at least 30 days before trial, supply all parties both a copy of the foreign language text and an English translation.

(c) Materials the Court May Consider; Notice. In determining foreign law, the court may consider any material or source, whether or not admissible. If the court considers any material or source not submitted by a party, it must give all parties notice and a reasonable opportunity to comment and submit additional materials.

(d) Determination and Review. The court—not the jury—must determine foreign law. The court's determination must be treated as a ruling on a question of law.

(e) Suits Brought Under the Family Code Involving a Marriage Relationship or Parent-Child Relationship. Subsections (a) and (b) of this rule do not apply to an action to which Rule 308b, Texas Rules of Civil Procedure, applies

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015; Tex. Sup. Ct. Misc. Docket No. 17-9163 Dec. 28, 2017, eff. Jan 1, 2018.)

Rule 204. Judicial Notice of Texas Municipal and County Ordinances, Texas Register Contents, and Published Agency Rules

(a) Scope. This rule governs judicial notice of Texas municipal and county ordinances, the contents of the Texas Register, and agency rules published in the Texas Administrative Code.

(b) Taking Notice. The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(c) Notice and Opportunity to Be Heard.

(1) ***Notice.*** The court may require a party requesting judicial notice to notify all other parties of the request so they may respond to it.

(2) ***Opportunity to Be Heard.*** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the matter to be noticed. If the court takes judicial notice before a party has been notified, the party, on request, is still entitled to be heard.

(d) Determination and Review. The court—not the jury—must determine municipal and county ordinances, the contents of the Texas Register, and published agency rules. The court's determination must be treated as a ruling on a question of law.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

ARTICLE III.
PRESUMPTIONS

[No rules adopted at this time.]

ARTICLE IV.
RELEVANCY AND ITS LIMITS

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 402. General Admissibility of Relevant Evidence

Relevant evidence is admissible unless any of the following provides otherwise:

- the United States or Texas Constitution;
- a statute;
- these rules; or
- other rules prescribed under statutory authority.

Irrelevant evidence is not admissible.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.

Rule 404. Character Evidence; Crimes or Other Acts

(a) Character Evidence.

(1) ***Prohibited Uses.*** Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) ***Exceptions for an Accused.***

(A) In a criminal case, a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.

(B) In a civil case, a party accused of conduct involving moral turpitude may offer evidence of the party's pertinent trait, and if the evidence is admitted, the accusing party may offer evidence to rebut it.

(3) ***Exceptions for a Victim.***

(A) In a criminal case, subject to the limitations in Rule 412, a defendant may offer evidence of a victim's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.

(B) In a homicide case, the prosecutor may offer evidence of the victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(C) In a civil case, a party accused of assaultive conduct may offer evidence of the victim's trait of violence to prove self-defense, and if the evidence is admitted, the accusing party may offer evidence of the victim's trait of peacefulness.

(4) ***Exceptions for a Witness.*** Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(5) *Definition of "Victim."* In this rule, "victim" includes an alleged victim.

(b) Crimes, Wrongs, or Other Acts.

(1) ***Prohibited Uses.*** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) ***Permitted Uses; Notice in Criminal Case.*** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On timely request by a defendant in a criminal case, the prosecutor must provide reasonable notice before trial that the prosecution intends to introduce such evidence—other than that arising in the same transaction—in its case-in-chief.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 405. Methods of Proving Character

(a) By Reputation or Opinion.

(1) ***In General.*** When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, inquiry may be made into relevant specific instances of the person's conduct.

(2) ***Accused's Character in a Criminal Case.*** In the guilt stage of a criminal case, a witness may testify to the defendant's character or character trait only if, before the day of the offense, the witness was familiar with the defendant's reputation or the facts or information that form the basis of the witness's opinion.

(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 406. Habit; Routine Practice

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 407. Subsequent Remedial Measures; Notification of Defect

(a) Subsequent Remedial Measures. When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or—if disputed—proving ownership, control, or the feasibility of precautionary measures.

(b) Notification of Defect. A manufacturer's written notification to a purchaser of a defect in one of its products is admissible against the manufacturer to prove the defect.

(Amended by Order Aug. 29, 2003, effective in all cases filed on or after July 1, 2003. Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 2015 Restyling: Rule 407 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

Rule 408. Compromise Offers and Negotiations

(a) Prohibited Uses. Evidence of the following is not admissible either to prove or disprove the validity or amount of a disputed claim:

(1) furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or statements made during compromise negotiations about the claim.

(b) Permissible Uses. The court may admit this evidence for another purpose, such as proving a party's or witness's bias, prejudice, or interest, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 2015 Restyling: Rule 408 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

The reference to "liability" has been deleted on the ground that the deletion makes the Rule flow better and easier to read, and because "liability" is covered by the broader term "validity." Courts have not made substantive decisions on the basis of any distinction between validity and liability. No change in current practice or in the coverage of the Rule is intended.

Finally, the sentence of the Rule referring to evidence "otherwise discoverable" has been deleted as superfluous. The intent of the sentence was to prevent a party from trying to immunize admissible information, such as a pre-existing document, through the pretense of disclosing it during compromise negotiations. But even without the sentence, the Rule cannot be read to protect pre-existing information simply because it was presented to the adversary in compromise negotiations.

Rule 409. Offers to Pay Medical and Similar Expenses

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 410. Pleas, Plea Discussions, and Related Statements

(a) Prohibited Uses in Civil Cases. In a civil case, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions:

- **(1)** a guilty plea that was later withdrawn;
- **(2)** a nolo contendere plea;
- **(3)** a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
- **(4)** a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) Prohibited Uses in Criminal Cases. In a criminal case, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions:

- **(1)** a guilty plea that was later withdrawn;
- **(2)** a nolo contendere plea that was later withdrawn;
- **(3)** a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
- **(4)** a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty or nolo contendere plea or they resulted in a later-withdrawn guilty or nolo contendere plea.

(c) Exception. In a civil case, the court may admit a statement described in paragraph (a)(3) or (4) and in a criminal case, the court may admit a statement described in paragraph (b)(3) or (4), when another statement made during the same plea or plea discussions has been introduced and in fairness the statements ought to be considered together.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or, if disputed, proving agency, ownership, or control.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 412. Evidence of Previous Sexual Conduct in Criminal Cases

(a) In General. The following evidence is not admissible in a prosecution for sexual assault, aggravated sexual assault, or attempt to commit sexual assault or aggravated sexual assault:

- **(1)** reputation or opinion evidence of a victim's past sexual behavior; or
- **(2)** specific instances of a victim's past sexual behavior.

(b) Exceptions for Specific Instances. Evidence of specific instances of a victim's past sexual behavior is admissible if:

- **(1)** the court admits the evidence in accordance with subdivisions (c) and (d);
- **(2)** the evidence:
  - **(A)** is necessary to rebut or explain scientific or medical evidence offered by the prosecutor;
  - **(B)** concerns past sexual behavior with the defendant and is offered by the defendant to prove consent;
  - **(C)** relates to the victim's motive or bias;
  - **(D)** is admissible under Rule 609; or
  - **(E)** is constitutionally required to be admitted; and
- **(3)** the probative value of the evidence outweighs the danger of unfair prejudice.

(c) Procedure for Offering Evidence. Before offering any evidence of the victim's past sexual behavior, the defendant must inform the court outside the jury's presence. The court must then conduct an in camera hearing, recorded by a court reporter, and determine whether the proposed evidence is admissible. The defendant may not refer to any evidence ruled inadmissible without first requesting and gaining the court's approval outside the jury's presence.

(d) Record Sealed. The court must preserve the record of the in camera hearing, under seal, as part of the record.

(e) Definition of "Victim." In this rule, "victim" includes an alleged victim.

(Amended by Order Dec. 13, 2006 eff. Jan. 1, 2007. Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

ARTICLE V.
PRIVILEGES.

Rule 501. Privileges in General

Unless a Constitution, a statute, or these or other rules prescribed under statutory authority provide otherwise, no person has a privilege to:

(a) refuse to be a witness;

(b) refuse to disclose any matter;

(c) refuse to produce any object or writing; or

(d) prevent another from being a witness, disclosing any matter, or producing any object or writing.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 502. Required Reports Privileged By Statute

(a) In General. If a law requiring a return or report to be made so provides:

(1) a person, corporation, association, or other organization or entity—whether public or private—that makes the required return or report has a privilege to refuse to disclose it and to prevent any other person from disclosing it; and

(2) a public officer or agency to whom the return or report must be made has a privilege to refuse to disclose it.

(b) Exceptions. This privilege does not apply in an action involving perjury, false statements, fraud in the return or report, or other failure to comply with the law in question.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 503. Lawyer–Client Privilege

(a) Definitions. In this rule:

(1) A "client" is a person, public officer, or corporation, association, or other organization or entity—whether public or private—that:

(A) is rendered professional legal services by a lawyer; or

(B) consults a lawyer with a view to obtaining professional legal services from the lawyer.

(2) A "client's representative" is:

(A) a person who has authority to obtain professional legal services for the client or to act for the client on the legal advice rendered; or

(B) any other person who, to facilitate the rendition of professional legal services to the client, makes or receives a confidential communication while acting in the scope of employment for the client.

(3) A "lawyer" is a person authorized, or who the client reasonably believes is authorized, to practice law in any state or nation.

(4) A "lawyer's representative" is:

(A) one employed by the lawyer to assist in the rendition of professional legal services; or

(B) an accountant who is reasonably necessary for the lawyer's rendition of professional legal services.

(5) A communication is "confidential" if not intended to be disclosed to third persons other than those:

(A) to whom disclosure is made to further the rendition of professional legal services to the client; or

(B) reasonably necessary to transmit the communication.

(b) Rules of Privilege.

(1) ***General Rule*.** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

(2) ***Special Rule in a Criminal Case*.** In a criminal case, a client has a privilege to prevent a lawyer or lawyer's representative from disclosing any other fact that came to the knowledge of the lawyer or the lawyer's representative by reason of the attorney–client relationship.

(c) Who May Claim. The privilege may be claimed by:

(1) the client;

(2) the client's guardian or conservator;

(3) a deceased client's personal representative; or

(4) the successor, trustee, or similar representative of a corporation, association, or other organization or entity—whether or not in existence. The person who was the client's lawyer or the lawyer's representative when the communication was made may claim the privilege on the client's behalf—and is presumed to have authority to do so.

(d) Exceptions. This privilege does not apply:

(1) ***Furtherance of Crime or Fraud*.** If the lawyer's services were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.

(2) ***Claimants Through Same Deceased Client*.** If the communication is relevant to an issue between parties claiming through the same deceased client.

(3) ***Breach of Duty By a Lawyer or Client*.** If the communication is relevant to an issue of breach of duty by a lawyer to the client or by a client to the lawyer.

(4) ***Document Attested By a Lawyer*.** If the communication is relevant to an issue concerning an attested document to which the lawyer is an attesting witness.

(5) ***Joint Clients*.** If the communication:

(A) is offered in an action between clients who retained or consulted a lawyer in common;

(B) was made by any of the clients to the lawyer; and

(C) is relevant to a matter of common interest between the clients.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 1998 change: The addition of subsection (a)(2)(B) adopts a subject matter test for the privilege of an entity, in place of the control group test previously used. *See National Tank Co. v. Brotherton*, 851 S.W.2d 193, 197-198 (Tex. 1993).

Rule 504. Spousal Privileges

(a) Confidential Communication Privilege.

(1) ***Definition*.** A communication is "confidential" if a person makes it privately to the person's spouse and does not intend its disclosure to any other person.

(2) ***General Rule*.** A person has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made to the person's spouse while they were married. This privilege survives termination of the marriage.

(3) ***Who May Claim*.** The privilege may be claimed by:

(A) the communicating spouse;

(B) the guardian of a communicating spouse who is incompetent; or

(C) the personal representative of a communicating spouse who is deceased.

The other spouse may claim the privilege on the communicating spouse's behalf— and is presumed to have authority to do so.

(4) ***Exceptions*.** This privilege does not apply:

(A) ***Furtherance of Crime or Fraud*.** If the communication is made—wholly or partially—to enable or aid anyone to commit or plan to commit a crime or fraud.

(B) Proceeding Between Spouse and Other Spouse or Claimant Through Deceased Spouse. In a civil proceeding:

(i) brought by or on behalf of one spouse against the other; or

(ii) between a surviving spouse and a person claiming through the deceased spouse.

(C) Crime Against Family, Spouse, Household Member, or Minor Child. In a:

(i) proceeding in which a party is accused of conduct that, if proved, is a crime against the person of the other spouse, any member of the household of either spouse, or any minor child; or

(ii) criminal proceeding involving a charge of bigamy under Section 25.01 of the Penal Code.

(D) ***Commitment or Similar Proceeding*.** In a proceeding to commit either spouse or otherwise to place the spouse or the spouse's property under another's control because of a mental or physical condition.

(E) ***Proceeding to Establish Competence*.** In a proceeding brought by or on behalf of either spouse to establish competence.

(b) Privilege Not to Testify in a Criminal Case.

(1) ***General Rule*.** In a criminal case, an accused's spouse has a privilege not to be called to testify for the state. But this rule neither prohibits a spouse from testifying voluntarily for the state nor gives a spouse a privilege to refuse to be called to testify for the accused.

(2) ***Failure to Call Spouse.*** If other evidence indicates that the accused's spouse could testify to relevant matters, an accused's failure to call the spouse to testify is a proper subject of comment by counsel.

(3) ***Who May Claim*.** The privilege not to testify may be claimed by the accused's spouse or the spouse's guardian or representative, but not by the accused.

(4) ***Exceptions*.** This privilege does not apply:

(A) ***Certain Criminal Proceedings.*** In a criminal proceeding in which a spouse is charged with:

(i) a crime against the other spouse, any member of the household of either spouse, or any minor child; or

(ii) bigamy under Section 25.01 of the Penal Code.

(B) ***Matters That Occurred Before the Marriage*.** If the spouse is called to testify about matters that occurred before the marriage.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 2015 Restyling: Previously, Rule 504(b)(1) provided that, "A spouse who testifies on behalf of an accused is subject to cross-examination as provided in Rule 611(b)." That sentence was included in the original version of Rule 504 when the Texas Rules of Criminal Evidence were promulgated in 1986 and changed the rule to a testimonial privilege held by the witness spouse. Until then, a spouse was deemed incompetent to testify against his or her defendant spouse, and when a spouse testified on behalf of a defendant spouse, the state was limited to cross-examining the spouse about matters relating to the spouse's direct testimony. The quoted sentence from the original Criminal Rule 504(b) was designed to overturn this limitation and allow the state to crossexamine a testifying spouse in the same manner as any other witness. More than twenty-five years later, it is clear that a spouse who testifies either for or against a defendant spouse may be crossexamined in the same manner as any other witness. Therefore, the continued inclusion in the rule of a provision that refers only to the cross-examination of a spouse who testifies on behalf of the accused is more confusing than helpful. Its deletion is designed to clarify the rule and does not change existing law.

Comment to 1998 change: The rule eliminates the spousal testimonial privilege for prosecutions in which the testifying spouse is the alleged victim of a crime by the accused. This is intended to be consistent with Code of Criminal Procedure article 38.10, effective September 1, 1995.

Rule 505. Privilege For Communications to a Clergy Member

(a) Definitions. In this rule:

(1) A "clergy member" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization or someone whom a communicant reasonably believes is a clergy member.

(2) A "communicant" is a person who consults a clergy member in the clergy member's professional capacity as a spiritual adviser.

(3) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present to further the purpose of the communication.

(b) General Rule. A communicant has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication by the communicant to a clergy member in the clergy member's professional capacity as spiritual adviser.

(c) Who May Claim. The privilege may be claimed by:

(1) the communicant;

(2) the communicant's guardian or conservator; or

(3) a deceased communicant's personal representative.

The clergy member to whom the communication was made may claim the privilege on the communicant's behalf—and is presumed to have authority to do so.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 506. Political Vote Privilege

A person has a privilege to refuse to disclose the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 507. Trade Secrets Privilege

(a) General Rule. A person has a privilege to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, unless the court finds that nondisclosure will tend to conceal fraud or otherwise work injustice.

(b) Who May Claim. The privilege may be claimed by the person who owns the trade secret or the person's agent or employee.

(c) Protective Measure. If a court orders a person to disclose a trade secret, it must take any protective measure required by the interests of the privilege holder and the parties and to further justice.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 508. Informer's Identity Privilege

(a) General Rule. The United States, a state, or a subdivision of either has a privilege to refuse to disclose a person's identity if:

(1) the person has furnished information to a law enforcement officer or a member of a legislative committee or its staff conducting an investigation of a possible violation of law; and

(2) the information relates to or assists in the investigation.

(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the informer furnished the information. The court in a criminal case must reject the privilege claim if the state objects.

(c) Exceptions.

(1) Voluntary Disclosure; Informer a Witness. This privilege does not apply if:

(A) the informer's identity or the informer's interest in the communication's subject matter has been disclosed—by a privilege holder or the informer's own action—to a person who would have cause to resent the communication; or

(B) the informer appears as a witness for the public entity.

(2) Testimony About the Merits.

(A) ***Criminal Case.*** In a criminal case, this privilege does not apply if the court finds a reasonable probability exists that the informer can give testimony necessary to a fair determination of guilt or innocence. If the court so finds and the public entity elects not to disclose the informer's identity:

(i) on the defendant's motion, the court must dismiss the charges to which the testimony would relate; or

(ii) on its own motion, the court may dismiss the charges to which the testimony would relate.

(B) ***Certain Civil Cases.*** In a civil case in which the public entity is a party, this privilege does not apply if the court finds a reasonable probability exists that the informer can give testimony necessary to a fair determination of a material issue on the merits. If the court so finds and the public entity elects not to disclose the informer's identity, the court may make any order that justice requires.

(C) ***Procedures.***

(i) If it appears that an informer may be able to give the testimony required to invoke this exception and the public entity claims the privilege, the court must give the public entity an opportunity to show in camera facts relevant to determining whether this exception is met. The showing should ordinarily be made by affidavits, but the court may take testimony if it finds the matter cannot be satisfactorily resolved by affidavits.

(ii) No counsel or party may attend the in camera showing.

(iii) The court must seal and preserve for appeal evidence submitted under this subparagraph (2)(C). The evidence must not otherwise be revealed without the public entity's consent.

(3) Legality of Obtaining Evidence.

(A) ***Court May Order Disclosure.*** The court may order the public entity to disclose an informer's identity if:

(i) information from an informer is relied on to establish the legality of the means by which evidence was obtained; and

(ii) the court is not satisfied that the information was received from an informer reasonably believed to be reliable or credible.

(B) Procedures.

(i) On the public entity's request, the court must order the disclosure be made in camera.

(ii) No counsel or party may attend the in camera disclosure.

(iii) If the informer's identity is disclosed in camera, the court must seal and preserve for appeal the record of the in camera proceeding. The record of the in camera proceeding must not otherwise be revealed without the public entity's consent.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 509. Physician–Patient Privilege

(a) Definitions. In this rule:

(1) A "patient" is a person who consults or is seen by a physician for medical care.

(2) A "physician" is a person licensed, or who the patient reasonably believes is licensed, to practice medicine in any state or nation.

(3) A communication is "confidential" if not intended to be disclosed to third persons other than those:

(A) present to further the patient's interest in the consultation, examination, or interview;

(B) reasonably necessary to transmit the communication; or

(C) participating in the diagnosis and treatment under the physician's direction, including members of the patient's family.

(b) Limited Privilege in a Criminal Case. There is no physician–patient privilege in a criminal case. But a confidential communication is not admissible in a criminal case if made:

(1) to a person involved in the treatment of or examination for alcohol or drug abuse; and

(2) by a person being treated voluntarily or being examined for admission to treatment for alcohol or drug abuse.

(c) General Rule in a Civil Case. In a civil case, a patient has a privilege to refuse to disclose and to prevent any other person from disclosing:

(1) a confidential communication between a physician and the patient that relates to or was made in connection with any professional services the physician rendered the patient; and

(2) a record of the patient's identity, diagnosis, evaluation, or treatment created or maintained by a physician.

(d) Who May Claim in a Civil Case. The privilege may be claimed by:

(1) the patient; or

(2) the patient's representative on the patient's behalf.

The physician may claim the privilege on the patient's behalf—and is presumed to have authority to do so.

(e) Exceptions in a Civil Case. This privilege does not apply:

(1) ***Proceeding Against Physician.*** If the communication or record is relevant to a claim or defense in:

(A) a proceeding the patient brings against a physician; or

(B) a license revocation proceeding in which the patient is a complaining witness.

(2) ***Consent.*** If the patient or a person authorized to act on the patient's behalf consents in writing to the release of any privileged information, as provided in subdivision (f).

(3) ***Action to Collect.*** In an action to collect a claim for medical services rendered to the patient.

(4) ***Party Relies on Patient's Condition.*** If any party relies on the patient's physical, mental, or emotional condition as a part of the party's claim or defense and the communication or record is relevant to that condition.

(5) ***Disciplinary Investigation or Proceeding.*** In a disciplinary investigation of or proceeding against a physician under the Medical Practice Act, Tex. Occ. Code § 164.001 et seq., or a registered nurse under Tex. Occ. Code § 301.451 et seq. But the board conducting the investigation or proceeding must protect the identity of any patient whose medical records are examined unless:

(A) the patient's records would be subject to disclosure under paragraph (e)(1); or

(B) the patient has consented in writing to the release of medical records, as provided in subdivision (f).

(6) ***Involuntary Civil Commitment or Similar Proceeding.*** In a proceeding for involuntary civil commitment or court-ordered treatment, or a probable cause hearing under Tex. Health & Safety Code:

(A) chapter 462 (Treatment of Persons With Chemical Dependencies);

(B) title 7, subtitle C (Texas Mental Health Code); or

(C) title 7, subtitle D (Persons With an Intellectual Disability Act).

(7) ***Abuse or Neglect of "Institution" Resident.*** In a proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of a resident of an "institution" as defined in Tex. Health & Safety Code § 242.002.

(f) Consent For Release of Privileged Information.

(1) Consent for the release of privileged information must be in writing and signed by:

(A) the patient;
(B) a parent or legal guardian if the patient is a minor;
(C) a legal guardian if the patient has been adjudicated incompetent to manage personal affairs;
(D) an attorney appointed for the patient under Tex. Health & Safety Code title 7, subtitles C and D;
(E) an attorney ad litem appointed for the patient under Tex. Estates Code title 3, subtitle C;
(F) an attorney ad litem or guardian ad litem appointed for a minor under Tex. Fam. Code chapter 107, subchapter B; or
(G) a personal representative if the patient is deceased.

(2) The consent must specify:
(A) the information or medical records covered by the release;
(B) the reasons or purposes for the release; and
(C) the person to whom the information is to be released.

(3) The patient, or other person authorized to consent, may withdraw consent to the release of any information. But a withdrawal of consent does not affect any information disclosed before the patient or authorized person gave written notice of the withdrawal.

(4) Any person who receives information privileged under this rule may disclose the information only to the extent consistent with the purposes specified in the consent.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015; Tex. Sup. Ct. Misc. Docket No. 16-9094, eff. June 14, 2016.)

Comment to 2015 Restyling: The physician–patient privilege in a civil case was first enacted in Texas in 1981 as part of the Medical Practice Act, formerly codified in Tex. Rev. Civ. Stat. art. 4495b. That statute provided that the privilege applied even if a patient had received a physician's services before the statute's enactment. Because more than thirty years have now passed, it is no longer necessary to burden the text of the rule with a statement regarding the privilege's retroactive application. But deleting this statement from the rule's text is not intended as a substantive change in the law.

The former rule's reference to "confidentiality or" and "administrative proceedings" in subdivision (e) [Exceptions in a Civil Case] has been deleted. First, this rule is a privilege rule only. Tex. Occ. Code § 159.004 sets forth exceptions to a physician's duty to maintain confidentiality of patient information outside court and administrative proceedings. Second, by their own terms the rules of evidence govern only proceedings in Texas courts. See Rule 101(b). To the extent the rules apply in administrative proceedings, it is because the Administrative Procedure Act mandates their applicability. Tex. Gov't Code § 2001.083 provides that "[i]n a contested case, a state agency shall give effect to the rules of privilege recognized by law." Section 2001.091 excludes privileged material from discovery in contested administrative cases.

Statutory references in the former rule that are no longer up-to-date have been revised. Finally, reconciling the provisions of Rule 509 with the parts of Tex. Occ. Code ch. 159 that address a physician-patient privilege applicable to court proceedings is beyond the scope of the restyling project.

Rule 510. Mental Health Information Privilege in Civil Cases

(a) Definitions. In this rule:

(1) A "professional" is a person:
(A) authorized to practice medicine in any state or nation;
(B) licensed or certified by the State of Texas in the diagnosis, evaluation, or treatment of any mental or emotional disorder;
(C) involved in the treatment or examination of drug abusers; or
(D) who the patient reasonably believes to be a professional under this rule.

(2) A "patient" is a person who:
(A) consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism and drug addiction; or
(B) is being treated voluntarily or being examined for admission to voluntary treatment for drug abuse.

(3) A "patient's representative" is:
(A) any person who has the patient's written consent;
(B) the parent of a minor patient;
(C) the guardian of a patient who has been adjudicated incompetent to manage personal affairs; or
(D) the personal representative of a deceased patient.

(4) A communication is "confidential" if not intended to be disclosed to third persons other than those:
(A) present to further the patient's interest in the diagnosis, examination, evaluation, or treatment;
(B) reasonably necessary to transmit the communication; or
(C) participating in the diagnosis, examination, evaluation, or treatment under the professional's direction, including members of the patient's family.

(b) General Rule; Disclosure.

(1) In a civil case, a patient has a privilege to refuse to disclose and to prevent any other person from disclosing:
(A) a confidential communication between the patient and a professional; and
(B) a record of the patient's identity, diagnosis, evaluation, or treatment that is created or maintained by a professional.

(2) In a civil case, any person—other than a patient's representative acting on the patient's behalf—who receives information privileged under this rule may disclose the information only to the extent consistent with the purposes for which it was obtained.

(c) Who May Claim. The privilege may be claimed by:

(1) the patient; or

(2) the patient's representative on the patient's behalf.

The professional may claim the privilege on the patient's behalf—and is presumed to have authority to do so.

(d) Exceptions. This privilege does not apply:

(1) ***Proceeding Against Professional.*** If the communication or record is relevant to a claim or defense in:

(A) a proceeding the patient brings against a professional; or

(B) a license revocation proceeding in which the patient is a complaining witness.

(2) ***Written Waiver.*** If the patient or a person authorized to act on the patient's behalf waives the privilege in writing.

(3) ***Action to Collect.*** In an action to collect a claim for mental or emotional health services rendered to the patient.

(4) ***Communication Made in Court-Ordered Examination.*** To a communication the patient made to a professional during a court-ordered examination relating to the patient's mental or emotional condition or disorder if:

(A) the patient made the communication after being informed that it would not be privileged;

(B) the communication is offered to prove an issue involving the patient's mental or emotional health; and

(C) the court imposes appropriate safeguards against unauthorized disclosure.

(5) ***Party Relies on Patient's Condition.*** If any party relies on the patient's physical, mental, or emotional condition as a part of the party's claim or defense and the communication or record is relevant to that condition.

(6) ***Abuse or Neglect of "Institution" Resident.*** In a proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of a resident of an "institution" as defined in Tex. Health & Safety Code § 242.002.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015; Tex. Sup. Ct. Misc. Docket No. 16-9094, eff. June 14, 2016.)

Comment to 2015 Restyling: The mental-health-information privilege in civil cases was enacted in Texas in 1979. Tex. Rev. Civ. Stat. art. 5561h (later codified at Tex. Health & Safety Code § 611.001 et seq.) provided that the privilege applied even if the patient had received the professional's services before the statute's enactment. Because more than thirty years have now passed, it is no longer necessary to burden the text of the rule with a statement regarding the privilege's retroactive application. But deleting this statement from the rule's text is not intended as a substantive change in the law.

Tex. Health & Safety Code ch. 611 addresses confidentiality rules for communications between a patient and a mental-health professional and for the professional's treatment records. Many of these provisions apply in contexts other than court proceedings. Reconciling the provisions of Rule 510 with the parts of chapter 611 that address a mental-health-information privilege applicable to court proceedings is beyond the scope of the restyling project.

Comment to 1998 change: This comment is intended to inform the construction and application of this rule. This rule only governs disclosures of patient-professional communications in judicial or administrative proceedings. Whether a professional may or must disclose such communications in other circumstances is governed by Tex. Health & Safety Code sec. 611.001-611.008. Former paragraph (d)(6) of the Civil Evidence Rules, regarding disclosures in a suit affecting the parent-child relationship, is omitted, not because there should be no exception to the privilege in suits affecting the parent-child relationship, but because the exception in such suits is properly considered under subparagraph (d)(5), as construed in *R.K. v. Ramirez*, 887 S.W.2d 836 (Tex. 1994). In determining the proper application of an exception in such suits, the trial court must ensure that the precise need for the information is not outweighed by legitimate privacy interests protected by the privilege. Subparagraph (d) does not except from the privilege information relating to a nonparty patient who is or may be a consulting or testifying expert in the suit.

Rule 511. Waiver by Voluntary Disclosure

(a) General Rule.

A person upon whom these rules confer a privilege against disclosure waives the privilege if:

(1) the person or a predecessor of the person while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged; or

(2) the person or a representative of the person calls a person to whom privileged communications have been made to testify as to the person's character or character trait insofar as such communications are relevant to such character or character trait.

(b) Lawyer-Client Privilege and Work Product; Limitations on Waiver.

Notwithstanding paragraph (a), the following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the lawyer-client privilege or work-product protection.

(1) ***Disclosure Made in a Federal or State Proceeding or to a Federal or State Office or Agency; Scope of a Waiver.*** When the disclosure is made in a federal proceeding or state proceeding of any state or to a federal office or agency or state office or agency of any state and waives the lawyer-client privilege or work-product protection, the waiver extends to an undisclosed communication or information only if:

(A) the waiver is intentional;

(B) the disclosed and undisclosed communications or information concern the same subject matter; and

(C) they ought in fairness to be considered together.

(2) ***Inadvertent Disclosure in State Civil Proceedings.*** When made in a Texas state proceeding, an inadvertent disclosure does not operate as a waiver if the holder followed the procedures of Rule of Civil Procedure 193.3(d).

(3) ***Controlling Effect of a Court Order.*** A disclosure made in litigation pending before a federal court or a state court of any state that has entered an order that the privilege or protection is not waived by disclosure connected with the litigation pending before that court is also not a waiver in a Texas state proceeding.

(4) ***Controlling Effect of a Party Agreement.*** An agreement on the effect of disclosure in a state proceeding of any state is binding only on the parties to the agreement, unless it is incorporated into a court order.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 2015 Restyling: The amendments to Rule 511 are designed to align Texas law with federal law on waiver of privilege by voluntary disclosure. Subsection (a) sets forth the general rule. Subsection (b) incorporates the provisions of Federal Rule of Evidence 502. Like the federal rule, subsection (b) only addresses disclosure of communications or information covered by the lawyer-client privilege or work-product protection. These amendments do not affect the law governing waiver of other privileges or protections.

Rule 512. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege

A privilege claim is not defeated by a disclosure that was:

(a) compelled erroneously; or

(b) made without opportunity to claim the privilege.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 513. Comment On or Inference From a Privilege Claim; Instruction

(a) Comment or Inference Not Permitted. Except as permitted in Rule 504(b)(2), neither the court nor counsel may comment on a privilege claim—whether made in the present proceeding or previously—and the factfinder may not draw an inference from the claim.

(b) Claiming Privilege Without the Jury's Knowledge. To the extent practicable, the court must conduct a jury trial so that the making of a privilege claim is not suggested to the jury by any means.

(c) Claim of Privilege Against Self-Incrimination in a Civil Case. Subdivisions (a) and (b) do not apply to a party's claim, in the present civil case, of the privilege against self-incrimination.

(d) Jury Instruction. When this rule forbids a jury from drawing an inference from a privilege claim, the court must, on request of a party against whom the jury might draw the inference, instruct the jury accordingly.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 1998 change. Subdivision (d) regarding a party's entitlement to a jury instruction about a claim of privilege is made applicable to civil cases.

ARTICLE VI.
WITNESSES

Rule 601. Competency to Testify in General; "Dead Man's Rule"

(a) In General. Every person is competent to be a witness unless these rules provide otherwise. The following witnesses are incompetent:

(1) ***Insane Persons.*** A person who is now insane or was insane at the time of the events about which the person is called to testify.

(2) ***Persons Lacking Sufficient Intellect.*** A child—or any other person—whom the court examines and finds lacks sufficient intellect to testify concerning the matters in issue.

(b) The "Dead Man's Rule."

(1) ***Applicability*****.** The "Dead Man's Rule" applies only in a civil case:

(A) by or against a party in the party's capacity as an executor, administrator, or guardian; or

(B) by or against a decedent's heirs or legal representatives and based in whole or in part on the decedent's oral statement.

(2) ***General Rule*****.** In cases described in subparagraph (b)(1)(A), a party may not testify against another party about an oral statement by the testator, intestate, or ward. In cases described in subparagraph (b)(1)(B), a party may not testify against another party about an oral statement by the decedent.

(3) ***Exceptions.*** A party may testify against another party about an oral statement by the testator, intestate, ward, or decedent if:

(A) the party's testimony about the statement is corroborated; or

(B) the opposing party calls the party to testify at the trial about the statement.

(4) ***Instructions*****.** If a court excludes evidence under paragraph (b)(2), the court must instruct the jury that the law prohibits a party from testifying about an oral statement by the testator, intestate, ward, or decedent unless the oral statement is corroborated or the opposing party calls the party to testify at the trial about the statement.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 2015 Restyling: The text of the "Dead Man's Rule" has been streamlined to clarify its meaning without making any substantive changes. The text of former Rule 601(b) (as well as its statutory predecessor, Vernon's Ann. Civ. St. art. 3716) prohibits only a "party" from testifying about the dead man's statements. Despite this, the last sentence of former Rule 601(b) requires the court to instruct the jury when the rule "prohibits an interested party or witness" from testifying. Because the rule prohibits only a "party" from testifying, restyled Rule 601(b)(4) references only "a party," and not "an interested party or witness." To be sure, courts have indicated that the rule (or its statutory predecessor) may be applicable to a witness who is not nominally a party and inapplicable to a witness who is only nominally a party. *See, e.g.*, *Chandler v. Welborn*, 156 Tex. 312, 294 S.W.2d 801, 809 (1956); *Ragsdale v. Ragsdale*, 142 Tex. 476, 179 S.W.2d 291, 295 (1944). But these decisions are based on an interpretation of the meaning of "party." Therefore, limiting the court's instruction under restyled Rule 601(b)(4) to "a party" does not change Texas practice. In addition, restyled Rule 601(b) deletes the sentence in former Rule 601(b) that states "[e]xcept for the foregoing, a witness is not precluded from giving evidence . . . because the witness is a party to the action . . ." This sentence is surplusage. Rule 601(b) is a rule of exclusion. If the testimony falls outside the rule of exclusion, its admissibility will be determined by other applicable rules of evidence.

Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 603. Oath or Affirmation to Testify Truthfully

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 604. Interpreter

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 605. Judge's Competency as a Witness

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 606. Juror's Competency as a Witness

(a) At the Trial. A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

(b) During an Inquiry into the Validity of a Verdict or Indictment.

(1) ***Prohibited Testimony or Other Evidence*.** During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) ***Exceptions.*** A juror may testify:

(A) about whether an outside influence was improperly brought to bear on any juror; or

(B) to rebut a claim that the juror was not qualified to serve.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 607. Who May Impeach a Witness

Any party, including the party that called the witness, may attack the witness's credibility.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 608. A Witness's Character for Truthfulness or Untruthfulness

(a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, a party may not inquire into or offer extrinsic evidence to prove specific instances of the witness's conduct in order to attack or support the witness's character for truthfulness.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 609. Impeachment by Evidence of a Criminal Conviction

(a) In General. Evidence of a criminal conviction offered to attack a witness's character for truthfulness must be admitted if:

(1) the crime was a felony or involved moral turpitude, regardless of punishment;

(2) the probative value of the evidence outweighs its prejudicial effect to a party; and

(3) it is elicited from the witness or established by public record.

(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.

(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime that was classified as a felony or involved moral turpitude, regardless of punishment;

(2) probation has been satisfactorily completed for the conviction, and the person has not been convicted of a later crime that was classified as a felony or involved moral turpitude, regardless of punishment; or

(3) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule only if:

(1) the witness is a party in a proceeding conducted under title 3 of the Texas Family Code; or

(2) the United States or Texas Constitution requires that it be admitted.

(e) Pendency of an Appeal. A conviction for which an appeal is pending is not admissible under this rule.

(f) Notice. Evidence of a witness's conviction is not admissible under this rule if, after receiving from the adverse party a timely written request specifying the witness, the proponent of the conviction fails to provide sufficient written notice of intent to use the conviction. Notice is sufficient if it provides a fair opportunity to contest the use of such evidence.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 610. Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 1998 change: This is prior Rule of Criminal Evidence 615.

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence

(a) Control by the Court; Purposes. The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

- **(1)** make those procedures effective for determining the truth;
- **(2)** avoid wasting time; and
- **(3)** protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-Examination. A witness may be cross-examined on any relevant matter, including credibility.

(c) Leading Questions. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

- **(1)** on cross-examination; and
- **(2)** when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 612. Writing Used to Refresh a Witness's Memory

(a) Scope. This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

- **(1)** while testifying;
- **(2)** before testifying, in civil cases, if the court decides that justice requires the party to have those options; or
- **(3)** before testifying, in criminal cases.

(b) Adverse Party's Options; Deleting Unrelated Matter. An adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

(c) Failure to Produce or Deliver the Writing. If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or—if justice so requires—declare a mistrial.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 613. Witness's Prior Statement and Bias or Interest

(a) Witness's Prior Inconsistent Statement.

- **(1)** ***Foundation Requirement.*** When examining a witness about the witness's prior inconsistent statement—whether oral or written—a party must first tell the witness:
  - **(A)** the contents of the statement;
  - **(B)** the time and place of the statement; and
  - **(C)** the person to whom the witness made the statement.
- **(2)** ***Need Not Show Written Statement.*** If the witness's prior inconsistent statement is written, a party need not show it to the witness before inquiring about it, but must, upon request, show it to opposing counsel.
- **(3)** ***Opportunity to Explain or Deny.*** A witness must be given the opportunity to explain or deny the prior inconsistent statement.
- **(4)** ***Extrinsic Evidence.*** Extrinsic evidence of a witness's prior inconsistent statement is not admissible unless the witness is first examined about the statement and fails to unequivocally admit making the statement.
- **(5)** ***Opposing Party's Statement.*** This subdivision (a) does not apply to an opposing party's statement under Rule 801(e)(2).

(b) Witness's Bias or Interest.

- **(1)** ***Foundation Requirement.*** When examining a witness about the witness's bias or interest, a party must first tell the witness the circumstances or statements that tend to show the witness's bias or interest. If examining a witness about a statement—whether oral or written—to prove the witness's bias or interest, a party must tell the witness:
  - **(A)** the contents of the statement;
  - **(B)** the time and place of the statement; and
  - **(C)** the person to whom the statement was made.

(2) ***Need Not Show Written Statement.*** If a party uses a written statement to prove the witness's bias or interest, a party need not show the statement to the witness before inquiring about it, but must, upon request, show it to opposing counsel.

(3) ***Opportunity to Explain or Deny.*** A witness must be given the opportunity to explain or deny the circumstances or statements that tend to show the witness's bias or interest. And the witness's proponent may present evidence to rebut the charge of bias or interest.

(4) ***Extrinsic Evidence.*** Extrinsic evidence of a witness's bias or interest is not admissible unless the witness is first examined about the bias or interest and fails to unequivocally admit it.

(c) Witness's Prior Consistent Statement. Unless Rule 801(e)(1)(B) provides otherwise, a witness's prior consistent statement is not admissible if offered solely to enhance the witness's credibility.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 2015 Restyling: The amended rule retains the requirement that a witness be given an opportunity to explain or deny (a) a prior inconsistent statement or (b) the circumstances or a statement showing the witness's bias or interest, but this requirement is not imposed on the examining attorney. A witness may have to wait until redirect examination to explain a prior inconsistent statement or the circumstances or a statement that shows bias. But the impeaching attorney still is not permitted to introduce extrinsic evidence of the witness's prior inconsistent statement or bias unless the witness has first been examined about the statement or bias and has failed to unequivocally admit it. All other changes to the rule are intended to be stylistic only.

Rule 614. Excluding Witnesses

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:

(a) a party who is a natural person and, in civil cases, that person's spouse;

(b) after being designated as the party's representative by its attorney:

(1) in a civil case, an officer or employee of a party that is not a natural person; or

(2) in a criminal case, a defendant that is not a natural person;

(c) a person whose presence a party shows to be essential to presenting the party's claim or defense; or

(d) the victim in a criminal case, unless the court determines that the victim's testimony would be materially affected by hearing other testimony at the trial.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 615. Producing a Witness's Statement in Criminal Cases

(a) Motion to Produce. After a witness other than the defendant testifies on direct examination, the court, on motion of a party who did not call the witness, must order an attorney for the state or the defendant and the defendant's attorney to produce, for the examination and use of the moving party, any statement of the witness that:

(1) is in their possession;

(2) relates to the subject matter of the witness's testimony; and

(3) has not previously been produced.

(b) Producing the Entire Statement. If the entire statement relates to the subject matter of the witness's testimony, the court must order that the statement be delivered to the moving party.

(c) Producing a Redacted Statement. If the party who called the witness claims that the statement contains information that does not relate to the subject matter of the witness's testimony, the court must inspect the statement in camera. After excising any unrelated portions, the court must order delivery of the redacted statement to the moving party. If a party objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record.

(d) Recess to Examine a Statement. If the court orders production of a witness's statement, the court, on request, must recess the proceedings to allow the moving party time to examine the statement and prepare for its use.

(e) Sanction for Failure to Produce or Deliver a Statement. If the party who called the witness disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record. If an attorney for the state disobeys the order, the court must declare a mistrial if justice so requires.

(f) "Statement" Defined. As used in this rule, a witness's "statement'' means:

(1) a written statement that the witness makes and signs, or otherwise adopts or approves;

(2) a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or

(3) the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015; Tex. Sup. Ct. Misc. Docket No. 15-006 Dec. 7, 2015, eff. Jan. 1, 2016; Tex. Sup. Ct. Misc. Docket No. 16-9012 Feb. 29, 2016, eff. Jan. 1, 2016.)

Comment to 2015 Amendment: The Michael Morton Act, codified at Texas Code of Criminal Procedure art. 39.14, affords defendants substantial pre-trial discovery, requiring the state, upon request from the defendant, to produce and permit the defendant to inspect and copy various items, including witness statements. In many instances, therefore, art. 39.14 eliminates the need, after the witness testifies on direct examination, for a defendant to request, and the court to order, production of a witness's statement.

But art. 39.14 does not entirely eliminate the need for in-trial discovery of witness statements. Art. 39.14 does not extend equivalent discovery rights to the prosecution, and so prosecutors will still need to use Rule 615 to obtain witness statements of defense witnesses. Moreover, some defendants may fail to exercise their discovery rights under art. 39.14 and so may wish to obtain a witness statement under Rule 615. In addition, the Michael Morton Act applies only to the prosecution of offenses committed after December 31, 2013. Defendants on trial for offenses committed before then have no right to pre-trial discovery of the witness statements of prosecution witnesses.

Consequently, Rule 615(a) has been amended to account for the changed pre-trial discovery regime introduced by the Michael Morton Act. If a party's adversary has already produced a witness's statement—whether through formal discovery under art. 39.14 or through more informal means—Rule 615(a) no longer gives a party the right to obtain, after the witness testifies on direct examination, a court order for production of the witness's statement. But if a party's adversary has not already produced a witness's statement, the party may still use Rule 615(a) to request and obtain a court order requiring production of the witness's statement after the witness finishes testifying on direct examination.

Comment to 1998 change: This is prior Texas Rule of Criminal Evidence 614.

ARTICLE VII.
OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness's perception; and

(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 2015 Restyling: All references to an "inference" have been deleted because this makes the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Rule 702 Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 703. Bases of an Expert's Opinion Testimony

An expert may base an opinion on facts or data in the case that the expert has been made aware of, reviewed, or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 2015 Restyling: All references to an "inference" have been deleted because this makes the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Comment to 1998 change: The former Civil Rule referred to facts or data "perceived by or reviewed by" the expert. The former Criminal rule referred to facts or data "perceived by or made known to" the expert. The terminology is now conformed , but no change in meaning is intended.

Rule 704. Opinion on an Ultimate Issue

An opinion is not objectionable just because it embraces an ultimate issue.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 705. Disclosing the Underlying Facts or Data and Examining an Expert About Them

(a) Stating an Opinion Without Disclosing the Underlying Facts or Data. Unless the court orders otherwise, an expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

(b) Voir Dire Examination of an Expert About the Underlying Facts or Data. Before an expert states an opinion or discloses the underlying facts or data, an adverse party in a civil case may—or in a criminal case must—be permitted to examine the expert about the underlying facts or data. This examination must take place outside the jury's hearing.

(c) Admissibility of Opinion. An expert's opinion is inadmissible if the underlying facts or data do not provide a sufficient basis for the opinion.

(d) When Otherwise Inadmissible Underlying Facts or Data May Be Disclosed; Instructing the Jury. If the underlying facts or data would otherwise be inadmissible, the proponent of the opinion may not disclose them to the jury if their probative value in helping the jury evaluate the opinion is outweighed by their prejudicial effect. If the court allows the proponent to disclose those facts or data the court must, upon timely request, restrict the evidence to its proper scope and instruct the jury accordingly.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 2015 Restyling: All references to an "inference" have been deleted because this makes the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Comment to 1998 change: Paragraphs (b), (c), and (d) are based on the former Criminal Rule and are made applicable to civil cases. This rule does not preclude a party in any case from conducting a voir dire examination into the qualifications of an expert.

Rule 706. Audit in Civil Cases

Notwithstanding any other evidence rule, the court must admit an auditor's verified report prepared under Rule of Civil Procedure 172 and offered by a party. If a party files exceptions to the report, a party may offer evidence supporting the exceptions to contradict the report.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

ARTICLE VIII.
HEARSAY

Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay

(a) Statement. "Statement" means a person's oral or written verbal expression, or nonverbal conduct that a person intended as a substitute for verbal expression.

(b) Declarant. "Declarant" means the person who made the statement.

(c) Matter Asserted. "Matter asserted" means:

(1) any matter a declarant explicitly asserts; and

(2) any matter implied by a statement, if the probative value of the statement as offered flows from the declarant's belief about the matter.

(d) Hearsay. "Hearsay" means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

(e) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

(1) ***A Declarant-Witness's Prior Statement.*** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony and:

(i) when offered in a civil case, was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition; or

(ii) when offered in a criminal case, was given under penalty of perjury at a trial, hearing, or other proceeding—except a grand jury proceeding—or in a deposition;

(B) is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(C) identifies a person as someone the declarant perceived earlier.

(2) ***An Opposing Party's Statement.*** The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

(3) ***A Deponent's Statement.*** In a civil case, the statement was made in a deposition taken in the same proceeding. "Same proceeding" is defined in Rule of Civil Procedure 203.6(b). The deponent's unavailability as a witness is not a requirement for admissibility.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 2015 Restyling: Statements falling under the hearsay exclusion provided by Rule 801(e)(2) are no longer referred to as "admissions" in the title to the subdivision. The term "admissions" is confusing because not all statements covered by the exclusion are admissions in the colloquial sense—a statement can be within the exclusion even if it "admitted" nothing and was not against the party's interest when made. The term "admissions" also raises confusion in comparison with the Rule 803(24) exception for declarations against interest. No change in application of the exclusion is intended.

The deletion of former Rule 801(e)(1)(D), which cross-references Code of Criminal Procedure art. 38.071, is not intended as a substantive change. Including this cross-reference made sense when the Texas Rules of Criminal Evidence were first promulgated, but with subsequent changes to the statutory provision, its inclusion is no longer appropriate. The version of article 38.071 that was initially cross-referenced in the Rules of Criminal Evidence required the declarant-victim to be available to testify at the trial. That requirement has since been deleted from the statute, and the statute no longer requires either the availability or testimony of the declarant-victim. Thus, cross-referencing the statute in Rule 801(e)(1), which applies only when the declarant testifies at trial about the prior statement, no longer makes sense. Moreover, article 38.071 is but one of a number of statutes that mandate the admission of certain hearsay statements in particular circumstances. *See, e.g.*, Code of Criminal Procedure art. 38.072; Family Code §§ 54.031, 104.002, 104.006. These statutory provisions take precedence over the general rule excluding hearsay, see Rules 101(c) and 802, and there is no apparent justification for cross-referencing article 38.071 and not all other such provisions.

Rule 802. The Rule Against Hearsay

Hearsay is not admissible unless any of the following provides otherwise:

- a statute;
- these rules; or
- other rules prescribed under statutory authority.

Inadmissible hearsay admitted without objection may not be denied probative value merely because it is hearsay.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 803. Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) ***Present Sense Impression.*** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) ***Excited Utterance.*** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) ***Then-Existing Mental, Emotional, or Physical Condition.*** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) ***Statement Made for Medical Diagnosis or Treatment.*** A statement that:

- **(A)** is made for—and is reasonably pertinent to—medical diagnosis or treatment; and
- **(B)** describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) ***Recorded Recollection.*** A record that:

- **(A)** is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
- **(B)** was made or adopted by the witness when the matter was fresh in the witness's memory; and
- **(C)** accurately reflects the witness's knowledge, unless the circumstances of the record's preparation cast doubt on its trustworthiness. If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) ***Records of a Regularly Conducted Activity.*** A record of an act, event, condition, opinion, or diagnosis if:

- **(A)** the record was made at or near the time by—or from information transmitted by—someone with knowledge;
- **(B)** the record was kept in the course of a regularly conducted business activity;
- **(C)** making the record was a regular practice of that activity;
- **(D)** all these conditions are shown by the testimony of the custodian or another qualified witness, or by an affidavit or unsworn declaration that complies with Rule 902(10); and
- **(E)** the opponent fails to demonstrate that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. "Business" as used in this paragraph includes every kind of regular organized activity whether conducted for profit or not.

(7) ***Absence of a Record of a Regularly Conducted Activity.*** Evidence that a matter is not included in a record described in paragraph (6) if:

- **(A)** the evidence is admitted to prove that the matter did not occur or exist;
- **(B)** a record was regularly kept for a matter of that kind; and
- **(C)** the opponent fails to show that the possible source of the information or other circumstances indicate a lack of trustworthiness.

(8) ***Public Records.*** A record or statement of a public office if:

- **(A)** it sets out:
  - **(i)** the office's activities;
  - **(ii)** a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law enforcement personnel; or
  - **(iii)** in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
- **(B)** the opponent fails to demonstrate that the source of information or other circumstances indicate a lack of trustworthiness.

(9) ***Public Records of Vital Statistics.*** A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

(10) ***Absence of a Public Record.*** Testimony—or a certification under Rule 902—that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

- **(A)** the record or statement does not exist; or
- **(B)** a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(11) ***Records of Religious Organizations Concerning Personal or Family History.*** A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) ***Certificates of Marriage, Baptism, and Similar Ceremonies.*** A statement of fact contained in a certificate:

- **(A)** made by a person who is authorized by a religious organization or by law to perform the act certified;
- **(B)** attesting that the person performed a marriage or similar ceremony or administered a sacrament; and
- **(C)** purporting to have been issued at the time of the act or within a reasonable time after it.

(13) ***Family Records.*** A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

(14) ***Records of Documents That Affect an Interest in Property.*** The record of a document that purports to establish or affect an interest in property if:

- **(A)** the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;
- **(B)** the record is kept in a public office; and
- **(C)** a statute authorizes recording documents of that kind in that office.

(15) ***Statements in Documents That Affect an Interest in Property.*** A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose—unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

(16) ***Statements in Ancient Documents.*** A statement in a document that is at least 20 years old and whose authenticity is established.

(17) ***Market Reports and Similar Commercial Publications.*** Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) ***Statements in Learned Treatises, Periodicals, or Pamphlets.*** A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(19) ***Reputation Concerning Personal or Family History.*** A reputation among a person's family by blood, adoption, or marriage—or among a person's associates or in the community—concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

(20) ***Reputation Concerning Boundaries or General History.*** A reputation in a community—arising before the controversy—concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

(21) ***Reputation Concerning Character.*** A reputation among a person's associates or in the community concerning the person's character.

(22) ***Judgment of a Previous Conviction.*** Evidence of a final judgment of conviction if:

(A) it is offered in a civil case and:

(i) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(ii) the conviction was for a felony;

(iii) the evidence is admitted to prove any fact essential to the judgment; and

(iv) an appeal of the conviction is not pending; or

(B) it is offered in a criminal case and:

(i) the judgment was entered after a trial or a guilty or nolo contendere plea;

(ii) the conviction was for a criminal offense;

(iii) the evidence is admitted to prove any fact essential to the judgment;

(iv) when offered by the prosecutor for a purpose other than impeachment, the judgment was against the defendant; and

(v) an appeal of the conviction is not pending.

(23) ***Judgments Involving Personal, Family, or General History or a Boundary.*** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.

(24) ***Statement Against Interest.*** A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability or to make the declarant an object of hatred, ridicule, or disgrace; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 804 Exceptions to the Rule Against Hearsay—When the Declarant Is Unavailable as a Witness

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a court order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure the declarant's attendance or testimony.

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) ***Former Testimony.*** Testimony that:

(A) when offered in a civil case:

(i) was given as a witness at a trial or hearing of the current or a different proceeding or in a deposition in a different proceeding; and

(ii) is now offered against a party and the party—or a person with similar interest—had an opportunity and similar motive to develop the testimony by direct, cross-, or redirect examination.

(B) when offered in a criminal case:

(i) was given as a witness at a trial or hearing of the current or a different proceeding; and

(ii) is now offered against a party who had an opportunity and similar motive to develop it by direct, cross-, or redirect examination; or

(iii) was taken in a deposition under—and is now offered in accordance with—chapter 39 of the Code of Criminal Procedure.

(2) ***Statement Under the Belief of Imminent Death.*** A statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) ***Statement of Personal or Family History.*** A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 805 Hearsay Within Hearsay

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 806 Attacking and Supporting the Declarant's Credibility

When a hearsay statement—or a statement described in Rule 801(e)(2)(C), (D), or (E), or, in a civil case, a statement described in Rule 801(e)(3)—has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's statement or conduct, offered to impeach the declarant, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

ARTICLE IX.
AUTHENTICATION AND IDENTIFICATION

Rule 901. Authenticating or Identifying Evidence

(a) **In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) **Examples.** The following are examples only—not a complete list—of evidence that satisfies the requirement:

(1) ***Testimony of a Witness with Knowledge.*** Testimony that an item is what it is claimed to be.

(2) ***Nonexpert Opinion About Handwriting.*** A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) ***Comparison by an Expert Witness or the Trier of Fact.*** A comparison by an expert witness or the trier of fact with a specimen that the court has found is genuine.

(4) ***Distinctive Characteristics and the Like.*** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) ***Opinion About a Voice.*** An opinion identifying a person's voice—whether heard firsthand or through mechanical or electronic transmission or recording—based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) ***Evidence About a Telephone Conversation.*** For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) ***Evidence About Public Records.*** Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) ***Evidence About Ancient Documents or Data Compilations.*** For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

(9) ***Evidence About a Process or System.*** Evidence describing a process or system and showing that it produces an accurate result.

(10) ***Methods Provided by a Statute or Rule.*** Any method of authentication or identification allowed by a statute or other rule prescribed under statutory authority.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) ***Domestic Public Documents That Are Sealed and Signed.*** A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) ***Domestic Public Documents That Are Not Sealed But Are Signed and Certified.*** A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine.

(3) ***Foreign Public Documents.*** A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so.

(A) ***In General.*** The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester—or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(B) ***If Parties Have Reasonable Opportunity to Investigate.*** If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

(i) order that it be treated as presumptively authentic without final certification; or

(ii) allow it to be evidenced by an attested summary with or without final certification.

(C) ***If a Treaty Abolishes or Displaces the Final Certification Requirement.*** If the United States and the foreign country in which the official record is located are parties to a treaty or convention that abolishes or displaces the final certification requirement, the record and attestation must be certified under the terms of the treaty or convention.

(4) ***Certified Copies of Public Records.*** A copy of an official record—or a copy of a document that was recorded or filed in a public office as authorized by law—if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), a statute, or a rule prescribed under statutory authority.

(5) ***Official Publications.*** A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) ***Newspapers and Periodicals.*** Printed material purporting to be a newspaper or periodical.

(7) ***Trade Inscriptions and the Like.*** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) ***Acknowledged Documents.*** A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) ***Commercial Paper and Related Documents.*** Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) ***Business Records Accompanied by Affidavit.*** The original or a copy of a record that meets the requirements of Rule 803(6) or (7), if the record is accompanied by an affidavit that complies with subparagraph (B) of this rule and any other requirements of law, and the record and affidavit are served in accordance with subparagraph (A). For good cause shown, the court may order that a business record be treated as presumptively authentic even if the proponent fails to comply with subparagraph (A).

(A) ***Service Requirement.*** The proponent of a record must serve the record and the accompanying affidavit on each other party to the case at least 14 permitted by Rule of Civil Procedure 21a.

(B) ***Form of Affidavit.*** An affidavit is sufficient if it includes the following language, but this form is not exclusive. The proponent may use an unsworn declaration made under penalty of perjury in place of an affidavit.

1. I am the custodian of records [*or* I am an employee or owner] of _____ and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities.
2. Attached are ____ pages of records. These are the original records or exact duplicates of the original records.
3. The records were made at or near the time of each act, event, condition, opinion, or diagnosis set forth. [*or* It is the regular practice of _____ to make this type of record at or near the time of each act, event, condition, opinion, or diagnosis set forth in the record.]
4. The records were made by, or from information transmitted by, persons with knowledge of the matters set forth. [*or* It is the regular practice of _____ for this type of record to be made by, or from information transmitted by, persons with knowledge of the matters set forth in them.]
5. The records were kept in the course of regularly conducted business activity. [*or* It is the regular practice of _____ to keep this type of record in the course of regularly conducted business activity.]
6. It is the regular practice of the business activity to make the records.

(11) ***Presumptions Under a Statute or Rule.*** A signature, document, or anything else that a statute or rule prescribed under statutory authority declares to be presumptively or prima facie genuine or authentic.

(Amended by Order Nov. 13, 2012, eff. March 1, 2013; Feb 12, 2013, eff. March 1, 2013 (Applies to all cases, including those pending on March 1, 2013.). Amended by Order March 26, 2013, eff. March 26, 2013. Amended by Order April 14, 2014, eff. Sept. 1, 2014. Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 2013 Change: Rule 902(10)(c) is added to provide a form affidavit for proof of medical expenses. The affidavit is intended to comport with Section 41.0105 of the Civil Practice and Remedies Code, which allows evidence of only those medical expenses that have been paid or will be paid, after any required credits or adjustments. *See Haygood v. Escabedo*, 356 S.W.3d 390 (Tex. 2011). The records attached to the affidavit must also meet the admissibility standard of *Haygood*, 356 S.W. 3d at 399-400 ("[O]nly evidence of recoverable medical expenses is admissible at trial.").

Comment to 2014 Change: The word "affidavit" in this rule includes an unsworn declaration made under penalty of perjury. TEX. CIV. PRAC. & REM. CODE § 132.001. A record and affidavit may be served electronically, including by email. TEX. R. CIV. P. 21 a. The reference to "any other requirements of law" incorporates the requirements of Sections 18.001 and 18.002 of the Civil Practice and Remedies Code for affidavits offered as prima facie proof of the cost or necessity of services or medical expenses.

Rule 903. Subscribing Witness's Testimony

A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

ARTICLE X.
CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions That Apply to This Article

In this article:

- **(a)** A "writing" consists of letters, words, numbers, or their equivalent set down in any form.
- **(b)** A "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.
- **(c)** A "photograph" means a photographic image or its equivalent stored in any form.
- **(d)** An "original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout—or other output readable by sight—if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it.
- **(e)** A "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 1002. Requirement of the Original

An original writing, recording, or photograph is required in order to prove its content unless these rules or other law provides otherwise.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as the original unless a question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 1004. Admissibility of Other Evidence of Content

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

- **(a)** all the originals are lost or destroyed, unless the proponent lost or destroyed them in bad faith;
- **(b)** an original cannot be obtained by any available judicial process;
- **(c)** an original is not located in Texas;
- **(d)** the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
- **(e)** the writing, recording, or photograph is not closely related to a controlling issue.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 1005. Copies of Public Records to Prove Content

The proponent may use a copy to prove the content of an official record—or of a document that was recorded or filed in a public office as authorized by law—if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 1006. Summaries to Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 1007. Testimony or Statement of a Party to Prove Content

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 1008. Functions of the Court and Jury

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines—in accordance with Rule 104(b)—any issue about whether:

(a) an asserted writing, recording, or photograph ever existed;

(b) another one produced at the trial or hearing is the original; or

(c) other evidence of content accurately reflects the content.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Rule 1009. Translating a Foreign Language Document

(a) Submitting a Translation. A translation of a foreign language document is admissible if, at least 45 days before trial, the proponent serves on all parties:

(1) the translation and the underlying foreign language document; and

(2) a qualified translator's affidavit or unsworn declaration that sets forth the translator's qualifications and certifies that the translation is accurate.

(b) Objection. When objecting to a translation's accuracy, a party should specifically indicate its inaccuracies and offer an accurate translation. A party must serve the objection on all parties at least 15 days before trial.

(c) Effect of Failing to Object or Submit a Conflicting Translation. If the underlying foreign language document is otherwise admissible, the court must admit—and may not allow a party to attack the accuracy of—a translation submitted under subdivision (a) unless the party has:

(1) submitted a conflicting translation under subdivision (a); or

(2) objected to the translation under subdivision (b).

(d) Effect of Objecting or Submitting a Conflicting Translation. If conflicting translations are submitted under subdivision (a) or an objection is made under subdivision (b), the court must determine whether there is a genuine issue about the accuracy of a material part of the translation. If so, the trier of fact must resolve the issue.

(e) Qualified Translator May Testify. Except for subdivision (c), this rule does not preclude a party from offering the testimony of a qualified translator to translate a foreign language document.

(f) Time Limits. On a party's motion and for good cause, the court may alter this rule's time limits.

(g) Court-Appointed Translator. If necessary, the court may appoint a qualified translator. The reasonable value of the translator's services must be taxed as court costs.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-9048, eff. April 1, 2015.)

Comment to 1998 change. This is a new rule.

OCA NOTE

Article XI—Miscellaneous Provisions and Rule 1101—Applicability of Rules are omitted. Rule 1101 dealt with the same subject matter as Rule 101. Therefore, in an effort to avoid redundancy, the provisions of Rule 1101 were incorporated into the "new" Rule 101. *See* Notes and Comments that follow Rule 101.

Texas Rules of Appellate Procedure

Adopted effective Sept. 1, 1997 including amendments received through March 23, 2020.

SECTION ONE.
GENERAL PROVISIONS

RULE 1. SCOPE OF RULES; LOCAL RULES OF COURTS OF APPEALS

1.1. Scope.

These rules govern procedure in appellate courts and before appellate judges and post-trial procedure in trial courts in criminal cases.

1.2. Local Rules and Forms.

(a) *Promulgation*. A court of appeals may promulgate rules and forms governing its practice that are not inconsistent with state or federal law or rules adopted by the Supreme Court or the Court of Criminal Appeals. To be effective, local rules and forms must be published on the Office of Court Administration's website.

(b) *Party's Noncompliance*. A court must not dismiss an appeal due to a party's failure to comply with a local rule or form without giving the noncomplying party notice and a reasonable opportunity to cure the noncompliance.

(Adopted by Order eff. Sept. 1, 1997. Amended by Tex. Sup. Ct. Misc. Docket No. 22-9026, March 30, 2022 and Tex. Sup. Ct. Misc. Docket No. 22-9081, July 25, 2022, eff. Jan. 1, 2023.)

Comment to 1997 change: Subdivision 1.1 is simplified without substantive change. Subdivision 1.2 is amended to make clear that any person is entitled to a copy of local rules. Paragraph 1.2(c), restricting dismissal of a case for noncompliance with a local rule, is added.

Comment to 2023 change: Rule 1.2 is amended to remove the requirement that the Supreme Court of Texas and Court of Criminal Appeals approve local rules and to expressly address local forms. The amended rule provides that local rules and forms must not conflict with other laws or rules and that they are not effective unless published on the Office of Court Administration's website.

RULE 2. SUSPENSION OF RULES.

On a party's motion or on its own initiative an appellate court may—to expedite a decision or for other good cause—suspend a rule's operation in a particular case and order a different procedure; but a court must not construe this rule to suspend any provision in the Code of Criminal Procedure or to alter the time for perfecting an appeal in a civil case.

Comment to 1997 change: Former subdivision (a) regarding appellate court jurisdiction is deleted. The power to suspend rules is extended to civil cases. Other nonsubstantive changes are made.

RULE 3. DEFINITIONS; UNIFORM TERMINOLOGY

3.1. Definitions.

(a) Appellant means a party taking an appeal to an appellate court.

(b) Appellate court means the courts of appeals, the Court of Criminal Appeals, and the Supreme Court.

(c) Appellee means a party adverse to an appellant.

(d) Applicant means a person seeking relief by a habeas corpus in a criminal case.

(e) Petitioner means a party petitioning the Supreme Court or the Court of Criminal Appeals for review.

(f) Relator means a person seeking relief in an original proceeding in an appellate court other than by habeas corpus in a criminal case.

(g) Reporter or court reporter means the court reporter or court recorder.

(h) Respondent means:

(1) a party adverse to a petitioner in the Supreme Court or the Court of Criminal Appeals; or

(2) a party against whom relief is sought in an original proceeding in an appellate court.

3.2. Uniform Terminology in Criminal Cases.

In documents filed in criminal appeals, the parties are the State and the appellant. But if the State has appealed under **Article 44.01 of the Code of Criminal Procedure**, the defendant is the appellee. Otherwise, papers should use real names for parties, and such labels as appellee, petitioner, respondent, and movant should be avoided unless necessary for clarity. In habeas corpus proceedings, the person for whose relief the writ is requested is the applicant; **Code of Criminal Procedure article 11.13.**

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: The definition of court below and the reference to "suing out a writ of error to the court of appeals," are deleted as those terms are no longer used in these rules. Other changes are made.

RULE 4. TIME AND NOTICE PROVISIONS

4.1. Computing Time.

(a) In General. The day of an act, event, or default after which a designated period begins to run is not included when computing a period prescribed or allowed by these rules, by court order, or by statute. The last day of the period is included, but if that day is a Saturday, Sunday, or legal holiday, the period extends to the end of the next day that is not a Saturday, Sunday, or legal holiday.

(b) Clerk's Office Closed or Inaccessible. If the act to be done is filing a document, and if the clerk's office where the document is to be filed is closed or inaccessible during regular hours on the last day for filing the document, the period for filing the document extends to the end of the next day when the clerk's office is open and accessible. The closing or inaccessibility of the clerk's office may be proved by a certificate of the clerk or counsel, by a party's affidavit, or by other satisfactory proof, and may be controverted in the same manner.

4.2. No Notice of Trial Court's Judgment in Civil Case.

(a) Additional Time to File Documents.

(1) In general. If a party affected by a judgment or other appealable order has not—within 20 days after the judgment or order was signed—either received the notice required by Texas Rule of Civil Procedure 306a.3 or acquired actual knowledge of the signing, then a period that, under these rules, runs from the signing will begin for that party on the earlier of the date when the party receives notice or acquires actual knowledge of the signing. But in no event may the periods begin more than 90 days after the judgment or order was signed.

(2) Exception for restricted appeal. Subparagraph (1) does not extend the time for perfecting a restricted appeal.

(b) Procedure to Gain Additional Time. The procedure to gain additional time is governed by Texas Rule of Civil Procedure 306a.5.

(c) The Court's Order. After hearing the motion, the trial court must sign a written order that finds the date when the party or the party's attorney first either received notice or acquired actual knowledge that the judgment or order was signed.

4.3. Periods Affected by Modified Judgment in Civil Case.

(a) During Plenary-Power Period. If a judgment is modified in any respect while the trial court retains plenary power, a period that, under these rules, runs from the date when the judgment is signed will run from the date when the modified judgment is signed.

(b) After Plenary Power Expires. If the trial court corrects or reforms the judgment under > Texas Rule of Civil Procedure 316 after expiration of the trial court's plenary power, all periods provided in these rules that run from the date the judgment is signed run from the date the corrected judgment is signed for complaints that would not apply to the original judgment.

4.4. Periods Affected When Process Served by Publication.

If process was served by publication and if a motion for new trial was filed under Texas Rule of Civil Procedure 329 more than 30 days after the judgment was signed, a period that, under these rules, runs from the date when the judgment is signed will be computed as if the judgment were signed on the date when the motion for new trial was filed.

4.5. No Notice of Judgment or Order of Appellate Court; Effect on Time to File Certain Documents.

(a) Additional Time to File Documents. A party may move for additional time to file a motion for rehearing or en banc reconsideration in the court of appeals, a petition for review, or a petition for discretionary review, if the party did not—until after the time expired for filing the document—either receive notice of the judgment or order from the clerk or acquire actual knowledge of the rendition of the judgment or order.

(b) Procedure to Gain Additional Time. The motion must state the earliest date when the party or the party's attorney received notice or acquired actual knowledge that the judgment or order had been rendered. The motion must be filed within 15 days of that date but in no event more than 90 days after the date of the judgment or order.

(c) Where to File.

(1) A motion for additional time to file a motion for rehearing or en banc reconsideration in the court of appeals must be filed in and ruled on by the court of appeals in which the case is pending.

(2) A motion for additional time to file a petition for review must be filed in and ruled on by the Supreme Court.

(3) A motion for additional time to file a petition for discretionary review must be filed in and ruled on by the Court of Criminal Appeals.

(d) Order of the Court. If the court finds that the motion for additional time was timely filed and the party did not—within the time for filing the motion for rehearing or en banc reconsideration, petition for review, or petition for discretionary review, as the case may be—receive the notice or have actual knowledge of the judgment or order, the court must grant the motion. If the court grants the motion, the time for filing the document will begin to run on the date when the court grants the motion.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order Dec. 23, 2002 eff. Jan. 1, 2003; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

Comment to 2002 change: Subdivision 4.5 is amended to clarify that a party may obtain additional time to file documents when the party fails to receive notice not only of an appellate court judgment, but of an appellate court order—such as one denying a motion for rehearing—that triggers the appeal period.

Comment to 2008 change: Subdivision 4.5 is changed, consistent with other changes in the rules, to specifically address a motion for en banc reconsideration and treat it as a motion for rehearing.

Rule 4.6. No Notice of Trial Court's Order on Motion for Forensic DNA Testing

(a) *Additional Time to File Notice of Appeal*. Notwithstanding Rules 26.2 and 26.3, a defendant may move for additional time to file a notice of appeal under Code of Criminal Procedure chapter 64 (Motion for Forensic DNA Testing) if the defendant neither received notice nor acquired actual knowledge that the trial judge signed an appealable order before the time for filing a notice of appeal had expired.

(b) *Contents of Motion for Additional Time*. The motion must be in writing and sworn, state the earliest date when the defendant first received notice or acquired actual knowledge that the appealable order had been signed, and comply with Rule 10.5(b)(2).

(c) *When and Where to File*.

(1) The motion must be filed within 30 days of the date upon which the defendant first received notice or acquired actual knowledge of the trial court's signing of the appealable order. But in no event may the motion be filed more than 120 days after the date the appealable order was signed.

(2) The motion must be filed in the proper court of appeals.

(d) *Order of the Court*. The court of appeals must grant a motion for additional time if it finds that the defendant neither received notice nor acquired actual knowledge of the trial judge's signing of an appealable order before the time for filing a notice of appeal had expired and that the defendant timely filed the motion for additional time. The time for filing the document will begin to run on the date when the court grants the motion.

(Adopted by Tex. Sup. Ct. Misc. Docket No. 16-9061 June 13, 2017, eff. Sept. 1, 2017.)

RULE 5. FEES IN CIVIL CASES

A party who is not excused by statute or these rules from paying costs must pay—at the time an item is presented for filing—whatever fees are required by statute or Supreme Court order. The appellate court may enforce this rule by any order that is just.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 13. The rule is simplified. The fees an appellate court may charge in a civil case are now specified by Supreme Court order.

RULE 6. REPRESENTATION BY COUNSEL

6.1. Lead Counsel.

(a) For Appellant. Unless another attorney is designated, lead counsel for an appellant is the attorney whose signature first appears on the notice of appeal.

(b) For a Party Other Than Appellant. Unless another attorney is designated, lead counsel for a party other than an appellant is the attorney whose signature first appears on the first document filed in the appellate court on that party's behalf.

(c) How to Designate. The original or a new lead counsel may be designated by filing a notice stating that attorney's name, mailing address, telephone number, fax number, if any, email address, and State Bar of Texas identification number. If a new lead counsel is being designated, both the new attorney and either the party or the former lead counsel must sign the notice.

(Amended by Order Aug. 16, 2013, eff. Jan. 1, 2014; Order Dec. 13, 2013, eff. Jan. 1, 2014.)

6.2. Appearance of Other Attorneys.

An attorney other than lead counsel may file a notice stating that the attorney represents a specified party to the proceeding and giving that attorney's name, mailing address, telephone number, fax number, if any, email address, and State Bar of Texas identification number. The clerk will note on the docket the attorney's appearance. When a brief or motion is filed, the clerk will note on the docket the name of each attorney, if not already noted, who appears on the document.

(Amended by Order Aug. 16, 2013, eff. Jan. 1, 2014; Order Dec. 13, 2013, eff. Jan. 1, 2014.)

6.3. To Whom Communications Sent.

Any notice, copies of documents filed in an appellate court, or other communications must be sent to:

(a) each party's lead counsel on appeal;

(b) a party's lead counsel in the trial court if:

(1) that party was represented by counsel in the trial court;

(2) lead counsel on appeal has not yet been designated for that party; and

(3) lead counsel in the trial court has not filed a nonrepresentation notice or been allowed to withdraw;

(c) a party if the party is not represented by counsel.

6.4. Nonrepresentation Notice.

(a) In General. If, in accordance with paragraph 6.3(b), the lead counsel in the trial court is being sent notices, copies of documents, or other communications, that attorney may file a nonrepresentation notice in the appellate court. The notice must:

(1) state that the attorney is not representing the party on appeal;

(2) state that the court and other counsel should communicate directly with the party in the future;

(3) give the party's name and last known address and telephone number; and

(4) be signed by the party.

(b) Appointed Counsel. In a criminal case, an attorney appointed by the trial court to represent an indigent party cannot file a nonrepresentation notice.

(c) Withdrawal of Non-Lead Counsel. If an attorney other than lead counsel will no longer represent a party, but lead counsel will continue to represent the party, the non-lead counsel should file a nonrepresentation notice. The notice should state that non-lead counsel will no longer represent the client and identify counsel who will continue to represent the party.

(Amended by Tex. Sup. Ct. Misc. Docket No. 23-9027, May 2, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9051, Aug. 4, 2023, eff. Sept. 1, 2023.)

6.5. Withdrawal of Lead Counsel.

An appellate court may, on appropriate terms and conditions, permit lead counsel to withdraw from representing a party in the appellate court.

(a) Contents of Motion. A motion for leave to withdraw must contain the following:

(1) a list of current deadlines and settings in the case;

(2) the party's name and last known address and telephone number;

(3) a statement that a copy of the motion was delivered to the party; and

(4) a statement that the party was notified in writing of the right to object to the motion.

(b) Delivery to Party. The motion must be delivered to the party in person or mailed—both by certified and by first-class mail—to the party at the party's last known address.

(c) If Motion Granted. If the court grants the motion, the withdrawing lead counsel must immediately notify the party, in writing, of any deadlines or settings that the attorney knows about at the time of withdrawal but that were not previously disclosed to the party. The withdrawing attorney must file a copy of that notice with the court clerk.

(d) Exception for Substitution of Counsel. If an attorney substitutes for a withdrawing attorney, the motion to withdraw need not comply with (a) but must state only the substitute attorney's name, mailing address, telephone number, fax number, if any, and State Bar of Texas identification number. The withdrawing lead counsel must comply with (b) but not (c).

(Amended by Tex. Sup. Ct. Misc. Docket No. 23-9027, May 2, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9051, Aug. 4, 2023, eff. Sept. 1, 2023.)

6.6. Agreements of Parties or Counsel.

To be enforceable, an agreement of parties or their counsel concerning an appellate court proceeding must be in writing and signed by the parties or their counsel. Such an agreement is subject to any appellate court order necessary to ensure that the case is properly presented.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Former Rules 7 and 57 are merged and substantially revised. Former Rule 8 regarding agreements of counsel is included here as subdivision 6.6 and the requirement that an agreement be filed and included in the record is deleted.

RULE 7. SUBSTITUTING PARTIES

7.1. Parties Who Are Not Public Officers.

(a) Death of a Party.

(1) Civil Cases. If a party to a civil case dies after the trial court renders judgment but before the case has been finally disposed of on appeal, the appeal may be perfected, and the appellate court will proceed to adjudicate the appeal as if all parties were alive. The appellate court's judgment will have the same force and effect as if rendered when all parties were living. The decedent party's name may be used on all papers.

(2) Criminal Cases. If the appellant in a criminal case dies after an appeal is perfected but before the appellate court issues the mandate, the appeal will be permanently abated.

(b) Substitution for Other Reasons. If substitution of a party in the appellate court is necessary for a reason other than death, the appellate court may order substitution on any party's motion at any time.

7.2. Public Officers.

(a) Automatic Substitution of Officer. When a public officer is a party in an official capacity to an appeal or original proceeding, and if that person ceases to hold office before the appeal or original proceeding is finally disposed of, the public officer's successor is automatically substituted as a party if appropriate. Proceedings following substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. Substitution may be ordered at any time, but failure to order substitution of the successor does not affect the substitution.

(b) Abatement. If the case is an original proceeding under Rule 52, the court must abate the proceeding to allow the successor to reconsider the original party's decision. In all other cases, the suit will not abate, and the successor will be bound by the appellate court's judgment or order as if the successor were the original party.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 9. Former subdivision (a) regarding death of a party in a civil case is now subparagraph 7.1(a)(1). Former subdivision (b) regarding death of a party in a criminal case is now subparagraph 7.1(a)(2). Former subdivision (c) regarding separation of office by public officers is now subdivision 7.2. Former paragraph (c)(3) regarding a successor's liability for costs is omitted as unnecessary. Former subdivision (d) regarding substitution for other causes is now paragraph 7.1(b). Subdivision 7.2 is revised to make it applicable to all cases in which a public officer is a party, and to make substitution automatic if appropriate.

RULE 8. BANKRUPTCY IN CIVIL CASES

8.1. Notice of Bankruptcy.

Any party may file a notice that a party is in bankruptcy. The notice must contain:

(a) the bankrupt party's name;

(b) the court in which the bankruptcy proceeding is pending;

(c) the bankruptcy proceeding's style and case number; and

(d) the date when the bankruptcy petition was filed.

(Amended by Order March 10, 2008 eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

Comment to 2008 change: The amendment eliminates the former requirement that the bankruptcy notice contain certain pages of the bankruptcy petition, in recognition that electronic filing is now prevale28.1.nt in bankruptcy courts and access to bankruptcy petitions is widely available through the federal PACER system.

8.2. Effect of Bankruptcy.

A bankruptcy suspends the appeal and all periods in these rules from the date when the bankruptcy petition is filed until the appellate court reinstates or severs the appeal in accordance with federal law. A period that began to run and had not expired at the time the proceeding was suspended begins anew when the proceeding is reinstated or severed under 8.3. A document filed by a party while the proceeding is suspended will be deemed filed on the same day, but after, the court reinstates or severs the appeal and will not be considered ineffective because it was filed while the proceeding was suspended.

8.3. Motion to Reinstate or Sever Appeal Suspended by Bankruptcy.

(a) Motion to Reinstate. If a case has been suspended by a bankruptcy filing, a party may move that the appellate court reinstate the appeal if permitted by federal law or the bankruptcy court. If the bankruptcy court has lifted or terminated the stay, a certified copy of the order must be attached to the motion.

(b) Motion to Sever. A party may move to sever the appeal with respect to the bankrupt party and to reinstate the appeal with respect to the other parties. The motion must show that the case is severable and must comply with applicable federal law regarding severance of a bankrupt party. The court may proceed under this paragraph on its own initiative.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is a new rule.

RULE 9. DOCUMENTS GENERALLY

9.1. Signing.

(a) Represented Parties. If a party is represented by counsel, a document filed on that party's behalf must be signed by at least one of the party's attorneys. For each attorney whose name appears on a document as representing that party, the document must contain that attorney's State Bar of Texas identification number, mailing address, telephone number, fax number, if any, and email address.

(b) Unrepresented Parties. A party not represented by counsel must sign any document that the party files and give the party's mailing address, telephone number, and fax number, if any, and email address.

(c) Electronic Signatures. A document that is electronically served, filed, or issued by a court or clerk is considered signed if the document includes:

(1) a "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

(Amended by Order Aug. 16, 2013, eff. Jan. 1, 2014; Order Dec. 13, 2013, eff. Jan. 1, 2014.)

9.2. Filing.

(a) With Whom. A document is filed in an appellate court by delivering it to:

(1) the clerk of the court in which the document is to be filed; or

(2) a justice or judge of that court who is willing to accept delivery. A justice or judge who accepts delivery must note on the document the date and time of delivery, which will be considered the time of filing, and must promptly send it to the clerk.

(b) Filing by Mail.

(1) Timely Filing. A document received within ten days after the filing deadline is considered timely filed if:

(A) it was sent to the proper clerk by United States Postal Service first class, express, registered, or certified mail or a commercial delivery service;

(B) it was placed in an envelope or wrapper properly addressed and stamped; and

(C) it was deposited in the mail or delivered to a commercial delivery service on or before the last day for filing.

(2) Proof of Mailing. Though it may consider other proof, the appellate court will accept the following as conclusive proof of the date of mailing:

(A) a legible postmark affixed by the United States Postal Service;

(B) a receipt for registered or certified mail if the receipt is endorsed by the United States Postal Service;

(C) a certificate of mailing by the United States Postal Service;

(D) a receipt endorsed by the commercial delivery service.

(c) Electronic Filing.

(1) Requirement. Attorneys in civil cases must electronically file documents. Attorneys in criminal cases must electronically file documents except for good cause shown in a motion filed in the appellate court. Unrepresented parties in civil and criminal cases may electronically file documents, but it is not required.

(2) Mechanism. Electronic filing must be done through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration.

(3) Exceptions. Documents filed under seal, subject to a pending motion to seal, or to which access is otherwise restricted by law or court order must not be electronically filed. For good cause, an appellate court may permit a party to file other documents in paper form in a particular case.

(4) Timely Filing. Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight (in the court's time zone) on the filing deadline. An electronically filed document is deemed filed when transmitted to the filing party's electronic filing service provider, except:

(A) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday; and

(B) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date the motion is granted.

(5) Technical Failure. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court.

(6) Confirmation of Filing. The electronic filing manager will send a filing confirmation notice to the filing party.

(7) Electronic Notices From the Court. The clerk may send notices, orders, or other communications about the case to the party electronically. A court seal may be electronic.

(Amended by Order June 27, 2011, eff. June 30, 2011; Order Aug. 16, 2013, eff. Jan. 1, 2014; Order Dec. 13, 2013, eff. Jan. 1, 2014.)

9.3. Number of Copies.

(a) Document Filed in Paper Form. If a document is not electronically filed, a party must file the original and one unbound copy of the document unless otherwise required by local rule, except that, in the Court of Criminal Appeals, only the original must be filed of a motion for extension of time, a response to the motion, or a pleading under Code of Criminal Procedure article 11.07. The unbound copy of an appendix must contain a separate page before each document and must not include tabs that extend beyond the edge of the page.

(b) Electronically Filed Document. A party need not file a paper copy of an electronically filed document.

(c) Exception for Record. Only the original record need be filed in any proceeding.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Order June 27, 2011, eff. June 30, 2011; Order Aug. 16, 2013, eff. Jan. 1, 2014; Order Dec. 13, 2013, eff. Jan. 1, 2014; Tex. Sup. Ct. Misc. Docket No. 23-9082, Oct. 3, 2023, expected eff. Feb. 1, 2024 and Tex. Sup. Ct. Misc. Docket No. 24-9003, Feb. 6, 2024, eff. March 1, 2024.)

APPENDIX A

Local Rule _____. Electronic Copies of Documents Filed in Paper Form.

(a) Electronic copies of documents required. For the convenience of the court, attorneys, parties, and the public, an attorney for a party must email to the court an electronic copy of every document filed with the court, except a document under seal or subject to a motion to seal. A party who is not represented by an attorney is encouraged to email to the court an electronic copy of every document filed with the court, except a document under seal or subject to a motion to seal. [Courts may add exceptions for attorneys and unrepresented parties.]

(b) Filing required. An electronic copy does not constitute a filing. Documents must continue to be filed as provided by the Texas Rules of Appellate Procedure[, except that only the original and [insert number] copies must be filed of any document other than a petition for discretionary review. A party must file the original and 11 copies of a petition for discretionary review].

(c) Time to email electronic copy. The electronic copy must be emailed to the court at [insert applicable email address] on the same day the original document is filed. Also on that day, the electronic copy must be emailed to each other party's lead counsel for whom the filing attorney has an email address.

(d) Identification of document. The email subject line must identify the document by case number and by name. The electronic copy must be named as follows: [insert court's desired naming conventions here].

(e) Redaction of electronic copies. An electronic copy must be substantively identical to the original document filed with the court, except it must not contain a social security number; a birth date; a home address; the name of any person who was a minor when the underlying suit was filed; a driver's license number, passport number, tax identification number, or similar government issued personal identification number; or a bank account number, credit card number, or other financial account number. The attorney emailing the electronic copy must redact all such information in accordance with the redaction guidelines posted by the Supreme Court's Clerk on the Supreme Court's website; however, the electronic copy may contain a reference to this information as long as the reference does not include any part of the actual information (e.g., "passport number"). For good cause, the court may order redaction of additional information.

(f) Certification of counsel. The submission of an electronic copy constitutes a certification by all attorneys of record for the party filing the document that the electronic copy complies with paragraph (e).

(g) Posting of electronic copies. The clerk may post electronic copies of documents in a case on the court's website. By letter to the clerk, a party to the case may request that electronic copies posted on the court's website be redacted further or removed altogether. The request must identify with particularity the document(s) to be removed or the information to be redacted and state specific reasons for the request. If the request is for further redaction, the party must email a copy of the requested version of the document.

(h) Format of electronic copies. An electronic copy must be formatted as follows:

(1) An electronic copy must be in text-searchable portable document format (PDF) compatible with the latest version of Adobe Reader.

(2) Except as otherwise provided by this rule, an electronic copy of a document created by a word processing program must not be a scan of the original but must instead be converted from the original directly into a PDF file using Adobe Acrobat, a word processing program's PDF conversion utility, or another software program.

(3) Records filed in original proceedings and appendix materials may be scanned if necessary, but scanning creates larger file sizes with images of lesser quality and should be avoided when possible. An appendix must be combined into one computer file with the document it is associated with, unless the resulting computer file would exceed the size limits in paragraph (i). If a record filed in an original proceeding or an appendix contains more than one item, it should include a table of contents and either bookmarks to assist in locating each item or separator pages with the title of the item immediately following and any number or letter associated with the item in the table of contents.

(4) A scanned document must be made searchable using optical-character-recognition software, such as Adobe Acrobat, and have a resolution of 300 dots per inch (dpi).

(5) An electronic copy may contain hyperlinks to another part of the same document, an external source cited in the document, an appendix item associated with the document, an embedded case, or a record cite. Hyperlinks within an appendix item are also permitted.

(6) An electronic copy must not contain a virus or malware. The submission of an electronic copy constitutes a certification by all attorneys of record for the party filing the document that the electronic copy has been checked for viruses and malware.

(7) An electronic copy need not be signed.

(i) Size of electronic copies. A electronic copy must not exceed 20 megabytes. Electronic copies larger than 20 megabytes must be divided into smaller files.

(j) Communications with the clerk. An attorney who emails an electronic copy of a document must supply the clerk with an email address to which the clerk may send notices or other communications about the case in lieu of mailing paper documents. If the attorney's email address changes, the attorney must provide the clerk with the new email address within one business day of the change. Lead counsel must register for Casemail and follow the instructions for receiving notices for cases in which they represent a party.

APPENDIX B

Local Rule _____. Electronic Filings of Documents.

(a) Electronic filing permitted. A party may electronically file (e-file) any document that may be filed with the court in paper form, except a document under seal or subject to a motion to seal.

(b) E-filing mechanism. E-filing must be done through Texas.gov, the portal established by the Texas Legislature. Directions for its use may be found on its website. This is a summary. A person must first register with an Electronic Filing Service Provider (EFSP). A list of approved EFSPs is on the Texas.gov website. The EFSP will provide the registrant with a confidential, secure username and password to use when e-filing a document. This username and password will also function as a signature on each e-filed document, and will authorize payment of all filing fees and service fees. A document to be e-filed must be transmitted to the EFSP, which will send the document to Texas.gov, which in turn will send the document to the clerk. The e-filer will receive by email an immediate acknowledgment of the e-filing, a confirmation of the clerk's acceptance of the filing, and a file-stamped copy of the document. Fees charged by Texas.gov for the e-filing of a document are in addition to any filing fees and are costs of court.

(c) Electronic service. A party who has registered to e-file documents through an EFSP may electronically serve (e-serve) documents through that EFSP on any other party who has consented to e-service by registering for the e-service option with an EFSP or by setting up a complimentary account with Texas.gov. Directions may be found on the Texas.gov website.

(1) Service through an EFSP is complete on transmission to the e-served person's EFSP or complimentary Texas.gov account. The e-filer's EFSP will send proof of service to the e-filer. Fees that an EFSP charges for e-service are not costs of court.

(2) If an e-filer must serve a copy of a document on a party who has not consented to eservice, the e-filer must comply with the service requirements in Texas Rule of Appellate Procedure 9.5 and, on the same day the document is e-filed, must send the document to:

(A) the party's lead counsel by email if the e-filer has an email address for the lead counsel; or

(B) if the party is not represented by counsel, to the party by email if the e-filer has the party's email address.

(d) Redaction of information in e-filed document.

(1) Unless the court orders otherwise, an e-filed document must not contain a social security number; a birth date; a home address; the name of any person who was a minor when the underlying suit was filed; a driver's license number, passport number, tax identification number, or similar government-issued personal identification number; or a bank account number, credit card number, or other financial account number. The e-filer must redact all of this information in accordance with the redaction guidelines posted by the Supreme Court's Clerk on the Supreme Court's website; however, the e-filed document may contain a reference to this information as long as the reference does not include any part of the actual information (e.g., "passport number"). For good cause, the court may order redaction of additional information.

(2) The e-filing of a document constitutes a certification by all attorneys of record for the party filing the document that the document complies with paragraph (1) of this rule.

(3) If an e-filer believes any information described in paragraph (1) of this rule is essential to an e-filed document or that the e-filed document would be confusing without the information, the e-filer may submit the information to the court in a reference list that is in paper form and under seal. The reference list must specify an appropriate identifier that corresponds uniquely to each item listed. Any reference in the e-filed document to a listed identifier will be construed to refer to the corresponding item of information. If the e-filer provides a reference list pursuant to this rule, the front page of the e-filed document must indicate that the reference list has been, or will be, provided.

(4) On its own initiative, the court may order a sealed reference list in any case. The court may also order that a document be filed under seal in paper form, without redaction. The court may later unseal the document or order the filer to provide a redacted version of the document for the public record.

(e) Format of e-filed document. An e-filed document must be formatted as follows:

(1) An e-filed document must be formatted in accordance with Texas Rule of Appellate Procedure 9.4(b)-(e). The "paper" requirements in Rule 9.4(b)-(c) apply equally to a "page" of the e-filed document.

(2) An e-filed document must be in text-searchable portable document format (PDF) compatible with the latest version of Adobe Reader. An EFSP will convert each e-filed document from its original form into a PDF file that complies with this rule.

(3) Records filed in original proceedings and appendix materials may be scanned if necessary, but scanning creates larger file sizes with images of lesser quality and should be avoided when possible. An appendix must be combined into one computer file with the document it is associated with, unless the resulting computer file would exceed Texas.gov's size limits for the document. If a record filed in an original proceeding or an appendix contains more than one item, it should include a table of

contents and either bookmarks to assist in locating each item or separator pages with the title of the item immediately following and any number or letter associated with the item in the table of contents.

(4) A scanned document must be made searchable using optical-character-recognition software, such as Adobe Acrobat, and have a resolution of 300 dots per inch (dpi).

(5) An e-filed document may contain hyperlinks to another part of the same document, an external source cited in the document, an appendix item associated with the document, an embedded case, or a record cite. Hyperlinks within an appendix item are also permitted.

(6) An e-filed document must not contain a virus or malware. The e-filing of a document constitutes a certification by the e-filer that the document has been checked for viruses and malware.

(7) The court may strike an e-filed document for nonconformance with this rule.

(f) Signatures on e-filed documents.

(1) Except as otherwise provided by this rule, the confidential, secure username and password that the e-filer must use to e-file a document constitute the e-filer's signature on the document, in compliance with signature requirements in the Texas Rules of Appellate Procedure. When a signature is provided in this manner, the e-filer must also include either an "/s/" and the e-filer's name typed in the space where the e-filer's signature would otherwise appear or an electronic image of the e-filer's signature, which may take the form of a public key-based digital signature or a scanned image of the e-filer's signature. The efiler must not allow the e-filer's username or password to be used by anyone other than an agent who is authorized by the e-filer.

(2) If a document must be notarized, sworn to, or made under oath, the e-filer must e-file the document as a scanned image containing the necessary signature(s).

(3) If a document requires the signature of an opposing party, the e-filer must e-file the document as a scanned image containing the opposing party's signature.

(4) When an e-filer e-files a scanned image of a document pursuant to paragraph (2) or (3) of this rule, the e-filer must retain the original document from which the scanned image was made until the case in which the document was filed is resolved. If the original document is in another party's possession, that party must retain the original document until the case in which the document was filed is resolved.

(5) If an e-served document was also e-filed and the person who completes a certificate of service under Texas Rule of Appellate Procedure 9.5(e) is different from the person who e-filed the document, the person who completes the certificate of service must sign the certificate by including either an'Vs/" and his or her name typed in the space where his or her signature would otherwise appear or an electronic image of his or her signature.

(g) Time of e-filing. A document will be considered filed timely if it is e-filed at any time before midnight (in the court's time zone) on the date on which the document is due.

(1) An e-filed document is deemed filed when the e-filer transmits the document to the e-filer's EFSP, unless the document is transmitted on a Saturday, Sunday, or legal holiday or requires a motion and an order allowing its filing.

(2) If a document is transmitted on a Saturday, Sunday, or legal holiday, it will be deemed filed on the next day that is not a Saturday, Sunday, or legal holiday.

(3) If a document requires a motion and an order allowing its filing, it will be deemed filed on the date the motion is granted.

(4) If an e-filed document is untimely due to a technical failure or a system outage, the e-filer may seek appropriate relief from the court.

(h) Paper copies.

OPTION 1: An e-filer is not required to file any paper copies of an e-filed document, except that paper copies of a petition for discretionary review must still be filed in accordance with Rule 9 of the Texas Rules of Appellate Procedure within one business day after the petition is e-filed.

OPTION 2: An e-filer must file 11 paper copies of an e-filed petition for discretionary review and [insert number] paper copies of any other e-filed document in accordance with Rule 9 of the Texas Rules of Appellate Procedure within one business day after the document is e-filed.

(i) Email address requirements and communications with the clerk. An e-filed document must include the e-filer's email address, in addition to any other information required by the Texas Rules of Appellate Procedure. If the e-filer's email address changes, the e-filer must provide the clerk and the e-filer's EFSP with the new email address within one business day of the change. If there is a change in the email address of a party who has consented to receive e-service, the party must provide Texas.gov or, if applicable, the party's EFSP with the new email address within one business day of the change. The clerk may send notices or other communications about a case to an attorney's email address in lieu of mailing paper documents.

(j) Casemail registration. Lead counsel must register for Casemail and follow the instructions for receiving notices for cases in which they represent a party.

(k) Construction of rules. This rule must be liberally construed so as to avoid undue prejudice to any person who makes a good-faith effort to comply with requirements in this rule.

9.4. Form.

Except for the record, a document filed with an appellate court, including a paper copy of an electronically filed document, must—unless the court accepts another form in the interest of justice—be in the following form:

(a) Printing. A document may be produced by standard typographic printing or by any duplicating process that produces a distinct black image. For a paper document, printing may be on both sides of the paper.

(b) Paper Type and Size. The paper on which a document is produced must 8½ by 11 inches, white or nearly white, and opaque.

(c) Margins. Documents must have at least one-inch margins on both sides and at the top and bottom.

(d) Spacing. Text must be double-spaced, but footnotes, block quotations, short lists, and issues or points of error may be single-spaced.

(e) Typeface. A document produced on a computer must be printed in a conventional typeface no smaller than 14-point except for footnotes, which must be no smaller than 12-point. A typewritten document must be printed in standard 10-character-per-inch (cpi) monospaced typeface.

(f) Binding and Covering. A paper document must be bound so as to ensure that it will not lose its cover or fall apart in regular use. A paper document should be stapled once in the top left-hand corner or be bound so that it will lie flat when open. A paper petition or brief should have durable front and back covers which must not be plastic or be red, black, or dark blue.

(g) Contents of Cover. A document's front cover, if any, must contain the case style, the case number, the title of the document being filed, the name of the party filing the document, and the name, mailing address, telephone number, fax number, if any, email address, and State Bar of Texas

identification number of the lead counsel for the filing party. If a party requests oral argument in the court of appeals, the request must appear on the front cover of that party's first brief.

(h) Appendix and Original Proceeding Record. A paper appendix may be bound either with the document to which it is related or separately. If separately bound, the appendix must comply with paragraph (f). A paper record in an original proceeding or a paper appendix must be tabbed and indexed. An electronically filed record in an original proceeding or an electronically filed appendix that includes more than one item must contain bookmarks to assist in locating each item.

(i) Length.

(1) Contents Included and Excluded. In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix.

(2) Maximum Length. The documents listed below must not exceed the following limits:

(A) A brief and response in a direct appeal to the Court of Criminal Appeals in a case in which the death penalty has been assessed: 37.500 words if computer-generated, and 125 pages if not.

(B) A brief and response in an appellate court (other than a brief under subparagraph (A)) and a petition and response in an original proceeding in the court of appeals: 15.000 words if computer generated, and 50 pages if not. In a civil case in the court of appeals, the aggregate of all briefs filed by a party must not exceed 27,000 words if computer-generated, and 90 pages if not.

(C) A reply brief in an appellate court and a reply to a response to a petition in an original proceeding in the court of appeals: 7,500 words if computer-generated, and 25 pages if not.

(D) A petition and response in an original proceeding in the Supreme Court, a petition for review and response in the Supreme Court, a petition for discretionary review and response in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.

(E) A reply to a response to a petition for review in the Supreme Court, a reply to a response to a petition in an original proceeding in the Supreme Court, and a reply to a response to a petition for discretionary review in the Court of Criminal Appeals: 2.400 words if computer-generated, and 8 pages if not.

(3) Certificate of Compliance. A computer-generated document that is subject to a word limit under this rule must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(4) Extensions. A court may, on motion, permit a document that exceeds the prescribed limit.

(j) Electronically Filed Documents. An electronically filed document must:

(1) be in text-searchable portable document format (PDF);

(2) be directly converted to PDF rather than scanned, if possible;

(3) not be locked;

(4) be combined with any appendix into one computer file, unless that file would exceed the size limit prescribed by the electronic file manager; and

(5) otherwise comply with the Technology Standards promulgated by the Judicial Committee on Information Technology and approved by the Supreme Court.

(k) Nonconforming Documents. If a document fails to conform with these rules, the court may strike the document or identify the error and permit the party to resubmit the document in a conforming format by a specified deadline.

(Amended by Order Aug. 10, 2012, eff. Dec. 1, 2012; Order Nov. 13, 2012, eff. Dec. 1, 2012; Order March 4, 2013, eff. March 4, 2013; Order Aug. 16, 2013, eff. Jan. 1, 2014; Order Dec. 13, 2013, eff. Jan. 1, 2014; Order March 4, 2013, eff. March 4, 2013.)

Comment to 2012 Change: Rule 9 is revised to consolidate all length limits and establish word limits for documents produced on a computer. All documents produced on a computer must comply with the word limits. Page limits are retained for documents that are typewritten or otherwise not produced on a computer.

9.5. Service.

(a) Service of All Documents Required. At or before the time of a document's filing, the filing party must serve a copy on all parties to the proceeding. Service on a party represented by counsel must be made on that party's lead counsel. Except in original proceedings, a party need not serve a copy of the record.

(b) Manner of Service.

(1) Documents Filed Electronically. A document filed electronically under Rule 9.2 must be served electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager. If the email address of the party or attorney to be served is not on file with the electronic filing manager, the document may be served on that party or attorney under subparagraph (2).

(2) Documents Not Filed Electronically. A document that is not filed electronically may be served in person, by mail, by commercial delivery service, by fax, or by email. Personal service includes delivery to any responsible person at the office of the lead counsel for the party served.

(c) When Complete.

(1) Service by mail is complete on mailing.

(2) Service by commercial delivery service is complete when the document is placed in the control of the delivery service.

(3) Service by fax is complete on receipt.

(4) Electronic service is complete on transmission of the document to the serving party's electronic filing service provider. The electronic filing manager will send confirmation of service to the serving party.

(d) Proof of Service. A document presented for filing must contain a proof of service in the form of either an acknowledgment of service by the person served or a certificate of service. Proof of service may appear on or be affixed to the filed document. The clerk may permit a document to be filed without proof of service, but will require the proof to be filed promptly.

(e) Certificate Requirements. For a document filed electronically in a civil case, an automated certificate of service generated by the filing party's electronic filing service provider suffices. For a document not filed electronically in a civil case or for any document filed in a criminal case, a certificate of service must be signed by the person who made the service and must state:

(1) the date and manner of service;

(2) the name and address of each person served; and

(3) if the person served is a party's attorney, the name of the party represented by that attorney.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003; Order Aug. 16, 2013, eff. Jan. 1, 2014; Order Dec. 13, 2013, eff. Jan. 1, 2014; Tex. Sup. Ct. Misc. Docket No. 23-9082, Oct. 3, 2023, expected eff. Feb. 1, 2024 and Tex. Sup. Ct. Misc. Docket No. 24-9003, Feb. 6, 2024, eff. March 1, 2024.)

Comment to 2002 change: The change clarifies that the filing party must serve a copy of the document filed on all other parties, not only in an appeal or review, but in original proceedings as well. The rule applies only to filing *parties*. Thus, when the clerk or court reporter is responsible for filing the record, as in cases on appeal, a copy need not be served on the parties. The rule for original civil proceedings, in which a party is responsible for filing the record, is stated in subdivision 52.7.

9.6. Communications With the Court.

Parties and counsel may communicate with the appellate court about a case only through the clerk.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 4. Subdivision 9.4, prescribing the form of documents filed in the appellate courts, is changed and the form to be used is stated in significantly more detail. Former subdivisions (f) and (g), regarding service of documents, are merged into subdivision 9.5. Former Rule 6 is included as subdivision 9.6, but no substantive change is made. Other changes are made throughout the rule. Electronic filing is authorized by §§ 51.801-.807 of the Government Code.

9.7. Adoption by Reference.

Any party may join in or adopt by reference all or any part of a brief, petition, response, motion, or other document filed in an appellate court by another party in the same case.

(Amended by Order Dec. 23, 2002 eff. Jan. 1, 2003.)

Comment to 2002 change: Subdivision 9.7 is added to provide express authorization for the practice of adopting by reference all or part of another party's filing.

9.8. Protection of Minor's identity in parental-rights termination cases or juvenile court cases.

(a) Alias Defined. For purposes of this rule, an alias means one or more of a person's initials or fictitious name, used to refer to the person.

(b) Parental-Rights Termination Cases.

(1) except for a docketing statement, in all papers submitted to the court, including all appendix items submitted with a brief, petition, or motion:

(A) a minor must be identified only by an alias unless the court orders otherwise;

(B) the court may order that a minor's parent or other family member be identified only by an alias if necessary to protect a minor's identity; and

(C) all documents must be redacted accordingly;

(2) the court must, in its opinion, use an alias to refer to a minor, and if necessary to protect the minor's identity, to the minor's parent or other family member.

(c) Juvenile Court Cases. In an appeal or an original proceeding in an appellate court, including all appendix items submitted with a brief, petition, or motion;

(1) except for a docketing statement, in all papers submitted to the court, including all appendix items submitted with a brief, petition, or motion:

(A) a minor must be identified only by an alias;

(B) a minor's parent of other family member must be identified only by an alias; and

(C) all documents must be redacted accordingly;

(2) the court must, in its opinion, use an alias to refer to a minor and to the minor's parent or other family member.

(d) No Alteration of Appellate Record. Nothing in this rule permits alteration of the original appellate record except as specifically authorized by court order.

(Adopted by Order March 10, 2008 eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

9.9. Privacy Protection for Documents Filed in Civil Cases.

(a) Sensitive Data Defined. Sensitive data consists of:

(1) a driver's license number, passport number, social security number, tax identification number or similar government-issued personal identification number;

(2) a bank account number, credit card number, or other financial account number; and

(3) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed.

(b) Filing of Documents Containing Sensitive Data Prohibited. Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document containing sensitive data may not be filed with a court unless the sensitive data is redacted, except for the record in an appeal under Section Two.

(c) Redaction of Sensitive Data; Retention Requirement. Sensitive data must be redacted by using the letter "X" in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the appeal and any related proceedings filed within six months of the date the judgment is signed.

(d) Notice to Clerk. If a document must contain sensitive data, the filing party must notify the clerk by:

(1) designating the document as containing sensitive data when the document is electronically filed; or

(2) if the document is not electronically filed, by including, on the upper lefthand side of the first page, the phrase: "NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA."

(e) Restriction on Remote Access. Documents that contain unredacted sensitive data in violation of this rule must not be posted on the Internet.

(Adopted by Order Aug. 16, 2013, eff. Jan. 1, 2014; Order Dec. 13, 2013, eff. Jan. 1, 2014.)

Comment to 1997 change: This is former Rule 4. Subdivision 9.4, prescribing the form of documents filed in the appellate courts, is changed and the form to be used is stated in significantly more detail. Former subdivisions (f) and (g), regarding service of documents, are merged into subdivision 9.5. Former Rule 6 is included as subdivision 9.6, but no substantive change is made. Other changes are made throughout the rule. Electronic filing is authorized by §§ 51.801-.807 of the Government Code.

Comment to 2002 change: The change [to Rule 9.5(a)] clarifies that the filing party must serve a copy of the document filed on all other parties, not only in an appeal or review, but in original proceedings as well. The rule applies only to filing parties. Thus, when the clerk or court reporter is responsible for filing the record, as in cases on appeal, a copy need not be served on the parties. The rule for original civil proceedings, in which a party is responsible for filing the record, is stated in subdivision 52.7. Subdivision 9.7 is added to provide express authorization for the practice of adopting by reference all or part of another party's filing.

Comment to 2008 change: Subdivision 9.3 is amended to reduce the number of copies of a motion for extension of time or response filed in the Supreme Court. Subdivision 9.8 is new. To protect the privacy of minors in suits affecting the parent-child relationship (SAPCR), including suits to terminate parental rights, Section 109.002(d) of the Family Code authorizes appellate courts, in their opinions, to identify parties only by fictitious names or by initials. Similarly, Section 56.01(j) of the Family Code prohibits identification of a minor or a minor's family in an appellate opinion related to juvenile court proceedings. But as appellate briefing becomes more widely available through electronic media sources, appellate courts' efforts to protect minors' privacy by disguising their identities in appellate opinions may be defeated if the same children are fully identified in briefs and other court papers available to the public. The rule provides protection from such disclosures. Any fictitious name should not be pejorative or suggest the person's true identity. The rule does not limit an appellate court's authority to disguise parties' identities in appropriate circumstances in other cases. Although appellate courts are authorized to enforce the rule's provisions requiring redaction, parties and amici curiae are responsible for ensuring that briefs and other papers submitted to the court fully comply with the rule.

Comment to 2012 Change: Rule 9 is revised to consolidate all length limits and establish word limits for documents produced on a computer. All documents produced on a computer must comply with the word limits. Page limits are retained for documents that are typewritten or otherwise not produced on a computer.

Comment to 2013 Change: Rule 9 is revised to incorporate rules for electronic filing, in accordance with the Supreme Court's order—Misc. Docket No. 12-9206, amended by Misc. Docket Nos. 13-9092 and 13-9164—mandating electronic filing in civil cases in appellate courts, effective January 1, 2014. In addition, Rule 9.9 is added to provide privacy protection for all documents, both paper and electronic, filed in civil cases in appellate courts.

Technology Standards (These standards apply to documents filed electronically under Texas Rule of Civil Procedure 21 and Texas Rule of Appellate Procedure 9.)

9.10. Privacy Protection for Documents Filed in Criminal Cases

(a) Sensitive Data Defined. Sensitive data consists of:

(1) a driver's license number, passport number, social security number, tax identification number or similar government-issued personal identification number;

(2) bank account number, credit card number, and other financial account number;

(3) a birth date, a home address, and the name of any person who was a minor at the time the offense was committed.

(b) Redacted Filings. Unless a court orders otherwise, an electronic or paper filing with the court, including the contents of any appendices, must not contain sensitive data.

(c) Redaction procedures. Sensitive data must be redacted by using the letter "X" in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filer must retain an unredacted version of the filed document during the pendency of the appeal and any related proceedings filed within three years of the date the judgment is signed. If a district court clerk or appellate court clerk discovers unredacted sensitive data in the record, the clerk shall notify the parties and seek a ruling from the court.

(d) Certification. The filing of a document constitutes a certification by the filer that the document complies with paragraphs (a) and (b) of this rule.

(e) Reference List. If a filer believes any information described in paragraph (a) of this rule is essential to a document or that the document would be confusing without the information, the filer may submit the information to the court in a reference list that is in paper form and under seal. The reference list must specify an appropriate identifier that corresponds uniquely to each item listed. Any reference in the document to a listed identifier will be construed to refer to the corresponding item of information. If the filer provides a reference list pursuant to this rule, the front page of the document containing the redacted information must indicate that the reference list has been, or will be, provided. On its own initiative, the court may order a sealed reference list in any case.

(f) Sealed materials. Materials that are required by statute to be sealed, redacted, or kept confidential, such as the items set out in Articles 35.29 (Personal Information About Jurors), 38.45 (Evidence Depicting or Describing Abuse of or Sexual Conduct by Child or Minor), and 42.12, § 9(j), must be treated in accordance with the pertinent statutes and shall not be publicly available on the Internet. A court may also order that a document be filed under seal in paper form or electronic form, without redaction. The court may later unseal the document or order the filer to provide a redacted version of the document for the public record. If a court orders material sealed, whether it be sensitive data or other materials, the court's sealing order must be affixed to the outside of the sealed container if the sealed material is filed in paper form, or be the first document that appears if filed in electronic

form. Sealed portions of the clerk's and reporter's records should be clearly marked and separated from unsealed portions and tendered as separate records, whether in paper form or electronic form. Sealed material shall not be available either on the Internet or in other form without court order.

(Adopted by Order Dec. 13, 2013, eff. Jan. 1, 2014.)

RULE 10. MOTIONS IN THE APPELLATE COURTS.

10.1. Contents of Motions; Response.

(a) Motion. Unless these rules prescribe another form, a party must apply by motion for an order or other relief. The motion must:

(1) contain or be accompanied by any matter specifically required by a rule governing such a motion;

(2) state with particularity the grounds on which it is based;

(3) set forth the order or relief sought;

(4) be served and filed with any brief, affidavit, or other paper filed in support of the motion; and

(5) in civil cases, except for motions for rehearing and motions for en banc reconsideration, contain or be accompanied by a certificate stating that the filing party conferred, or made a reasonable attempt to confer, with all other parties about the merits of the motion and whether those parties oppose the motion.

(b) Response. A party may file a response to a motion at any time before the court rules on the motion or by any deadline set by the court. The court may determine a motion before a response is filed.

(Amended by Order March 10, 2008 eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Order May 25, 2021, eff. Oct. 1, 2021.)

Comment to 2008 change: It is presumed that non-movants will oppose the relief sought in motions for rehearing and motions for en banc reconsideration. To encourage consistent application of the certificate-of-conference requirement, Rule 10.1(a)(5) is amended—and Rule 49.11 is added—to exempt those motions from the certificate requirement.

10.2. Evidence on Motions.

A motion need not be verified unless it depends on the following types of facts, in which case the motion must be supported by affidavit or other satisfactory evidence. The types of facts requiring proof are those that are:

(a) not in the record;

(b) not within the court's knowledge in its official capacity; and

(c) not within the personal knowledge of the attorney signing the motion.

(Amended by Order March 10, 2008 eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

10.3. Determining Motions.

(a) Time for Determination. A court should not hear or determine a motion until 10 days after the motion was filed, unless:

(1) the motion is to extend time to file a brief, a petition for review, or a petition for discretionary review;

(2) the motion states that the parties have conferred and that no party opposes the motion; or

(3) the motion is an emergency.

(b) Reconsideration. If a motion is determined prematurely, any party adversely affected may request the court to reconsider its order.

10.4. Power of Panel or Single Justice or Judge to Entertain Motions.

(a) Single Justice. In addition to the authority expressly conferred by these rules or by law, a single justice or judge of an appellate court may grant or deny a request for relief that these rules allow to be sought by motion. But in a civil case, a single justice should not do the following:

(1) act on a petition for an extraordinary writ; or

(2) dismiss or otherwise determine an appeal or a motion for rehearing or en banc reconsideration..

(b) Panel. An appellate court may provide, by order or rule, that a panel or the full court must act on any motion or class of motions.

(Amended by Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

10.5. Particular Motions.

(a) Motions Relating to Informalities in the Record. A motion relating to informalities in the manner of bringing a case into court must be filed within 30 days after the record is filed in the court of appeals. The objection, if waivable, will otherwise be deemed waived.

(b) Motions to Extend Time.

(1) Contents of Motion in General. All motions to extend time, except a motion to extend time for filing a notice of appeal, must state:

(A) the deadline for filing the item in question;

(B) the length of the extension sought;

(C) the facts relied on to reasonably explain the need for an extension; and

(D) the number of previous extensions granted regarding the item in question.

(2) Contents of Motion to Extend Time to File Notice of appeal. A motion to extend the time for filing a notice of appeal must:

(A) comply with (1)(A) and (C);

(B) identify the trial court;

(C) state the date of the trial court's judgment or appealable order; and

(D) state the case number and style of the case in the trial court.

(3) Contents of Motion to Extend Time to File Petition for Review or Petition for Discretionary Review. A motion to extend time to file a petition for review or petition for discretionary review must also specify:

(A) the court of appeals;

(B) the date of the court of appeals' judgment; and

(C) the case number and style of the case in the court of appeals; and

(D) the date every motion for rehearing or en banc reconsideration was filed, and either the date and nature of the court of appeals' ruling on the motion, or that if remains pending.

(c) Motions to Postpone Argument. Unless all parties agree, or unless sufficient cause is apparent to the court, a motion to postpone argument of a case must be supported by sufficient cause.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order Aug. 20, 2008, eff. Sept. 1, 2008)

Comment to 1997 change: This is former Rule 19. Under subdivision 10.1, a response may be filed at any time before the court rules on the motion. The provision of former subdivision (b) regarding docketing motions is incorporated in Rule 12.2. The provision of former subdivision (b) for noting attorneys' names on the docket is incorporated in Rule 6.2. Former subdivision (c), requiring the clerk to send notices of the filing of motions is deleted as unnecessary because the parties must serve all motions under Rule 9.5. Subdivision 10.2 is amended to eliminate the requirement of an oath where the facts are within the personal knowledge of the attorney. Subdivision 10.5 is new and incorporates the provisions of other rules concerning motions, as follows: 10.5(a) from former Rule 71; 10.5(b) from former Rules 73, 130(d), and 160; and 10.5(c) from former Rule 70. Other changes are made.

Comment to 2008 change: It happens so infrequently that a non-movant does not oppose a motion for rehearing on en banc reconsideration that such motions are excepted from the certificate-of-conference requirement in Subdivision 10.1(a)(5). Subdivision 10.2 is revised to clarify that facts supporting a motion need not be verified by the filer if supporting evidence is in the record, the facts are known to the court, or the filer has personal knowledge of them. Subdivision 10.5(b)(3)(D) is added.

RULE 11. AMICUS CURIAE BRIEFS.

An appellate clerk may receive, but not file, an amicus curiae brief. But the court for good cause may refuse to consider the brief and order that it be returned. An amicus curiae brief must:

(a) comply with the briefing rules for parties;

(b) identify the person or entity on whose behalf the brief is tendered;

(c) disclose the source of any fee paid or to be paid for preparing the brief; and

(d) certify that copies have been served on all parties.

(Amended by Order Dec. 23, 2002 eff. Jan. 1, 2003.)

Comment to 2002 change: The change expressly recognizes that a court may refuse to consider an amicus curiae brief for good cause.

RULE 12. DUTIES OF APPELLATE CLERK.

12.1. Docketing the Case.

On receiving a copy of the notice of appeal, the petition for review, the petition for discretionary review, the petition in an original proceeding, or a certified question, the appellate clerk must:

(a) endorse on the document the date of receipt;

(b) collect any filing fee;

(c) docket the case;

(d) notify all parties of the receipt of the document; and

(e) if the document filed is a petition for review filed in the Supreme Court, notify the court of appeals clerk of the filing of the petition.

12.2. Docket Numbers.

The clerk must put the case's docket number on each item received in connection with the case and must put the docket number on the envelope in which the record is stored.

(a) Numbering System. Each case filed in a court of appeals must be assigned a docket number consisting of the following four parts, separated by hyphens:

(1) the number of the court of appeals district;

(2) the last two digits of the year in which the case is filed;

(3) the number assigned to the case; and

(4) the designation "CV" for a civil case or "CR" for a criminal case.

(b) Numbering Order. Each case must be docketed in the order of its filing.

(c) Multiple Notices of Appeal. All notices of appeal filed in the same case must be given the same docket number.

(d) Appeals Not Yet Filed. A motion relating to an appeal that has been perfected but not yet filed must be docketed and assigned a docket number that will also be assigned to the appeal when it is filed.

12.3. Custody of Papers.

The clerk must safeguard the record and every other item filed in a case. If the record or any part of it or any other item is missing, the court will make an order for the replacement of the record or item that is just under the circumstances.

12.4. Withdrawing Papers.

The clerk may permit the record or other filed item to be taken from the clerk's office at any time, on the following conditions:

(a) the clerk must have a receipt for the record or item;

(b) the clerk should make reasonable conditions to ensure that the withdrawn record or item is preserved and returned;

(c) the clerk may demand the return of the record or item at any time;

(d) after the case is submitted to the court and before the court's decision, the record cannot be withdrawn;

(e) after the court's decision, the losing party must be given priority in withdrawing the record;

(f) the clerk may not allow original documents filed under Rule 34.5(f) or original exhibits filed under Rule 34.6(g) to be taken from the clerk's office;

(g) if the court allows an original document or exhibit to be taken by a party and it is not returned, the court may accept the opposing party's statement concerning the document's or exhibit's nature and contents;

(h) withdrawn material must not be removed from the court's jurisdiction; and

(i) the court may, on the motion of any party or its own initiative, modify any of these conditions.

12.5. Clerk's Duty to Account.

The clerk of an appellate court who receives money due another court must promptly pay the money to the court to whom it is due. This rule is enforceable by the Supreme Court.

12.6. Notices of Court's Judgments and Orders.

In any proceeding, the clerk of an appellate court must promptly send a notice of any judgment, mandate, or other court order to all parties to the proceeding.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003.)

Comment to 2002 change: Subdivision 12.6 is amended to require the clerk to notify the parties of all of the court's rulings, including the mandate.

RULE 13. COURT REPORTERS AND COURT RECORDERS.

13.1. Duties of Court Reporters and Recorders.

The official court reporter or court recorder must:

(a) unless excused by agreement of the parties, attend court sessions and make a full record of the proceedings;

(b) take all exhibits offered in evidence during a proceeding and ensure that they are marked;

(c) file all exhibits with the trial court clerk after a proceeding ends;

(d) perform the duties prescribed by Rules 34.6 and 35; and

(e) perform other acts relating to the reporter's or recorder's official duties, as the trial court directs.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003.)

Comment to 2002 change: Subdivision 13.1(a) is amended merely for clarification.

13.2. Additional Duties of Court Recorder.

The official court recorder must also:

(a) ensure that the recording system functions properly throughout the proceeding and that a complete, clear, and transcribable recording is made;

(b) make a detailed, legible log of all proceedings being recorded, showing:

- **(1)** the number and style of the case before the court;
- **(2)** the name of each person speaking;
- **(3)** the event being recorded such as the voir dire, the opening statement, direct and cross-examinations, and bench conferences;
- **(4)** each exhibit offered, admitted, or excluded;
- **(5)** the time of day of each event; and
- **(6)** the index number on the recording device showing where each event is recorded;

(c) after a proceeding ends, file with the clerk the original log;

(d) have the original recording stored to ensure that it is preserved and is accessible; and

(e) ensure that no one gains access to the original recording without the court's written order.

13.3. Priorities of Reporters.

The trial court must help ensure that the court reporter's work is timely accomplished by setting work priorities. The reporter's duties relating to proceedings before the court take preference over other work.

13.4. Report of Reporters.

To aid the trial court in setting priorities under 13.3, each court reporter must give the trial court a monthly written report showing the amount and nature of the business pending in the reporter's office. A copy of this report must be filed with the appellate clerk of each district in which the court sits.

13.5 Appointing Deputy Reporter.

When the official court reporter is unable to perform the duties in 13.1 or 13.2 because of illness, press of official work, or unavoidable absence or disability, the trial court may designate a deputy reporter. If the court appoints a deputy reporter, that person must file with the trial court clerk a document stating:

(a) the date the deputy worked;

(b) the court in which the deputy worked;

(c) the number and style of the case on which the deputy worked; and

(d) the deputy's name, mailing address, telephone number, fax number, if any, email address, and Certified Shorthand Reporter number.

(Amended by Tex. Sup. Ct. Misc. Docket No. 19-9061, Aug. 5, 2019, and Tex. Sup. Ct. Misc. Docket No. 20-003, Feb. 11, 2020, eff. Sept. 1, 2019.)

13.6. Filing of Notes in a Criminal Case.

When a defendant is convicted and sentenced, or is granted deferred adjudication for a felony other than a state jail felony, and does not appeal, the court reporter must—within 20 days after the time to perfect the appeal has expired—file the untranscribed notes or the original recording of the proceeding with the trial court clerk. The trial court clerk need not retain the notes beyond 15 years of their filing date.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Former Rules 11 and 12 are merged. Former Rules 11(a), (c) and (d) now appear as subdivisions 13.1, 13.5 and 13.6. Former Rule 11(b) is omitted as unnecessary. The provisions of former Rule 12(a) are moved to Rule 35.3. Former Rules 12(b) and (c) now appear as subdivisions 13.3 and 13.4. The rule is made to apply to court recorders as well as court reporters. Paragraph 13.1(a) merges paragraphs (a)(1) and (2) of former Rule 11, and now requires the reporter to make a record of voir dire and closing argument unless excused by agreement of the parties. Paragraph 13.1(b) is new, but codifies current practice. Subdivision 13.2 is new and specifies rules for electronic recording of proceedings. A provision requiring a deputy court reporter to file with the trial court clerk a document identifying the proceedings in which the reporter worked is included in paragraph 13.5. Other changes are made.

RULE 14. RECORDING AND BROADCASTING COURT PROCEEDINGS.

14.1. Recording and Broadcasting Permitted.

An appellate court may permit courtroom proceedings to be broadcast, televised, recorded, or photographed in accordance with this rule.

14.2. Procedure.

(a) Request to Cover Court Proceeding.

(1) A person wishing to broadcast, televise, record, or photograph a court proceeding must file with the court clerk a request to cover the proceeding. The request must state:

(A) the case style and number;

(B) the date and time when the proceeding is to begin;

(C) the name of the requesting person or organization;

(D) the type of coverage requested (for example, televising or photographing); and

(E) the type and extent of equipment to be used.

(2) A request to cover argument of a case must be filed no later than five days before the date the case is set for argument and must be served on all parties to the case. A request to cover any other proceeding must be filed no later than two days before the date when the proceeding is to begin.

(b) Response. Any party may file a response to the request. If the request is to cover argument, the response must be filed no later than two days before the date set for argument. If a party objects to coverage of the argument, the response should state the injury that will allegedly result from coverage.

(c) Court May Shorten Time. The court may, in the interest of justice, shorten the time for filing a document under this rule if no party or interested person would be unduly prejudiced.

(d) Decision of Court. In deciding whether to allow coverage, the court may consider information known ex parte to the court. The court may allow, deny, limit, or terminate coverage for any reason the court considers necessary or appropriate, such as protecting the parties' rights or the dignity of the court and ensuring the orderly conduct of the proceedings.

14.3. Equipment and Personnel.

The court may, among other things:

(a) require that a person seeking to cover a proceeding demonstrate or display the equipment that will be used;

(b) prohibit equipment that produces distracting sound or light;

(c) prohibit signal lights or devices showing when equipment is operating, or require their concealment;

(d) prohibit moving lights, flash attachments, or sudden lighting changes;

(e) require the use of the courtroom's existing video, audio, and lighting systems, if any;

(f) specify the placement of personnel and equipment;

(g) determine the number of cameras to be allowed in the courtroom; and

(h) require pooling of equipment if more than one person wishes to cover a proceeding.

14.4. Enforcement.

The court may sanction a violation of this rule by measures that include barring a person or organization from access to future coverage of proceedings in that court for a defined period.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 21. The rule is rewritten and now allows recording and broadcasting of court proceedings at the discretion of the court and subject to the stated guidelines.

RULE 15. ISSUANCE OF WRIT OR PROCESS BY APPELLATE COURT.

15.1. In General.

(a) Signature Under Seal. A writ or process issuing from an appellate court must bear the court's seal and be signed by the clerk.

(b) To Whom Directed; by Whom Served. Unless a rule or statute provides otherwise, the writ or process must be directed to the person or court to be served. The writ or process may be served by the sheriff, constable, or other peace officer whose jurisdiction includes the county in which the person or court to be served may be found.

(c) Return; Lack of Execution; Simultaneous Writs. The writ or process must be returned to the issuing court according to the writ's direction. If the writ or process is not executed, the clerk may issue another writ or process if requested by the party who requested the former writ or process. At a party's request, the clerk may issue two or more writs simultaneously.

15.2. Appearance Without Service; Actual Knowledge.

A party who appears in person or by attorney in an appellate court proceeding—or who has actual knowledge of the court's opinion, judgment, or order related to a writ or process—is bound by the opinion, judgment, or order to the same extent as if personally served under 15.1.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 17. Nonsubstantive changes are made.

RULE 16. DISQUALIFICATION OR RECUSAL OF APPELLATE JUDGES.

16.1. Grounds for Disqualification.

The grounds for disqualification of an appellate court justice or judge are determined by the Constitution and laws of Texas.

16.2. Grounds for Recusal.

The grounds for recusal of an appellate court justice or judge are the same as those provided in the Rules of Civil Procedure. In addition, a justice or judge must recuse in a proceeding if it presents a material issue which the justice or judge participated in deciding while serving on another court in which the proceeding was pending.

16.3. Procedure for Recusal.

(a) Motion. A party may file a motion to recuse a justice or judge before whom the case is pending. The motion must be filed promptly after the party has reason to believe that the justice or judge should not participate in deciding the case.

(b) Decision. Before any further proceeding in the case, the challenged justice or judge must either remove himself or herself from all participation in the case or certify the matter to the entire court, which will decide the motion by a majority of the remaining judges sitting en banc. The challenged justice or judge must not sit with the remainder of the court to consider the motion as to him or her.

(c) Appeal. An order of recusal is not reviewable, but the denial of a recusal motion is reviewable.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Former Rules 15 and 15a are merged. Former Rule 15a appears as subdivision 16.2. For grounds for disqualification, reference is made to the Constitution and statutes rather than the Rules of Civil Procedure. The procedure for disqualification is not specified. The nature of prior participation in a proceeding

that requires recusal is clarified. Former subdivision (b) of Rule 15, requiring service of the motion, is omitted as unnecessary. The remaining subdivisions of former Rule 15 are contained in subdivision 16.3. Other changes are made.

RULE 17. COURT OF APPEALS UNABLE TO TAKE IMMEDIATE ACTION.

17.1. Inability to Act.

A court of appeals is unable to take immediate action if it cannot—within the time when action must be taken—assemble a panel because members of the court are ill, absent, or unavailable. A justice who is disqualified or recused is unavailable. A court of appeals' inability to act immediately may be established by certificate of the clerk, a member of the court, or a party's counsel, or by affidavit of a party.

17.2. Nearest Available Court of Appeals.

If a court of appeals is unable to take immediate action, the nearest court of appeals that is able to take immediate action may do so with the same effect as the other court. The nearest court of appeals is the one whose courthouse is nearest—measured by a straight line—the courthouse of the trial court.

17.3. Further Proceedings.

After acting or refusing to act, the nearest court of appeals must promptly send a copy of its order, and the original or a copy of any document presented to it, to the other court, which will conduct any further proceedings in the matter.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 16. The rule is rewritten and simplified.

RULE 18. MANDATE.

18.1. Issuance.

The clerk of the appellate court that rendered the judgment must issue a mandate in accordance with the judgment and send it to the clerk of the court to which it is directed and to all parties to the proceeding when one of the following periods expires:

(a) In the Court of Appeals.

(1) Ten days after the time has expired for filing a motion to extend time to file a petition for review or a petition for discretionary review if:

(A) no timely petition for review or petition for discretionary review has been filed;

(B) no timely filed motion to extend time to file a petition for review or petition for discretionary review is pending; and

(C) in a criminal case, the Court of Criminal Appeals has not granted review on its own initiative.

(2) Ten days after the time has expired for filing a motion to extend time to file a motion for rehearing of a denial, refusal, or dismissal of a petition for review, or a refusal or dismissal of a petition for discretionary review, if no timely filed motion for rehearing or motion to extend time is pending.

(b) In the Supreme Court and the Court of Criminal Appeals. Ten days after the time has expired for filing a motion to extend time to file a motion for rehearing if no timely filed motion for rehearing or motion to extend time is pending.

(c) Agreement to Issue. The mandate may be issued earlier if the parties so agree, or for good cause on the motion of a party.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003.)

Comment to 2002 change: Subdivision 18.1 is amended consistent with the change in subdivision 12.6.

18.2. Stay of Mandate.

A party may move to stay issuance of the mandate pending the United States Supreme Court's disposition of a petition for writ of certiorari. The motion must state the grounds for the petition and the circumstances requiring the stay. The appellate court authorized to issue the mandate may grant a stay if it finds that the grounds are substantial and that the petitioner or others would incur serious hardship from the mandate's issuance if the United States Supreme Court were later to reverse the judgment. In a criminal case, the stay will last for no more than 90 days, to permit the timely filing of a petition for writ of certiorari. After that period and others mentioned in this rule expire, the mandate will issue.

18.3. Trial Court Case Number.

The mandate must state the trial court case number.

18.4. Filing of Mandate.

The clerk receiving the mandate will file it with the case's other papers and note it on the docket.

18.5. Costs.

The mandate will be issued without waiting for costs to be paid. If the Supreme Court declines to grant review, Supreme Court costs must be included in the court of appeals' mandate.

18.6. Mandate in Accelerated Appeals.

The appellate court's judgment on an appeal from an interlocutory order takes effect when the mandate is issued. The court may issue the mandate with its judgment or delay the mandate until the appeal is finally disposed of. If the mandate is issued, any further proceeding in the trial court must conform to the mandate.

18.7. Recall of Mandate.

If an appellate court vacates or modifies its judgment or order after issuing its mandate, the appellate clerk must promptly notify the clerk of the court to which the mandate was directed and all parties. The mandate will have no effect and a new mandate may be issued.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is a new rule that combines the provisions of former Rules 43(g), 86, 186, 231, and 232.

RULE 19. PLENARY POWER OF THE COURTS OF APPEALS AND EXPIRATION OF TERM.

19.1. Plenary Power of Courts of Appeals.

A court of appeals' plenary power over its judgment expires:

(a) 60 days after judgment if no timely filed motion for rehearing or timely filed motion en banc reconsideration, or timely filed motion to extend time to file such a motion, is then pending; or

(b) 30 days after the court overrules all timely filed motions for rehearing or en banc reconsideration, and all timely filed motions to extend time to file such a motion.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003; Order March 10, 2008, eff. Sept. 1, 2008; Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

Comment to 1997 change: This is a new rule except the provisions of former Rule 234 are incorporated in subdivision 19.4.

Comment to 2002 change: Subdivision 19.1 is 23 amended to clarify that a motion for en banc reconsideration extends the court of appeals' plenary power in the same manner as a motion for rehearing addressed to the panel of justices who rendered the judgment or under consideration.

Comment to 2008 change: Subdivision 19.1 is changed, consistent with other changes in the rules, to specifically address a motion for en banc reconsideration and treat it as having the effect of a motion for rehearing.

19.2. Plenary Power Continues After Petition Filed.

In a civil case, the court of appeals retains plenary power to vacate or modify its judgment during the periods prescribed in 19.1 even if a party has filed a petition for review in the Supreme Court.

19.3. Proceedings After Plenary Power Expires.

After its plenary power expires, the court cannot vacate or modify its judgment. But the court may:

(a) correct a clerical error in its judgment or opinion;

(b) issue and recall its mandate as these rules provide;

(c) enforce or suspend enforcement of its judgment as these rules or applicable law provide;

(d) order or modify the amount and type of security required to suspend a judgment, and decide the sufficiency of the sureties, under Rule 24; and

(e) order its opinion published in accordance with Rule 47.

19.4. Expiration of Term.

The expiration of the appellate court's term does not affect the court's plenary power or its jurisdiction over a case that is pending when the court's term expires.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is a new rule except the provisions of former Rule 234 are incorporated in subdivision 19.4.

RULE 20. WHEN PARTY IS INDIGENT.

20.1. Civil Cases.

(a) *Costs Defined*. In this rule, "costs" mean filing fees charged by the appellate court. Fees charged for preparation of the appellate record are governed by Texas Rule of Civil Procedure 145.

(b) *When a Statement Was Filed in the Trial Court*.

(1) *General Rule; Status in Trial Court Carries Forward*. A party who filed a Statement of Inability to Afford Payment of Court Costs in the trial court is not required to pay costs in the appellate court unless the trial court overruled the party's claim of indigence in an order that complies with Texas Rule of Civil Procedure 145. A party is not required to pay costs in the appellate court if the trial court ordered the party to pay partial costs or to pay costs in installments.

(2) *Establishing the Right to Proceed Under the General Rule*. To establish the right to proceed without payment of costs under (1), a party must communicate to the appellate court clerk in writing that the party is presumed indigent under this rule. In an appeal under Section Two of these rules, the applicability of the presumption should be stated in the notice of appeal and in the docketing statement.

(3) *Exception; Material Change in Circumstances*. An appellate court may permit a party who is not entitled to proceed under (1) to proceed without payment of costs if the party establishes that the party's financial circumstances have materially changed since the date of the trial court's order under Texas Rule of Civil Procedure 145.

(A) *Requirements*. The party must file a motion in the appellate court alleging that the party's financial circumstances have materially changed since the date of the trial court's order and a current Statement of Inability to Afford Payment of Court Costs that complies with Texas Rule of Civil Procedure 145. The Statement that was filed in the trial court does not meet the requirements of this rule.

(B) *Action by Appellate Court*. The appellate court may decide the motion based on the record or refer the motion to the trial court with instructions to hear evidence and issue findings of fact. If a motion is referred to the trial court, the appellate court must review the trial court's findings and the record of the hearing before ruling on the motion.

(c) *When No Statement Was Filed in the Trial Court*. An appellate court may permit a party who did not file a Statement of Inability to Afford Payment of Court Costs in the trial court to proceed without payment of costs. The court may require the party to file a Statement in the appellate court. If the court denies the party's request to proceed without payment of costs, it must do so in a written order.

(Amended by Order March 10, 2008 eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Order Aug. 31, 2011, eff. Sept. 1, 2011; Order Dec. 12, 2011, eff. March 1, 2012; Order Feb. 13, 2012, eff. March 1, 2012; Tex. Sup. Ct. Misc. Docket No. 16-9056, eff. Sept. 1, 2016; Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016.)

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

Comment to 2016 Change: The rule has been rewritten so that it only governs filing fees and any other fee charged by the appellate court. Texas Rule of Civil Procedure 145 governs a party's claim that the party is unable to afford costs for preparation of the appellate record.

Because appellate filing fees are minimal, a party that filed a Statement of Inability to Afford Payment of Court Costs in the trial court is not required to file a new Statement in the appellate court unless the trial court made affirmative findings under Texas Rule of Civil Procedure 145 that the party is able to afford all court costs and to pay those costs as they are incurred. Furthermore, because a determination of indigence by the trial court carries forward to appeal in all cases, Family Code section 107.013 is satisfied.

Experience has shown that, in most cases, a party's financial circumstances do not change substantially between the trial court proceedings and the appellate court proceedings. Nonetheless, (b)(3) permits a party whom the trial court determined is able to afford all costs to demonstrate to the appellate court that the party's circumstances have changed since the trial court's ruling and that the party is unable to afford appellate filing fees.

Comment to 2008 change: Subdivision 20.1(a) is added to provide, as in Texas Rule of Civil Procedure 145, that an affidavit of indigence accompanied by an IOLTA or other Texas Access to Justice Foundation certificate cannot be challenged. Subdivision 20.1(c)(1) is revised to clarify that an affidavit of indigence filed to proceed in the trial court without advance payment of costs is insufficient to establish indigence on appeal; a separate affidavit must be filed with or before the notice of appeal. Subdivision 20.1(c)(3) is revised to provide that an appellate court must give an appellant who fails to file a proper appellate indigence affidavit notice of the defect and an opportunity to cure it before dismissing the appeal or affirming the judgment on that basis. *See Higgins v. Randall County Sheriff's Office*, 193 S.W .3d 898 (Tex. 2006). The limiting phrase "under (c)(2)" in Subdivision 20.1(d)(2) is deleted to clarify that the appellate clerk's duty to forward copies of the affidavit to the trial court clerk and the court reporter, along with a notice setting a deadline to contest the affidavit, applies to affidavits on appeal erroneously filed in the appellate court, not only to affidavits in other appellate proceedings properly filed in the appellate court under subdivision 20.1(c)(2). Although Subdivision 3.1(g) defines "court reporter" to include court recorder, subdivision 20.1(e) is amended to make clear that a court recorder can contest an affidavit.

20.2. Criminal Cases.

Within the time for perfecting the appeal, an appellant who is unable to pay for the appellate record may, by motion and affidavit, ask the trial court to have the appellate record furnished without charge. If after hearing the motion the court finds that the appellant cannot pay or give security for the appellate record, the court must order the reporter to transcribe the proceedings. When the court certifies that the appellate record has been furnished to the appellant, the reporter must be paid from the general funds of the county in which the offense was committed, in the amount set by the trial court.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: The rule is new and combines the provisions of former Rules 13(k), 40(a)(3), and 53(j). The procedure for proceeding in civil cases in an appellate court without advance payment of costs, in both appeals and original proceedings, is stated. The information that must be given in the affidavit is prescribed. An extension of time to file the affidavit is now available. The indigent party is no longer required to serve the court reporter, but must file the affidavit with the appropriate clerk who is to notify the court reporter. A contest need not be under oath. Provision is made for later ability to pay the costs. Nonsubstantive changes are made to the rule for criminal cases.

Reference

See also: Civil Practice and Remedies Code § 13.003.

SECTION TWO.
APPEALS FROM TRIAL COURT JUDGMENTS AND ORDERS

RULE 21. NEW TRIALS IN CRIMINAL CASES.

21.1. Definitions.

(a) *New trial* means the rehearing of a criminal action after the trial court has, on the defendant's motion, set aside a finding or verdict of guilt.

(b) *New trial on punishment* means a new hearing of the punishment stage of a criminal action after the trial court has, on the defendant's motion, set aside an assessment of punishment without setting aside a finding or verdict of guilt.

21.2. When Motion for New Trial Required.

A motion for new trial is a prerequisite to presenting a point of error on appeal only when necessary to adduce facts not in the record.

21.3. Grounds.

The defendant must be granted a new trial, or a new trial on punishment, for any of the following reasons:

(a) except in a misdemeanor case in which the maximum possible punishment is a fine, when the defendant has been unlawfully tried in absentia or has been denied counsel;

(b) when the court has misdirected the jury about the law or has committed some other material error likely to injure the defendant's rights;

(c) when the verdict has been decided by lot or in any manner other than a fair expression of the jurors' opinion;

(d) when a juror has been bribed to convict or has been guilty of any other corrupt conduct;

(e) when a material defense witness has been kept from court by force, threats, or fraud, or when evidence tending to establish the defendant's innocence has been intentionally destroyed or withheld, thus preventing its production at trial;

(f) when, after retiring to deliberate, the jury has received other evidence; when a juror has talked with anyone about the case; or when a juror became so intoxicated that his or her vote was probably influenced as a result;

(g) when the jury has engaged in such misconduct that the defendant did not receive a fair and impartial trial; or

(h) when the verdict is contrary to the law and the evidence.

21.4. Time to File and Amend Motion.

(a) To File. The defendant may file a motion for new trial before, but no later than 30 days after, the date when the trial court imposes or suspends sentence in open court.

(b) To Amend. Within 30 days after the date when the trial court imposes or suspends sentence in open court but before the court overrules any preceding motion for new trial, a defendant may, without leave of court, file one or more amended motions for new trial.

21.5. State May Controvert; Effect.

The State may oppose in writing any reason the defendant sets forth in the motion for new trial. The State's having opposed a motion for new trial does not affect a defendant's responsibilities under 21.6.

21.6. Time to Present.

The defendant must present the motion for new trial to the trial court within 10 days of filing it, unless the trial court in its discretion permits it to be presented and heard within 75 days from the date when the court imposes or suspends sentence in open court.

21.7. Types of Evidence Allowed at Hearing.

The court may receive evidence by affidavit or otherwise.

21.8. Court's Ruling.

(a) Time to Rule. The court must rule on a motion for new trial within 75 days after imposing or suspending sentence in open court.

(b) Ruling. In ruling on a motion for new trial, the court may make oral or written findings of fact. The granting of a motion for new trial must be accomplished by written order. A docket entry does not constitute a written order.

(c) Failure to Rule. A motion not timely ruled on by written order will be deemed denied when the period prescribed in (a) expires.

21.9. Granting a new trial.

(a) A court must grant a new trial when it has found a meritorious ground for new trial, but a court must grant only a new trial on punishment when it has found a ground that affected only the assessment of punishment.

(b) Granting a new trial restores the case to its position before the former trial, including, at any party's option, arraignment or pretrial proceedings initiated by that party.

(c) Granting a new trial on punishment restores the case to its position after the defendant was found guilty. Unless the defendant, State, and trial court all agree to a change, punishment in a new trial shall be assessed in accordance with the defendant's original election under article 37.07, § 2(b) of the Code of Criminal Procedure.

(d) A finding or verdict of guilt in the former trial must not be regarded as a presumption of guilt, nor may it be alluded to in the presence of the jury that hears the case on retrial of guilt. A finding of fact or an assessment of punishment in the former trial may not be alluded to in the presence of the jury that hears the case on retrial of punishment.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order Dec. 13, 2006 eff. Jan. 1, 2007.)

Comment to 1997 change: Former Rules 30, 31, and 32 are merged. Paragraph (b)(6) of former Rule 30 is deleted because the rule-making authority of the Court of Criminal Appeals was withdrawn. *See* Code of Criminal Procedure article 40.001. Other nonsubstantive changes are made.

RULE 22. ARREST OF JUDGMENT IN CRIMINAL CASES.

22.1. Definition.

Motion in arrest of judgment means a defendant's oral or written suggestion that, for reasons stated in the motion, the judgment rendered against the defendant was contrary to law. Such a motion is made in the trial court.

22.2. Grounds.

The motion may be based on any of the following grounds:

(a) that the indictment or information is subject to an exception on substantive grounds;

(b) that in relation to the indictment or information a verdict is substantively defective; or

(c) that the judgment is invalid for some other reason.

22.3. Time to File Motion.

A defendant may file a motion in arrest of judgment before, but no later than 30 days after, the date when the trial court imposes or suspends sentence in open court.

22.4. Court's Ruling.

(a) Time to Rule; Form of Ruling. The court must rule on a motion in arrest of judgment within 75 days after imposing or suspending sentence in open court. The ruling may be oral or in writing.

(b) Failure to Rule. A motion not timely ruled on will be deemed denied when the period prescribed in (a) expires.

22.5. Effect of Denying.

For purposes of the defendant's giving notice of appeal, an order denying a motion in arrest of judgment will be considered an order denying a motion for new trial.

22.6. Effect of Granting.

(a) Defendant Restored. If judgment is arrested, the defendant is restored to the position that he or she had before the indictment or information was presented.

(b) Defendant Discharged or Remanded. If the judgment is arrested, the defendant will be discharged. But the trial court may remand the defendant to custody or fix bail if the court determines, from the evidence adduced at trial, that the defendant may be convicted on a proper indictment or information, or on a proper verdict in relation to the indictment or information.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Former Rules 33, 34, and 35 are merged without substantive change.

RULE 23. NUNC PRO TUNC PROCEEDINGS IN CRIMINAL CASES.

23.1. Judgment and Sentence.

Unless the trial court has granted a new trial or arrested the judgment, or unless the defendant has appealed, a failure to render judgment and pronounce sentence may be corrected at any time by the court's doing so.

23.2. Credit on Sentence.

When sentence is pronounced, the trial court must give the defendant credit on that sentence for:

(a) all time the defendant has been confined since the time when judgment and sentence should have been entered and pronounced; and

(b) all time between the defendant's arrest and confinement to the time when judgment and sentence should have been entered and pronounced.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 36. The rule is amended without substantive change.

RULE 24. SUSPENSION OF ENFORCEMENT OF JUDGMENT PENDING APPEAL IN CIVIL CASES.

24.1. Suspension of Enforcement.

(a) Methods. Unless the law or these rules provide otherwise, a judgment debtor may supersede the judgment by:

(1) filing with the trial court clerk a written agreement with the judgment creditor for suspending enforcement of the judgment;

(2) filing with the trial court clerk a good and sufficient bond;

(3) making a deposit with the trial court clerk in lieu of a bond; or

(4) providing alternate security under Rule 24.2(e) or ordered by the court.

(b) Bonds.

(1) A bond must be:

(A) in the amount required by 24.2;

(B) payable to the judgment creditor;

(C) signed by the judgment debtor or the debtor's agent;

(D) signed by a sufficient surety or sureties as obligors; and

(E) conditioned as required by (d).

(2) A bond is effective upon filing. On motion of any party, the trial court will review the bond.

(c) Deposit in Lieu of Bond.

(1) Types of Deposits. Instead of filing a surety bond, a party may deposit with the trial court clerk:

(A) cash;

(B) a cashier's check payable to the clerk, drawn on any federally insured and federally or state-chartered bank or savings-and-loan association; or

(C) with leave of court, a negotiable obligation of the federal government or of any federally insured and federally or state-chartered bank or savings-and-loan association.

(2) Amount of Deposit. The deposit must be in the amount required by 24.2.

(3) Clerk's Duties. The clerk must promptly deposit any cash or a cashier's check in accordance with law. The clerk must hold the deposit until the conditions of liability in (d) are extinguished. The clerk must then release any remaining funds in the deposit to the judgment debtor.

(d) Conditions of Liability. The surety or sureties on a bond, any deposit in lieu of a bond, or any alternate security under Rule 24.2(e) or ordered by the court is subject to liability for all damages and costs that may be awarded against the debtor—up to the amount of the bond, deposit, or security—if:

(1) the debtor does not perfect an appeal or the debtor's appeal is dismissed, and the debtor does not perform the trial court's judgment;

(2) the debtor does not perform an adverse judgment final on appeal; or

(3) the judgment is for the recovery of an interest in real or personal property, and the debtor does not pay the creditor the value of the property interest's rent or revenue during the pendency of the appeal.

(e) Orders of Trial Court. The trial court may make any order necessary to adequately protect the judgment creditor against loss or damage that the appeal might cause.

(f) Effect of Supersedeas. Enforcement of a judgment must be suspended if the judgment is superseded. Enforcement begun before the judgment is superseded must cease when the judgment is superseded. If execution has been issued, the clerk will promptly issue a writ of supersedeas.

24.2. Amount of Bond, Deposit or Security.

(a) Type of Judgment.

(1) For Recovery of Money. When the judgment is for money, the amount of the bond, deposit, or security must equal the sum of compensatory damages awarded in the judgment, interest for the estimated duration of the appeal, and costs awarded in the judgment. But the amount must not exceed the lesser of:

(A) 50 percent of the judgment debtor's current net worth; or

(B) 25 million dollars.

(2) For Recovery of Property. When the judgment is for the recovery of an interest in real or personal property, the trial court will determine the type of security that the judgment debtor must post. The amount of that security must be at least:

(A) the value of the property interest's rent or revenue, if the property interest is real; or

(B) the value of the property interest on the date when the court rendered judgment, if the property interest is personal.

(3) Other Judgment. When the judgment is for something other than money or an interest in property, the trial court must set the amount and type of security that the judgment debtor must post. The security must adequately protect the judgment creditor against loss or damage that the appeal might cause. But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper. When the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court must permit a judgment to be superseded except in a matter arising from a contested case in an administrative enforcement action.

(4) Conservatorship or Custody. When the judgment involves the conservatorship or custody of a minor or other person under legal disability, enforcement of the judgment will not be suspended, with or without security, unless ordered by the trial court. But upon a proper showing, the appellate court may suspend enforcement of the judgment with or without security.

(5) For a Governmental Entity. When a judgment in favor of a governmental entity in its governmental capacity is one in which the entity has no pecuniary interest, the trial court must determine whether to suspend enforcement, with or without security, taking into account the harm that is likely to result to the judgment debtor if enforcement is not suspended, and the harm that is likely to result to others if enforcement is suspended. The appellate court may review the trial court's determination and suspend enforcement of the judgment, with or without security, or refuse to suspend the judgment. If security is required, recovery is limited to the governmental entity's actual damages resulting from suspension of the judgment.

(b) Lesser Amount. The trial court must lower the amount of security required by (a) to an amount that will not cause the judgment debtor substantial economic harm if, after notice to all parties and a hearing, the court finds that posting a bond, deposit, or security in the amount required by (a) is likely to cause the judgment debtor substantial economic harm.

(c) Determination of Net Worth.

(1) Judgment Debtor's Affidavit Required; Contents; Prima Facie Evidence. A judgment debtor who provides a bond, deposit, or security under (a)(1)(A) or (e) in an amount based on the debtor's net worth must simultaneously file with the trial court clerk an affidavit that states the debtor's net worth and states complete, detailed information concerning the debtor's assets and liabilities from which net worth can be ascertained. An affidavit that meets these requirements is prima facie evidence of the debtor's net worth for the purpose of establishing the amount of the bond, deposit, or security required to suspend enforcement of the judgment. A trial court clerk must receive and file a net worth affidavit tendered for filing by a judgment debtor.

(2) Contest; Discovery. A judgment creditor may file a contest to the debtor's claimed net worth. The contest need not be sworn. The creditor may conduct reasonable discovery concerning the judgment debtor's net worth.

(3) Hearing; Burden of Proof; Findings; Additional Security. The trial court must hear a judgment creditor's contest of the judgment debtor's claimed net worth promptly after any discovery has been completed. The judgment debtor has the burden of proving net worth. The trial court must issue an order that states the debtor's net worth and states with particularity the factual basis for that determination. If the trial court orders additional or other security to supercede the judgment, the enforcement of the judgment will be suspended for twenty days after the trial court's order. If the judgment debtor does not comply with the order within that period, the judgment may be enforced against the judgment debtor.

(d) Injunction. The trial court may enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

(**e) Alternative Security in Certain Cases.**

(1) Applicability. Paragraph (e) applies only to a judgment debtor with a net worth of less than $10 million.

(2) Alternative Security; Required Showing. On a showing by the judgment debtor that posting security in the amount required under (a)(1) would require the judgment debtor to substantially liquidate the judgment debtor's interests in real or personal property necessary to the normal course of the judgment debtor's business, the trial court must allow the judgment debtor to post alternative security with a value sufficient to secure the judgment.

(3) Earnings on Appeal. During an appeal, the judgment debtor may continue to manage, use, and receive earnings from interests in real or personal property in the normal course of business.

(f) Redetermination. If an appellate court reduces the amount of the judgment used to set the bond, deposit, or security, the judgment debtor is entitled, pending appeal of the judgment to a court of last resort, to a redetermination by the trial court of the amount of the bond, deposit, or security required to suspend enforcement.

(Amended by Order August 29, 2003, effective in all cases in which a final judgment is signed on or after Sept. 1. 2003; Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Misc. Docket No. 18-9061 April 2, 2018, eff. May 1, 2018..)

24.3. Continuing Trial Court Jurisdiction; Duties of Judgment Debtor.

(a) Continuing Jurisdiction. Even after the trial court's plenary power expires, the trial court has continuing jurisdiction to do the following:

(1) order the amount and type of security and decide the sufficiency of sureties; and

(2) if circumstances change, modify the amount or type of security required to continue the suspension of a judgment's execution.

(b) Duties of Judgment Debtor. If, after jurisdiction attaches in an appellate court, the trial court orders or modifies the security or decides the sufficiency of sureties, the judgment debtor must notify the appellate court of the trial court's action.

24.4. Appellate Review.

(a) Motions; Review. A party may seek review of the trial court's ruling by motion filed in the court of appeals with jurisdiction or potential jurisdiction over the appeal from the judgment in the case. A party may seek review of the court of appeals' ruling on the motion by petition for writ of mandamus in the Supreme Court. The appellate court may review:

(1) the sufficiency or excessiveness of the amount of security, but when the judgment is for money, the appellate court must not modify the amount of security to exceed the limits imposed by rule 24.2(a)(1);

(2) the sureties on any bond;

(3) the type of security;

(4) the determination whether to permit suspension of enforcement; and

(5) the trial court's exercise of discretion under Rule 24.3(a).

(b) Grounds of Review. Review may be based both on conditions as they existed at the time the trial court signed an order, and on changes in those conditions afterward.

(c) Temporary Orders. The appellate court may issue any temporary orders necessary to preserve the parties' rights.

(d) Filing in Appellate Court. A motion filed under paragraph (a) should be filed in the court of appeals having potential appellate jurisdiction over the underlying judgment. The court of appeals' ruling is subject to review on petition for writ of mandamus to the Texas Supreme Court.

(e) Action by Appellate Court. The motion must be heard at the earliest practicable time. The appellate court may require that the amount of a bond, deposit, or other security be increased or decreased, and that another bond, deposit, or security be provided. The appellate court may require other changes in the trial court order. The appellate court may remand to the trial court for entry of findings of fact or for the taking of evidence.

(f) Effect of Ruling. If the appellate court orders additional or other security to supersede the judgment, enforcement will be suspended for 20 days after the appellate court's order. If the judgment debtor does not comply with the order within that period, the judgment may be enforced. When any additional bond, deposit, or security has been filed, the trial court clerk must notify the appellate court. The posting of additional security will not release the previously posted security or affect any alternative security arrangements that the judgment debtor previously made unless specifically ordered by the appellate court.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order Aug. 29, 2003, eff. Sept. 1, 2003; Order March 10, 2008 eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Tex. Sup. Ct. Misc. Docket No. 23-9062, Aug. 25, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9101, Dec. 18, 2023, eff. Jan. 1, 2024 [Rules 24.1(b)(2) and 24.4(d)].)

Comment to 1997 change: Former Rules 47, 48, and 49 are merged. The rule is substantially revised. Paragraph 24.1(a) now provides for superseding the judgment by agreement. Paragraph 24.1(c) is taken from former Rule 48 and provides for a deposit in lieu of the bond, including specific provisions for the release of the deposit. Paragraph 24.1(d) provides the conditions for the surety to honor the bond and for the deposit to be paid to the judgment creditor. In subdivision 24.2, the provisions for determining the amount of the bond or deposit are simplified. All provisions regarding superseding a judgment for an interest in property are merged into subparagraph 24.2(a)(2). The procedure for allowing security in a lesser amount is moved to paragraph 24.2(b) and is made applicable to all judgments. Subdivision 24.4 is taken from former Rule 49. The procedure for appellate review is more precisely stated.

Comment to 2008 changes: Subdivision 24.2(c) is amended to clarify the procedure in determining net worth. A debtor's affidavit of net worth must be detailed, but the clerk must file what is tendered without determining whether it complies with the rule. If the trial court orders that additional or other security be given, the debtor is afforded time to comply. Subdivision 24.4(a) is revised to clarify that a party seeking relief from a supersedeas ruling should file a motion in the court of appeals that has or presumably will have jurisdiction of the appeal. After the court of appeals has ruled, a party may seek review by filing a petition for writ of mandamus in the Supreme Court. *See In re Smith/In re Main Place Custom Homes, Inc.*, 192 S.W.3d 564, 568 (Tex. 2006) (per curiam).

Comment to 2023 change: New Rule 24.2(e) and (f) are added to implement section 52.007 of the Texas Civil Practice and Remedies Code.

Comment to 2024 change: Rules 24.1(b)(2) and 24.4(d) are amended to provide that a bond is effective upon filing, though the bond is still subject to challenge.

RULE 25. PERFECTING APPEALS.

25.1. Civil Cases.

(a) Notice of Appeal. An appeal is perfected when a written notice of appeal is filed with the trial court clerk. If a notice of appeal is mistakenly filed with the appellate court, the notice is deemed to have been filed the same day with the trial court clerk, and the appellate clerk must immediately send the trial court clerk a copy of the notice.

(b) Jurisdiction of Appellate Court. The filing of a notice of appeal by any party invokes the appellate court's jurisdiction over all parties to the trial court's judgment or order appealed from. Any party's failure to take any other step required by these rules, including the failure of another party to perfect an appeal under (c), does not deprive the appellate court of jurisdiction but is ground only for the appellate court to act appropriately, including dismissing the appeal.

(c) Who Must File Notice. A party who seeks to alter the trial court's judgment or other appealable order must file a notice of appeal. Parties whose interests are aligned may file a joint notice of appeal. The appellate court may not grant a party who does not file a notice of appeal more favorable relief than did the trial court except for just cause.

(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) n an accelerated appeal, state that the appeal is accelerated and state whether it is a parental termination or child protection case or an appeal from an order certifying a child to stand trial as an adult, 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 post judgment 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 paying costs under Rule 20.1.

(e) Notice of Notice. 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. At or before the time of the notice of appeal's filing, the filing party must also deliver a copy of the notice of appeal to each court reporter responsible for preparing the reporter's record.

(f) Trial Court Clerk's Duties. The trial court clerk must immediately deliver a copy of the notice of appeal to the appellate court clerk, to the trial judge, and to each court reporter responsible for preparing the reporter's record.

(g) 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.

(h) 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.

(Amended by Order Aug. 31, 2011, eff. Sept. 1, 2011; Order Dec. 12, 2011, eff. March 1, 2012; Order Feb. 13, 2012, eff. March 1, 2012; Tex. Sup. Ct. Misc. Docket No. 16-9056, eff. Sept. 1, 2016; Amended by Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016; Amended by Tex. Sup. Ct. Misc. Docket No. 19-9061, Aug. 5, 2019 and Tex. Sup. Ct. Misc. Docket No. 20-003, Feb. 11, 2020, eff. Sept. 1, 2019; Tex. Sup. Ct. Misc. Docket No. 22-9104, Nov. 30, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9029, May 30, 2023, eff. June, 1, 2023.)

Comment to 2023 change: Rule 25.1 is amended to implement Texas Family Code section 56.01(h-1).

Comment to 2019 change: Subdivision 25.1(e) is revised to implement 51.017 of the Texas Civil Practice and Remedies Code.

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

25.2. Criminal Cases.

(a) Rights to Appeal.

(1) Of the State. The State is entitled to appeal a court's order in a criminal case as provided by Code of Criminal Procedure article 44.01.

(2) Of the Defendant. A defendant in a criminal case has the right of appeal under Code of Criminal Procedure article 44.02 and these rules. The trial court shall enter a certification of the defendant's right of appeal each time it enters a judgment of guilt or other appealable order other than an order appealable under Code of Criminal Procedure Chapter 64. In a plea bargain case—that is, a case in which a defendant's plea was guilty or nolo contendere and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by the defendant—a defendant may appeal only:

(A) those matters that were raised by written motion filed and ruled on before trial,

(B) after getting the trial court's permission to appeal, or

(C) where the specific appeal is expressly authorized by statute.

(b) Perfection of Appeal. In a criminal case, appeal is perfected by timely filing a sufficient notice of appeal. In a death-penalty case it is unnecessary to file a notice of appeal, but, in every death-penalty case, the clerk of the trial court shall file a notice of conviction with the Court of Criminal Appeals within thirty days after the defendant is sentenced to death.

(c) Form and Sufficiency of Notice.

(1) Notice must be given in writing and filed with the trial court clerk. If the notice of appeal is received in the court of appeals, the clerk of that court shall immediately record on the notice the date that it was received and send the notice to the trial court clerk.

(2) Notice is sufficient if it shows the party's desire to appeal from the judgment or other appealable order, and, if the State is the appellant, the notice complies with Code of Criminal Procedure article 44.01.

(d) Certification of Defendant's Right of Appeal. If the defendant is the appellant, the record must include the trial court's certification of the defendant's right of appeal under Rule 25.2(a)(2). The certification shall include a notice that the defendant has been informed of his rights concerning an appeal, as well as any right to file a *pro se* petition for discretionary review. This notification shall be signed by the defendant, with a copy given to him. The certification should be part of the record when notice is filed, but may be added by timely amendment or supplementation under this rule or Rule 34.5(c)(1) or Rule 37.1 or by order of the appellate court under Rule 34.5(c)(2). The appeal must be dismissed if a certification that shows the defendant has the right of appeal has not been made part of the record under these rules.

(e) Trial Court's Clerk's Duties. The trial court clerk must note on the copies of the notice of appeal and the trial court's certification of the defendant's right of appeal the case number and the date when each was filed. The clerk must then immediately deliver one copy of each to the clerk of the appropriate court of appeals, to the trial judge, to each court reporter responsible for preparing the reporter's record, and, if the defendant is the appellant, one copy of each to the State's attorney.

(f) Amending the Notice or Certification. An amended notice of appeal or trial court's certification of the defendant's right of appeal correcting a defect or omission in an earlier filed notice or certification, including a defect in the notification of the defendant's appellate rights, may be filed in the appellate court in accordance with Rule 37.1, or at any time before the appealing party's brief is filed if the court of appeals has not used Rule 37.1. The amended notice or certification is subject to being struck for cause on the motion of any party affected by the amended notice or certification. After the appealing party's brief is filed, the notice or certification may be amended only on leave of the appellate court and on such terms as the court may prescribe.

(g) Effect of Appeal. Once the record has been filed in the appellate court, all further proceedings in the trial court—except as provided otherwise by law or by these rules—will be suspended until the trial court receives the appellate-court mandate.

(h) Advice of Right of Appeal. When a court enters a judgment or other appealable order and the defendant has a right of appeal, the court (orally or in writing) shall advise the defendant of his right of appeal and of the requirements for timely filing a sufficient notice of appeal.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003; Order Dec. 13, 2006, eff. Jan. 1, 2007; Order May 2, 2007, eff. Sept. 1, 2007; Order Aug. 20, 2008, eff. Sept. 1, 2008; Order Nov. 5, 2018 eff. Dec. 1, 20018; Tex. Sup. Ct. Misc. Docket No. 20-9026, Feb. 11, 2020, eff. March 1, 2020.)

Comment on 2002 change: Rule 25.2, for criminal cases, is amended. Subdivision 25.2(a) states the parties' right of appeal that are established by Code of Criminal Procedure article 44.01 and by article 44.02, the proviso of which was repealed when rulemaking power was given to the Court of Criminal Appeals. Subdivision 25.2(b) is given the requirement that a notice of appeal be in "sufficient" form, which codifies the decisional law. The requirement in former subdivision 25.2(b)(3) that a plea-bargain appellant's notice of appeal specify the right of appeal is replaced by a requirement in subdivision 25.2(d) that the trial court certify the defendant's right of appeal in every case in which a judgment or other appealable order is entered. The certificate should be signed at the time of judgment or other appealable order is pronounced. The form of certification of the defendant's right of appeal is provided in an appendix [see below] to these rules. If the record does not include the trial court's certification that the defendant has the right of appeal, the appeal must be dismissed. If a sufficient notice of appeal or certification is not filed after the appellate court deals with the defect (*See* Rules 34.5(c) and 37.1), preparation of an appellate record and representation by an appointed attorney may cease.

[Form to be included in Appendix and is omitted.]

RULE 26. 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;

(b) in an accelerated appeal, the notice of appeal must be filed within 20 days after the judgment or order is signed;

(c) in a restricted appeal, the notice of appeal must be filed within six months after the judgment or order is signed; and

(d) if any party timely files a notice of appeal, another party may file a notice of appeal within the applicable period stated above or 14 days after the first filed notice of appeal, whichever is later.

26.2. Criminal Cases.

(a) By the Defendant. The notice of appeal must be filed:

(1) within 30 days after the day sentence is imposed or suspended in open court, or after the day the trial court enters an appealable order; or

(2) within 90 days after the day sentence is imposed or suspended in open court if the defendant timely files a motion for new trial.

(b) By the State. The notice of appeal must be filed within 20 days after the day the trial court enters the order, ruling, or sentence to be appealed.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

26.3. Extension of Time.

The appellate court may extend the time to file the notice of appeal if, within 15 days after the deadline for filing the notice of appeal, the party:

(a) files in the trial court the notice of appeal; and

(b) files in the appellate court a motion complying with Rule 10.5(b).

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 41. All times for perfecting appeal in civil cases—including the time for perfecting a restricted appeal—are stated. An extension of time is available for all appeals. The provisions of former Rule 41(c) regarding prematurely filed documents are moved to Rule 27. Nonsubstantive changes are made in the rule for criminal cases.

RULE 27. PREMATURE FILINGS.

27.1. Prematurely Filed Notice of Appeal.

(a) Civil Cases. In a civil case, a prematurely filed notice of appeal is effective and deemed filed on the day of, but after, the event that begins the period for perfecting the appeal.

(b) Criminal Cases. In a criminal case, a prematurely filed notice of appeal is effective and deemed filed on the same day, but after, sentence is imposed or suspended in open court, or the appealable order is signed by the trial court. But a notice of appeal is not effective if filed before the trial court makes a finding of guilt or receives a jury verdict.

27.2. Other Premature Actions.

The appellate court may treat actions taken before an appealable order is signed as relating to an appeal of that order and give them effect as if they had been taken after the order was signed. The appellate court may allow an appealed order that is not final to be modified so as to be made final and may allow the modified order and all proceedings relating to it to be included in a supplemental record.

27.3. If Appealed Order Modified or Vacated.

After an order or judgment in a civil case has been appealed, if the trial court modifies the order or judgment, or if the trial court vacates the order or judgment and replaces it with another appealable order or judgment, the appellate court must treat the appeal as from the subsequent order or judgment and may treat actions relating to the appeal of the first order or judgment as relating to the appeal of the subsequent order or judgment. The subsequent order or judgment and actions relating to it may be included in the original or supplemental record. Any party may nonetheless appeal from the subsequent order or judgment.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This rule is new and combines the provisions of former Rules 41(c) and 58.

RULE 28. ACCELERATED AND PERMISSIVE APPEALS IN CIVIL CASES.

28.1. Civil cases—Appeal as of Right.

(a) Types of Accelerated Appeals. Appeals from interlocutory orders (when allowed by statute), appeals in quo warranto proceedings, appeals required by statute to be accelerated or expedited, and appeals required by law to be filed or perfected within less than 30 days after the date of the order or judgment being appealed are accelerated appeals.

(b) Perfection of Accelerated Appeal. Unless otherwise provided by statute, an accelerated appeal is perfected by filing a notice of appeal in compliance with Rule 25.1 within the time allowed by Rule 26.1(b) or as extended by Rule 26.3. Filing a motion for new trial, any other post-trial motion, or a request for findings of fact will not extend the time to perfect an accelerated appeal.

(c) Appeals of Interlocutory Orders. The trial court need not file findings of fact and conclusions of law but may do so within 30 days after the order is signed.

(d) Quo Warranto Appeals. The trial court may grant a motion for new trial timely filed under Texas Rule of Civil Procedure 329b(a)-(b) until 50 days after the trial court's final judgment is signed. If not determined by signed written order within that period, the motion will be deemed overruled by operation of law on expiration of that period.

(e) Record and Briefs. In lieu of the clerk's record, the appellate court may hear an accelerated appeal on the original papers forwarded by the trial court or on sworn and uncontroverted copies of those papers. The appellate court may allow the case to be submitted without briefs. The deadlines and procedures for filing the record and briefs in an accelerated appeal are provided in Rules 35.1 and 38.6.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Order Aug. 25, 2008, eff. Sept. 1, 2008.)

28.2. Repealed eff Sept. 1, 2023.

(Repealed by Tex. Sup. Ct. Misc. Docket No. 23-9047, July 25, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9093, Nov. 17, 2023, eff. Sept 1, 2023.)

28.3. Permissive Appeals in Civil Cases.

(a) Petition Required. When a trial court has permitted an appeal from an interlocutory order that would not otherwise be appealable, a party seeking to appeal must petition the court of appeals for permission to appeal.

(b) Where Filed. The petition must be filed with the clerk of the court of appeals having appellate jurisdiction over the action in which the order to be appealed is issued. The First and Fourteenth Courts of Appeals must determine in which of those two courts a petition will be filed.

(c) When Filed. The petition must be filed within 15 days after the order to be appealed is signed. If the order is amended by the trial court, either on its own or in response to a party's motion, to include the court's permission to appeal, the time to petition the court of appeals runs from the date the amended order is signed.

(d) Extension of Time to File Petition. The court of appeals may extend the time to file the petition if the party;

(1) files the petition within 15 days after the deadline, and

(2) files a motion complying with Rule 10.5(b).

(e) Contents. The petition must:

(1) contain the information required by Rule 25.1 (d) to be included in a notice of appeal:

(2) attach:

(A) a copy of the order from which appeal is sought;

(B) a copy of every file marked document that is material to the order from which appeal is sought and that was filed in the court; and

(C) a properly authenticated transcript of any relevant testimony from the underlying proceeding, including any relevant exhibits offered in evidence relating to the order from which appeal is sought; a statement that the transcript has been ordered and will be filed when it is received; or a statement that no evidence was adduced in connection with such order.

(3) contain a table of contents, index of authorities, issues presented, and a statement of facts; and

(4) argue clearly and concisely why the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion and how an immediate appeal from the order may materially advance the ultimate termination of the litigation.

(f) Response; Reply; Cross-Petition; Time for Filing. If any party timely files a petition, any other party may file a response or a cross-petition within 10 days. A party may file a response to a cross-petition within 10 days of the date the cross-petition is filed. A petitioner or cross-petitioner may reply to any matter in a response within 7 days of the date the response is filed. The court of appeals may extend the time to file a response, reply, and cross-petition.

(g) Length of Petition. Cross-Petition, Response, and Reply. A petition, cross-petition, response, and reply must comply with the page limitations in Rule 9.4(i)(2)(D)-(E).

(h) Service. A petition, cross-petition, response, and reply must be served on all parties to the trial court proceeding.

(i) Docketing Statement. Upon filing the petition, the petitioner must file the docketing statement required by Rule 32.1.

(j) Time for Determination. Unless the court of appeals orders otherwise, a petition, and any cross-petition, response, and reply, will be determined without oral argument, no earlier than 10 days after the petition is filed.

(k) When Petition Granted. If the petition is granted, a notice of appeal is deemed to have been filed under Rule 26. Kb) on that date, and the appeal is governed by the rules for accelerated appeals. A separate notice of appeal need not be filed. A copy of the order granting the petition must be filed with the trial court clerk.

(l) When Petition Denied. If the court of appeals denies the petition, the court must explain in its decision the specific reasons for its finding that an appeal is not warranted. On petition for review, the Supreme Court may review the court of appeals' denial de novo, and, if the Supreme Court concludes that the statutory prerequisites for a permissive appeal are met, the Supreme Court may direct the court of appeals to grant permission to appeal.

(Amended by Order March 4, 2013, eff. March 4, 2013; Tex. Sup. Ct. Misc. Docket No. 23-9044, July 14, 2023 and Tex. Sup. Ct. Misc. Docket No. 23-9088, Nov. 7, 2023, eff. Nov. 17, 2023.)

Comment to 2023 change: Rule 28.2 is repealed. Rule 28.3 is amended to implement sections 51.014(g) and (h) of the Civil Practice and Remedies Code and governs the procedure for all permissive appeals filed after September 1, 2023.

28.4. Accelerated Appeals in Parental Termination and Child Protection Cases and from Orders Certifying a Child to Stand Trial as an Adult.

(a) Application and Definitions.

(1) Appeals in parental termination and child protection cases and from an order certifying a child to stand trial as an adult 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.

(C) an "order certifying a child to stand trial as an adult" is an order under Family Code section 54.02 waiving juvenile court jurisdiction and transferring a child for prosecution in a district or criminal district court.

(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 and or an order certifying a child to stand trial as an adult.

(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.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order March 10, 2008 eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Order Aug. 31, 2011, eff. Sept. 1, 2011; Order Sept. 9, 2011, eff. Sept. 9, 2011; Order Dec. 12, 2011, eff. March 1, 2012; Order Feb. 13, 2012, eff. March 1, 2012; Tex. Sup. Ct. Misc. Docket No. 22-9104, Nov. 30, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9029, May 30, 2023, eff. June, 1, 2023.)

Comment to 1997 change: This is former Rule 42. A motion for new trial is now permitted in an appeal from an interlocutory order, but it does not extend the time to perfect appeal. The deadlines for filing items in an accelerated appeal are moved to other rules. *See* Rules 26.1, 35.1 and 38.6. Former Rule 42(b), regarding discretionary acceleration, is omitted as unnecessary. *See* Rule 40.1. The provision in former Rule 42(c) allowing the court to shorten the time to file briefs is omitted as unnecessary. *See* Rule 38.6.

Comment to 2008 changes: Rule 28 is rewritten. Subdivision 28.1 more clearly defines accelerated appeals and provides a uniform appellate timetable. But many statutes that provide for accelerated or expedited appeals also set appellate timetables, and statutory deadlines govern over deadlines provided in the rule. Subdivision 28.2 provides procedures for an agreed appeal of an interlocutory order permitted by statute. Such appeals are now permitted under Section 51.014(d) of the Civil Practice and Remedies Code. The requirements for perfecting appeal are generally set out in Rule 25.1, and as provided there, only the notice of appeal is jurisdictional.

Comment to 2011 Change: Section 51.014(d)-(f) of the Texas Civil Practice and Remedies Code, as amended in 2011, provides for appeals of orders not otherwise appealable when permitted by the trial court. The 2011 amendments, which explicitly apply only to cases commenced on or after September 1, 2011, eliminated the prior requirement that the parties agree to the appeal and reinstated a requirement that the court of appeals also permit the appeal. Act of May 25, 2011, 82nd Leg., R.S., ch. 203, §§ 3.01, 6.01 [HB 274], amending Act of May 27, 2005, 79th Leg. R.S., ch. 1051 [HB 1294], §§ 1-2, 2005 Tex. Gen. Laws 3512, 3512-3513 and Act of May 17, 2001, 77th Leg., R.S., ch. 1389 [HB 978], § 1, 2001 Tex. Gen. Laws 3575. The amendments necessitated the addition of Rule 28.3 and the adoption of Rule of Civil Procedure 168, which governs the procedure for obtaining permission to appeal from the trial court.

New Rule 28.3 applies only to appeals in cases that were filed in the trial court on or after September I, 2011. Rule 28.2 applies only to appeals in cases that were filed in the trial court before September 1, 2011.

Rule of Civil Procedure 168 clarifies that the trial court's permission to appeal should be included in the order to be appealed rather than in a separate order. As stated in Rule 28.3(c), if a prior order containing the trial court's ruling is amended to include such permission, the time for appeal runs from the amended order. Rule 28.3(k) further clarifies that if the petition is granted, appeal is thereby perfected, and the appeal proceeds as an accelerated appeal, with all deadlines-including deadlines and

obligations for preparing the record-running from the date the petition was granted. A separate notice of appeal need not be filed. The petition procedure in Rule 28.3 is intended to be similar to the Rule 53 procedure governing petitions for review in the Supreme Court.

Comment to 2023 change: Rule 28.4 is amended to implement Texas Family Code section 56.01(h-1).

RULE 29. ORDERS PENDING INTERLOCUTORY APPEAL IN CIVIL CASES.

29.1. Effect of Appeal.

Perfecting an appeal from an order granting interlocutory relief does not suspend the order appealed from unless:

(a) the order is superseded in accordance with 29.2; or

(b) the appellant is entitled to supersede the order without security by filing a notice of appeal.

29.2. Security.

The trial court may permit an order granting interlocutory relief to be superseded pending an appeal from the order, in which event the appellant may supersede the order in accordance with Rule 24. If the trial court refuses to permit the appellant to supersede the order, the appellant may move the appellate court to review that decision for abuse of discretion.

29.3. Temporary Orders of Appellate Court.

When an appeal from an interlocutory order is perfected, the appellate court may make any temporary orders necessary to preserve the parties' rights until disposition of the appeal and may require appropriate security. But the appellate court must not suspend the trial court's order if the appellant's rights would be adequately protected by supersedeas or another order made under Rule 24.

29.4. Enforcement of Temporary Orders.

While an appeal from an interlocutory order is pending, only the appellate court in which the appeal is pending may enforce the order. But the appellate court may refer any enforcement proceeding to the trial court with instructions to:

(a) hear evidence and grant appropriate relief; or

(b) make findings and recommendations and report them to the appellate court.

29.5. Further Proceedings in Trial Court.

While an appeal from an interlocutory order is pending, the trial court retains jurisdiction of the case and unless prohibited by statute may make further orders, including one dissolving the order complained of on appeal. If permitted by law, the trial court may proceed with a trial on the merits. But the court must not make an order that:

(a) is inconsistent with any appellate court temporary order; or

(b) interferes with or impairs the jurisdiction of the appellate court or effectiveness of any relief sought or that may be granted on appeal.

(Amended by Order Dec. 23, 2002 eff. Jan. 1, 2003. Amended by Order March 10, 2008 eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

Comment to 2002 change: Rule 29.5 is amended to acknowledge that a trial court may be prohibited by law from proceeding to trial during the pendency of an interlocutory appeal, as for example by section 51.014(b) of the Texas Civil Practice and Remedies Code.

Comment to 2008 changes: Rule 29.5 is amended to be consistent with § 51.014(b) of the Civil Practice and Remedies Code, as amended in 2003, staying all proceedings in the trial court pending resolution of interlocutory appeals of class certification orders, denials of summary judgments based on assertions of immunity by governmental officers or employees, and orders granting or denying a governmental unit's plea to the jurisdiction.

29.6. Review of Further Orders.

(a) Motion to Review Further Orders. While an appeal from an interlocutory order is pending, on a party's motion or on the appellate court's own initiative, the appellate court may review the following:

(1) a further appealable interlocutory order concerning the same subject matter; and

(2) any interlocutory order that interferes with or impairs the effectiveness of the relief sought or that may be granted on appeal.

(b) Record. The party filing the motion may rely on the original record or may file a supplemental record with the motion.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 43. The provision in the former rule that an appeal from an order certifying a class suspends the order is repealed. The provision in the former rule that an order denying interlocutory relief cannot be suspended is omitted as unnecessary because the rule provides for superseding only orders granting relief. No substantive change is intended. The provision in former Rule 43(d) prohibiting the trial court from making an order granting substantially the same relief as the order appealed is repealed as being too broad. The provisions of former Rule 43(g) regarding the mandate are moved to Rule 18.6 and 18.7. The provision of former Rule 43(h) regarding rehearings is moved to Rule 49.4.

RULE 30. RESTRICTED APPEAL TO COURT OF APPEALS IN CIVIL CASES.

A party who did not participate—either in person or through counsel—in the hearing that resulted in the judgment complained of and who did not timely file a postjudgment motion or request for findings of fact and conclusions of law, or a notice of appeal within the time permitted by Rule 26.1(a),

may file a notice of appeal within the time permitted by Rule 26.1(c). Restricted appeals replace writ of error appeals to the court of appeals. Statutes pertaining to writ of error appeals to the court of appeals apply equally to restricted appeals.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 45. The appeal by writ of error procedure is repealed. A procedure for an appeal filed within 6 months—called a restricted appeal—is substituted. This rule sets out who may take a restricted appeal. Rules 25.1 and 26.1 set out the method of perfection and the time for perfecting the appeal.

RULE 31. APPEALS IN HABEAS CORPUS, BAIL, AND EXTRADITION PROCEEDINGS IN CRIMINAL CASES.

31.1. Filing the Record and Briefs.

When written notice of appeal from a judgment or order in a habeas corpus or bail proceeding is filed, the trial court clerk must prepare and certify the clerk's record and, if the appellant requests, the court reporter must prepare and certify a reporter's record. The clerk must send the clerk's record and the court reporter must send the reporter's record to the appellate court within 15 days after the notice of appeal is filed. On reasonable explanation, the appellate court may shorten or extend the time to file the records.

(a) For an appeal from a habeas corpus proceeding challenging a conviction or an order placing the defendant on community supervision—but not challenging any particular condition of community supervision—the appellate court should use the same briefing rules, deadlines, and schedule that apply to direct appeals from criminal cases. On motion of any party, or on its own initiative, the appellate court may impose a more expedited timeline or submit the case without briefing, if necessary to do substantial justice to the parties.

(b) For an appeal from a bail proceeding or any other habeas corpus proceeding, including one that challenges a particular condition of community supervision, the court will—if it desires briefs—set the time for filing briefs.

(Amended by Order Nov. 5, 2018, eff. Dec. 1, 2018)

31.2. Submission; Hearing.

The applicant need not personally appear. The appellate court will not review any incidental question that might have arisen on the hearing of the application before the trial court. The sole purpose of the appeal is to do substantial justice to the parties.

(a) In an appeal from a habeas corpus proceeding challenging a conviction or an order placing the defendant on community supervision—but not challenging a particular condition of community supervision—the appellate court should use the same submission and hearing schedules that apply to direct appeals from criminal cases. On motion of any party, or on its own initiative, the appellate court may impose a more expedited timeline or submit the case without briefing, if necessary to do substantial justice to the parties.

(b) An appeal in any other habeas corpus or bail proceeding, including a challenge to a particular condition of community supervision, shall be submitted and heard at the earliest practicable time.

(Amended by Order Nov. 5, 2018, eff. Dec. 1, 2018)

31.3. Orders on Appeal.

The appellate court will render whatever judgment and make whatever orders the law and the nature of the case require. The court may make an appropriate order relating to costs, whether allowing costs and fixing the amount, or allowing no costs.

31.4. Stay of Mandate.

(a) When Motion for Stay Required. Despite Rule 18 or any other of these rules, in the following circumstances a party who in good faith intends to seek discretionary review must—within 15 days after the court of appeals renders judgment—file with the court of appeals clerk a motion for stay of mandate, to which is appended the party's petition for discretionary review showing reasons why the Court of Criminal Appeals should review the appellate court judgment:

(1) when a court of appeals affirms the judgment of the trial court in an extradition matter and thereby sanctions a defendant's extradition; or

(2) when a court of appeals reverses the trial court's judgment in a bail matter—including bail pending appeal under > Code of Criminal Procedure article 44.04(g)—and thereby grants or reduces the amount of bail.

(b) Determination of the Motion. The clerk must promptly submit the motion and appendix to the court of appeals, or to one or more judges as the court deems appropriate, for immediate consideration and determination.

(1) If the motion for stay is granted, the clerk will file the petition for discretionary review and process the case in accordance with Rule 68.7.

(2) If the motion is denied, the clerk will issue a mandate in accordance with the court of appeals' judgment.

(c) Denial of Stay. If the motion for stay is denied under 31.4(b)(2), the losing party may then present the motion and appendix to the clerk of the Court of Criminal Appeals, who will promptly submit them to the Court, or to one or more judges as the Court deems appropriate, for immediate consideration and determination. The Court of Criminal Appeals may deny the motion or stay or recall the mandate. If the mandate is stayed or recalled, the court of appeals clerk will file the petition for discretionary review and process the case in accordance with Rule 68.7.

31.5. Judgment Conclusive.

The court of appeals' judgment is final and conclusive if the Court of Criminal Appeals does not grant discretionary review. If the Court of Criminal Appeals grants discretionary review, that court's judgment is final and conclusive. In either case, no further application in the same case can be made for the writ unless the law provides otherwise.

31.6. Defendant Detained by Other Than Officer.

If the defendant is held by a person other than an officer, the sheriff receiving the appellate court mandate so ordering must immediately cause the defendant to be discharged, for which discharge the mandate is sufficient authority.

31.7. Judgment to Be Certified.

The appellate court clerk will certify the court's judgment to the officer holding the defendant in custody or, if the defendant is held by a person other than an officer, to the appropriate sheriff.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 44. Since the purpose of the appeal is to do substantial justice, it is extended to both parties in recognition that both parties now have the right to appeal. Other nonsubstantive changes are made.

RULE 32. DOCKETING STATEMENT.

32.1. Civil Cases.

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:

(a)(1) if the appellant filing the statement has counsel, the name of that appellant and the name, address, telephone number, fax number, if any, and State Bar of Texas identification number of the appellant's lead counsel; or

(2) if the appellant filing the statement is not represented by an attorney, that party's name, address, telephone number, and fax number, if any;

(b) the date the notice of appeal was filed in the trial court and, if mailed to the trial court clerk, the date of mailing;

(c) the trial court's name and county, the name of the judge who tried the case, and the date the judgment or order appealed from was signed;

(d) the date of filing of any motion for new trial, motion to modify the judgment, request for findings of fact, motion to reinstate, or other filing that affects the time for perfecting the appeal;

(e) the names of all other parties to the trial court's judgment or the order appealed from, and:

(1) if represented by counsel, their lead counsel's names, addresses, telephone numbers, and fax numbers, if any; or

(2) if not represented by counsel, the name, address, and telephone number of the party, or a statement that the appellant diligently inquired but could not discover that information;

(f) the general nature of the case—for example, personal injury, breach of contract, or temporary injunction;

(g) whether the appeal's submission should be given priority, 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 or an appeal from an order certifying a child to stand trial as an adult, as defined in Rule 28.4;

(h) whether the appellant has requested or will request a reporter's record, and whether the trial was electronically recorded;

(i) the name, mailing address, telephone number, fax number, in any, email address, and Certified Shorthand Reporter number of each of each court reporter responsible for preparing the reporter's record;

(j) whether the appellant intends to seek temporary or ancillary relief while the appeal is pending;

(k) if the appellant filed a Statement of Inability to Afford Payment of Court Costs in the trial court:

(1) the date the Statement was filed;

(2) the date of filing of any motion challenging the Statement;

(3) the date of any hearing on the appellant's ability to afford costs; and

(4) if the trial court signed an order under Texas Rule of Civil Procedure 145, the court's findings regarding the appellant's ability to afford costs and the date that the order was signed.

(l) whether the appellant has filed or will file a supersedeas bond; and

(m) any other information the appellate court requires.

(Amended by Order Dec. 12, 2011, eff. March 1, 2012; Order Feb. 13, 2012, eff. March 1, 2012; Tex. Sup. Ct. Misc. Docket No. 16-9056, eff. Sept. 1, 2016; Amended by Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016; Amended by Tex. Sup. Ct. Misc. Docket No. 19-9061, Aug. 5, 2019 and Tex. Sup. Ct. Misc. Docket No. 20-003, Feb. 11, 2020, eff. Sept. 1, 2019; Tex. Sup. Ct. Misc. Docket No. 22-9104, Nov. 30, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9029, May 30, 2023, eff. June, 1, 2023.)

Comment to 2023 change: Rule 32.1 is amended to implement Texas Family Code section 56.01(h-1).

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

32.2. Criminal Cases.

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

(a)(1) if the appellant has counsel, the name of the appellant and the name, address, telephone number, fax number, if any, and State Bar of Texas identification number of the appellant's counsel, and whether the counsel is appointed or retained; or

(2) if the appellant is not represented by an attorney, that party's name, address, telephone number, and fax number, if any;

(b) the date the notice of appeal was filed in the trial court and, if mailed to the trial court clerk, the date of mailing;

(c) the trial court's name and county, and the name of the judge who tried the case;

(d) the date the trial court imposed or suspended sentence in open court, or the date the judgment or order appealed from was signed;

(e) the date of filing any motion for new trial, motion in arrest of judgment, or any other filing that affects the time for perfecting the appeal;

(f) the offense charged and the date of the offense;

(g) the defendant's plea;

(h) whether the trial was jury or nonjury;

(i) the punishment assessed;

(j) whether the appeal is from a pretrial order;

(k) whether the appeal involves the validity of a statute, ordinance, or rule;

(l) whether a reporter's record has been or will be requested, and whether the trial was electronically recorded;

(m) the name, mailing address, telephone number, fax number (if any), email address, and Certified Shorthand Reporter number of each court reporter responsible for preparing the reporter's record;

(n)(1) the dates of filing of any motion and affidavit of indigence;

(2) the date of any hearing;

(3) the date of any order; and

(4) whether the motion was granted or denied; and

(o) any other information the appellate court requires.

(Amended by Tex. Sup. Ct. Misc. Docket No. 20-9026, Feb. 11, 2020, eff. March 1, 2020.)

32.3. Supplemental Statements.

Any party may file a statement supplementing or correcting the docketing statement.

32.4. Purpose of Statement.

The docketing statement is for administrative purposes and does not affect the appellate court's jurisdiction.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: The rule is new.

RULE 33. PRESERVATION OF APPELLATE COMPLAINTS

33.1. Preservation; How Shown.

(a) In General. As a prerequisite to presenting a complaint for appellate review, the record must show that:

(1) the complaint was made to the trial court by a timely request, objection, or motion that:

(A) stated the grounds for the ruling that the complaining part y sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context; and

(B) complied with the requirements of the Texas Rules of Evidence or the Texas Rules of Civil or Appellate Procedure; and

(2) the trial court:

(A) ruled on the request, objection, or motion, either expressly or implicitly; or

(B) refused to rule on the request, objection, or motion, and the complaining party objected to the refusal.

(b) Ruling by Operation of Law. In a civil case, the overruling by operation of law of a motion for new trial or a motion to modify the judgment preserves for appellate review a complaint properly made in the motion, unless taking evidence was necessary to properly present the complaint in the trial court.

(c) Formal Exception and Separate Order Not Required. Neither a formal exception to a trial court ruling or order nor a signed, separate order is required to preserve a complaint for appeal.

(d) Sufficiency of Evidence Complaints in Civil Nonjury Cases. In a civil nonjury case, a complaint regarding the legal or factual insufficiency of the evidence—including a complaint that the damages found by the court are excessive or inadequate, as distinguished from a complaint that the trial court erred in refusing to amend a fact finding or to make an additional finding of fact—may be made for the first time on appeal in the complaining party's brief.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003; Order Tex. Sup. Ct. Misc. Docket No. 16-9018 and Final Order Misc. Docket No. 17-9067, eff. July 1, 2017.)

Comment to 2002 change: The last sentence of former Rule 52(d) of the Rules of Appellate Procedure has been reinstated in substance.

Comment to 2017 change: The 2017 amendment is intended only to clarify, and not to change existing law.

33.2. Formal Bills of Exception.

To complain on appeal about a matter that would not otherwise appear in the record, a party must file a formal bill of exception.

(a) Form. No particular form of words is required in a bill of exception. But the objection to the court's ruling or action, and the ruling complained of, must be stated with sufficient specificity to make the trial court aware of the complaint.

(b) Evidence. When the appellate record contains the evidence needed to explain a bill of exception, the bill itself need not repeat the evidence, and a party may attach and incorporate a transcription of the evidence certified by the court reporter.

(c) Procedure.

(1) The complaining party must first present a formal bill of exception to the trial court.

(2) If the parties agree on the contents of the bill of exception, the judge must sign the bill and file it with the trial court clerk. If the parties do not agree on the contents of the bill, the trial judge must—after notice and hearing—do one of the following things:

(A) sign the bill of exception and file it with the trial court clerk if the judge finds that it is correct;

(B) suggest to the complaining party those corrections to the bill that the judge believes are necessary to make it accurately reflect the proceedings in the trial court, and if the party agrees to the corrections, have the corrections made, sign the bill, and file it with the trial court clerk; or

(C) if the complaining party will not agree to the corrections suggested by the judge, return the bill to the complaining party with the judge's refusal written on it, and prepare, sign, and file with the trial court clerk such bill as will, in the judge's opinion, accurately reflect the proceedings in the trial court.

(3) If the complaining party is dissatisfied with the bill of exception filed by the judge under (2)(C), the party may file with the trial court clerk the bill that was rejected by the judge. That party must also file the affidavits of at least three people who observed the matter to which the bill of exception is addressed. The affidavits must attest to the correctness of the bill as presented by the party. The matters contained in that bill of exception may be controverted and maintained by additional affidavits filed by any party within ten days after the filing of that bill. The truth of the bill of exception will be determined by the appellate court.

(d) Conflict. If a formal bill of exception conflicts with the reporter's record, the bill controls.

(e) Time to File.

(1) Civil Cases. In a civil case, a formal bill of exception must be filed no later than 30 days after the filing party's notice of appeal is filed.

(2) Criminal Cases. In a criminal case, a formal bill of exception must be filed:

(A) no later than 60 days after the trial court pronounces or suspends sentence in open court; or

(B) if a motion for new trial has been timely filed, no later than 90 days after the trial court pronounces or suspends sentence in open court.

(3) Extension of Time. The appellate court may extend the time to file a formal bill of exception if, within 15 days after the deadline for filing the bill, the party files in the appellate court a motion complying with Rule 10.5(b).

(f) Inclusion in Clerk's Record. When filed, a formal bill of exception should be included in the appellate record.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 52. Subdivision 33.1 is rewritten. Former Rule 52(b), regarding offers of proof, is omitted as unnecessary. *See* TEX. R. CIV. EVID. 103; TEX. R. CRIM. EVID. 103. Subdivision 33.2 is also rewritten and the procedure is more definitely stated. Former Rule 52(d), regarding motions for new trial, is omitted as unnecessary. *See* TEX. R. CIV. P. 324(a) & (b).

RULE 34. APPELLATE RECORD.

34.1. Contents.

The appellate record consists of the clerk's record and, if necessary to the appeal, the reporter's record. Even if more than one notice of appeal is filed, there should be only one appellate record in a case.

34.2. Agreed Record.

By written stipulation filed with the trial court clerk, the parties may agree on the contents of the appellate record. An agreed record will be presumed to contain all evidence and filings relevant to the appeal. To request matter to be included in the agreed record, the parties must comply with the procedures in Rules 34.5 and 34.6.

34.3. Agreed Statement of the Case.

In lieu of a reporter's record, the parties may agree on a brief statement of the case. The statement must be filed with the trial court clerk and included in the appellate record.

34.4. Form.

The Supreme Court and Court of Criminal Appeals will prescribe the form of the appellate record.

APPENDIX C
IN THE SUPREME COURT OF TEXAS
ORDER DIRECTING
THE FORM OF THE APPELLATE RECORD IN CIVIL CASES

ORDERED that:

Pursuant to Texas Rule of Appellate Procedure 34.4, the Supreme Court orders that the appellate record in civil cases be in the form specified below:

RULE 1. CLERK'S RECORD

1.1. Preparation of Electronic or Paper Clerk's Record.

The trial court clerk must prepare and file the clerk's record in accordance with Rules of Appellate Procedure 34.5 and 35. Even if more than one notice of appeal or request for inclusion of items is filed, the clerk should prepare only one consolidated record in a case. To prepare the clerk's record, the trial court clerk must:

(a) gather the documents required by Rule of Appellate Procedure 34.5(a) and those requested by a party under Rule of Appellate Procedure 34.5(b);

(b) start each document on a new page;

(c) include the date of filing on each document;

(d) arrange the documents in ascending chronological order, by date of filing or occurrence;

(e) start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page;

(f) prepare, label, and certify the clerk's record as required by this rule;

(g) as far as practicable, include the date of signing by the judge on each order and judgment;

(h) include on the front cover of the first volume, and any subsequent volumes, of the clerk's record, whether filed in paper or electronic form, the following information, in substantially the following form:

CLERK'S RECORD

VOLUME ____ of ____

Trial Court Cause No. _____

In the _____ (District or County) Court

of _____ County, Texas,

Honorable _____, Judge Presiding

_____

_____, Plaintiff(s)

vs.

_____, Defendant(s)

_____

Appealed to the
(Supreme Court of Texas at Austin, Texas,
or Court of Criminal Appeals of Texas at Austin, Texas,
or Court of Appeals for the _____ District of Texas, at _____, Texas).

_____

Attorney for Appellant(s):

Name _____

Address _____

Telephone no.: _____

Fax no.: _____

E-mail address: _____

SBOT no.: _____

Attorney for: _____, Appellant(s)

_____

Name of clerk preparing the clerk's record: _____

(i) prepare and include after the front cover of the clerk's record a detailed table of contents identifying each document in the entire record (including sealed documents), the date each document was filed, and, except for sealed documents, the page on which each document begins. The table of contents must be double-spaced and conform to the order in which documents appear in the clerk's record, rather than in alphabetical order. If the clerk's record consists of multiple volumes, the table of contents must indicate the page on which each volume begins. If the clerk's record is filed in electronic form, the clerk must use bookmarks to link each document description in the table of contents, except descriptions of sealed documents, to the page on which each document begins; and

(j) conclude the clerk's record with a certificate in substantially the following form:

The State of Texas)

County of _____)

I, _____, Clerk of the _____ Court of _____ County, Texas do hereby certify that the documents contained in this record to which this certification is attached are all of the documents specified by Texas Rule of Appellate Procedure 34.5(a) and all other documents timely requested by a party to this proceeding under Texas Rule of Appellate Procedure 34.5(b).

GIVEN UNDER MY HAND AND SEAL at my office in _____, County, Texas this ___ day of _____.

signature of clerk _____

name of clerk _____

title _____

If the clerk's record is filed in electronic form, the trial court clerk must include either a scanned image of the clerk's signature or "/s/" and the clerk's name typed in the space where the signature would otherwise appear.

1.2. Filing an Electronic Clerk's Record.

The clerk of a court subject to mandatory civil electronic filing must file the record electronically. The clerk of any other court must file the record electronically, if possible. When filing a clerk's record in electronic form, the trial court clerk must:

(a) file each computer file in text-searchable Portable Document Format (PDF);

(b) create electronic bookmarks to mark the first page of each document in the clerk's record;

(c) limit the size of each computer file to 100 MB or less, if possible;

(d) directly convert, rather than scan, the record to PDF, if possible;

(e) comply with the Technology Standards promulgated by the Judicial Committee on Information Technology;

(f) include the following elements in the computer file name, exemplified as CR (01 of 02).pdf:

(1) "CR";

(2) the volume number, using at least two digits, with leading zeroes if needed; "of"; and the total number of volumes;

(3) a period; and

(4) "pdf";

(g) file each sealed document separately from the remainder of the clerk's record and include the word "sealed" in the computer file name;

(h) if filing a supplement to the clerk's record, include the number of the supplement and "Supp";

(i) if filing a supplement to the clerk's record, include a hyphen, the number of the supplement, the term "Supp," and another hyphen after the term "CLR" in the computer file name (e.g., FortBend-DC-09-29-CLR-1Supp-Vol001.pdf, FortBend-DC-09-29-CLR-2Supp-Vol001.pdf);

(j) submit each computer file to the Texas Appeals Management and E-filing System (TAMES) web portal using the instructions provided on the appellate court's website; and

(k) not lock any document that is part of the record.

1.3. Filing a Paper Clerk's Record.

When filing a paper record with the appellate court, the trial court clerk must:

(a) bind the documents together in one or more volumes with a top bound, two-inch capacity, two-and-three-quarter-inch, center-to-center removable fastener and no other binding materials, like wax, ribbon, glue, staples, tape, etc.;

(b) include no more than 500 pages in each volume, or limit the thickness of each volume to a maximum of two inches;

(c) include only one-sided copies in the clerk's record;

(d) number the first volume "1" and each succeeding volume sequentially;

(e) if practicable, make a legible copy of the documents on opaque, white, 8½ x 11 inch paper; and

(f) place each sealed document in a securely sealed, manila envelope that is not bound with the other documents in the clerk's record.

1.4. Non-Conforming Records and Supplements.

In the event of a material violation of this rule in the preparation or filing of the clerk's record, on motion of a party or on its own initiative, the appellate court may require the trial court clerk to amend the clerk's record or to prepare a new clerk's record in proper form—and provide it to any party who has previously made a copy of the original, defective clerk's record—at the trial clerk's expense. A supplement to a clerk's record must also be prepared in conformity with this rule.

RULE 2. ELECTRONIC REPORTER'S RECORD.

(a) The court reporter or court recorder must prepare and file the reporter's record in accordance with Rules of Appellate Procedure 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records, and the court's local rules. Even if more than one notice of appeal or request for preparation of the record is filed, the court reporter or court recorder should prepare only one consolidated record in the case.

(b) If proceedings were recorded stenographically, the court reporter or recorder must file the reporter's record in an electronic format via the Texas Appeals Management and E-filing System (TAMES) web portal and in accordance with Section 8 of the Uniform Format Manual for Texas Reporters' Records, the court's local rules, and any guidelines posted on the appellate court's website.

(c) If the record is filed in electronic format, the court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise appear.

(d) A court reporter or recorder must not lock any document that is part of the record.

(e) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(f) In the event of a material violation of this rule in the preparation of a reporter's record, on motion of a party or on the court's own initiative, the appellate court may require the court reporter or court recorder to amend the reporter's record or to prepare a new reporter's record in proper form - and provide it to any party who has previously made a copy of the original, defective reporter's record - at the reporter's or recorder's expense. A court reporter who fails to comply with the requirements of the Uniform Format Manual for Texas Reporters' Records is also subject to discipline by the Court Reporters Certification Board.

(Appendix C adopted by Order Aug. 16, 2013, eff. Jan. 1, 2014; Dec. 13, 2013, eff. Jan. 1, 2014.)

34.5. Clerk's Record.

(a) Contents. Unless the parties designate the filings in the appellate record by agreement under Rule 34.2, the record must include copies of the following:

(1) in civil cases, all pleadings on which the trial was held;

(2) in criminal cases, the indictment or information, any special plea or defense motion that was presented to the court and overruled, any written waiver, any written stipulation, and, in cases in which a plea of guilty or nolo contendere has been entered, any documents executed for the plea;

(3) the court's docket sheet;

(4) the court's charge and the jury's verdict, or the court's findings of fact and conclusions of law;

(5) the court's judgment or other order that is being appealed;

(6) any request for findings of fact and conclusions of law, any post-judgment motion, and the court's order on the motion;

(7) the notice of appeal;

(8) any formal bill of exception;

(9) any request for a reporter's record, including any statement of points or issues under Rule 34.6(c);

(10) any request for preparation of the clerk's record;

(11) in civil cases, a certified bill of costs including the cost of preparing the clerk's record, showing credits for payments made;

(12) in criminal cases, the trial court's certification of the defendant's right of appeal under Rule 25.2;

(13) in civil cases, any supersedeas bond or certificate of cash deposit in lieu of a bond; and

(14) subject to (b), any filing that a party designates to have included in the record.

(b) Request for Additional Items.

(1) Time for Request. At any time before the clerk's record is prepared, any party may file with the trial court clerk a written designation specifying items to be included in the record.

(2) Request Must Be Specific. A party requesting that an item be included in the clerk's record must specifically describe the item so that the clerk can readily identify it. The clerk will disregard a general designation, such as one for "all papers filed in the case."

(3) Requesting Unnecessary Items. In a civil case, if a party requests that more items than necessary be included in the clerk's record or any supplement, the appellate court may—regardless of the appeal's outcome—require that party to pay the costs for the preparation of the unnecessary portion.

(4) Failure to Timely Request. An appellate court must not refuse to file the clerk's record or a supplemental clerk's record because of a failure to timely request items to be included in the clerk's record.

(c) Supplementation.

(1) If a relevant item has been omitted from the clerk's record, the trial court, the appellate court, or any party may by letter direct the trial court clerk to prepare, certify, and file in the appellate court a supplement containing the omitted item.

(2) If the appellate court in a criminal case orders the trial court to prepare and file findings of fact and conclusions of law as required by law, or certification of the defendant's right of appeal as required by these rules, the trial court clerk must prepare, certify, and file in the appellate court a supplemental clerk's record containing those findings and conclusions.

(3) Any supplemental clerk's record will be part of the appellate record.

(d) Defects or Inaccuracies. If the clerk's record is defective or inaccurate, the appellate clerk must inform the trial court clerk of the defect or inaccuracy and instruct the clerk to make the correction.

(e) Clerk's Record Lost or Destroyed. If a filing designated for inclusion in the clerk's record has been lost or destroyed, the parties may, by written stipulation, deliver a copy of that item to the trial court clerk for inclusion in the clerk's record or a supplement. If the parties cannot agree, the trial court must—on any party's motion or at the appellate court's request—determine what constitutes an accurate copy of the missing item and order it to be included in the clerk's record or a supplement.

(f) Original Documents. If the trial court determines that original documents filed with the trial court clerk should be inspected by the appellate court or sent to that court in lieu of copies, the trial court must make an order for the safekeeping, transportation, and return of those original documents. The order must list the original documents and briefly describe them. All the documents must be arranged in their listed sequence and bound firmly together. On any party's motion or its own initiative, the appellate court may direct the trial court clerk to send it any original document.

(g) Additional Copies of Clerk's Record in Criminal Cases. In a criminal case, the clerk's record must be made in duplicate, and in a case in which the death penalty was assessed, in triplicate. The trial court clerk must retain the copy or copies for the parties to use with the court's permission.

(h) Clerk May Consult With Parties. The clerk may consult with the parties concerning the contents of the clerk's record.

(Amended by Order Dec. 23, 2002 eff. Jan. 1, 2003. Amended by Tex. Sup. Ct. Misc. Docket No. 22-9109, Dec. 13, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9021, March 18, 2023, eff. May 1, 2023.))

Comment to 2002 change: Rule 34.5(a) is amended to require that the record in a criminal case include the certification of defendant's right of appeal; *see* Rule 25.2(d). Rule 34.5(c) is amended to make clear that an appellate court may order the trial court to make such a certification for inclusion in a supplemental clerk's record.

34.6. Reporter's Record.

(a) Contents.

(1) Stenographic Recording. If the proceedings were stenographically recorded, the reporter's record consists of the court reporter's transcription of so much of the proceedings, and any of the exhibits, that the parties to the appeal designate.

(2) Electronic Recording. If the proceedings were electronically recorded, the reporter's record consists of certified copies of all tapes or other audio-storage devices on which the proceedings were recorded, any of the exhibits that the parties to the appeal designate, and certified copies of the logs prepared by the court recorder under Rule 13.2.

(b) Request for Preparation.

(1) Request to Court Reporter. At or before the time for perfecting the appeal, the appellant must request in writing that the official reporter prepare the reporter's record. The request must designate the exhibits to be included. A request to the court reporter—but not the court recorder—must also designate the portions of the proceedings to be included.

(2) Filing. The appellant must file a copy of the request with the trial court clerk.

(3) Failure to Timely Request. An appellate court must not refuse to file a reporter's record or a supplemental reporter's record because of a failure to timely request it.

(c) Partial Reporter's Record.

(1) Effect on Appellate Points or Issues. If the appellant requests a partial reporter's record, the appellant must include in the request a statement of the points or issues to be presented on appeal and will then be limited to those points or issues.

(2) Other Parties May Designate Additions. Any other party may designate additional exhibits and portions of the testimony to be included in the reporter's record.

(3) Costs; Requesting Unnecessary Matter. Additions requested by another party must be included in the reporter's record at the appellant's cost. But if the trial court finds that all or part of the designated additions are unnecessary to the appeal, the trial court may order the other party to pay the costs for the preparation of the unnecessary additions. This paragraph does not affect the appellate court's power to tax costs differently.

(4) Presumptions. The appellate court must presume that the partial reporter's record designated by the parties constitutes the entire record for purposes of reviewing the stated points or issues. This presumption applies even if the statement includes a point or issue complaining of the legal or factual insufficiency of the evidence to support a specific factual finding identified in that point or issue.

(5) Criminal Cases. In a criminal case, if the statement contains a point complaining that the evidence is insufficient to support a finding of guilt, the record must include all the evidence admitted at the trial on the issue of guilt or innocence and punishment.

(d) Supplementation. If anything relevant is omitted from the reporter's record, the trial court, the appellate court, or any party may by letter direct the official court reporter to prepare, certify, and file in the appellate court a supplemental reporter's record containing the omitted items. Any supplemental reporter's record is part of the appellate record.

(e) Inaccuracies in the Reporter's Record.

(1) Correction of Inaccuracies by Agreement. The parties may agree to correct an inaccuracy in the reporter's record, including an exhibit, without the court reporter's recertification.

(2) Correction of Inaccuracies by Trial Court. If the parties cannot agree on whether or not to correct the reporter's record so that the text accurately discloses what occurred in the trial court and the exhibits are accurate, the trial court must—after notice and hearing—settle the dispute. If the court finds any inaccuracy, it must order the court reporter to conform the reporter's record (including text and any exhibits) to what occurred in the trial court, and to file certified corrections in the appellate court.

(3) Correction After Filing in Appellate Court. If the dispute arises after the reporter's record has been filed in the appellate court, that court may submit the dispute to the trial court for resolution. The trial court must then proceed as under subparagraph (e)(2).

(f) Reporter's Record Lost or Destroyed. An appellant is entitled to a new trial under the following circumstances:

(1) if the appellant has timely requested a reporter's record;

(2) if, without the appellant's fault, a significant exhibit or a significant portion of the court reporter's notes and records has been lost or destroyed or—if the proceedings were electronically recorded—a significant portion of the recording has been lost or destroyed or is inaudible;

(3) if the lost, destroyed, or inaudible portion of the reporter's record, or the lost or destroyed exhibit, is necessary to the appeal's resolution; and

(4) if the lost, destroyed or inaudible portion of the reporter's record cannot be replaced by agreement of the parties, or the lost or destroyed exhibit cannot be replaced either by agreement of the parties or with a copy determined by the trial court to accurately duplicate with reasonable certainty the original exhibit.

(g) Original Exhibits.

(1) Reporter May Use in Preparing Reporter's Record. At the court reporter's request, the trial court clerk must give all original exhibits to the reporter for use in preparing the reporter's record. Unless ordered to include original exhibits in the reporter's record, the court reporter must return the original exhibits to the clerk after copying them for inclusion in the reporter's record. If someone other than the trial court clerk possesses an original exhibit, either the trial court or the appellate court may order that person to deliver the exhibit to the trial court clerk.

(2) Use of Original Exhibits by Appellate Court. If the trial court determines that original exhibits should be inspected by the appellate court or sent to that court in lieu of copies, the trial court must make an order for the safekeeping, transportation, and return of those exhibits. The order must list the exhibits and briefly describe them. To the extent practicable, all the exhibits must be arranged in their listed order and bound firmly together before being sent to the appellate clerk. On any party's motion or its own initiative, the appellate court may direct the trial court clerk to send it any original exhibit.

(h) Additional Copies of Reporter's Record in Criminal Cases. In a criminal case in which a party requests a reporter's record, the court reporter must prepare a duplicate of the reporter's record and file it with the trial court clerk. In a case where the death penalty was assessed, the court reporter must prepare two duplicates of the reporter's record.

(i) Supreme Court and Court of Criminal Appeals May Set Fee. From time to time, the Supreme Court and the Court of Criminal Appeals may set the fee that the court reporters may charge for preparing the reporter's record.

(Amended by Order Dec. 23, 2002 eff. Jan. 1, 2003.)

Comment to 2002 change: Subparagraphs 34.6(e) and (f) are amended to clarify the application to exhibits. The language in subparagraph (e)(2) referring to the text of the record is simplified without substantive change. Subparagraph (e)(3) incorporates the procedures specified in (e)(2). The language in subparagraph (f) is clarified to require agreement only as to the portion of the text at issue, and to provide that the trial court may determine that a copy of an exhibit should be used even if the parties cannot agree.

RULE 35. TIME TO FILE RECORD; RESPONSIBILITY FOR FILING RECORD.

35.1. Civil Cases.

The appellate record must be filed in the appellate court within 60 days after the judgment is signed, except as follows:

(a) if Rule 26.1(a) applies, within 120 days after the judgment is signed;

(b) if Rule 26.1(b) applies, within 10 days after the notice of appeal is filed; or

(c) if Rule 26.1(c) applies, within 30 days after the notice of appeal is filed.

35.2. Criminal Cases.

The appellate record must be filed in the appellate court:

(a) if a motion for new trial is not filed, within 60 days after the date the sentence is imposed or suspended in open court or the order appealed from is signed;

(b) if a timely motion for new trial is filed and denied, within 120 days after the date the sentence is imposed or suspended in open court; or

(c) if a motion for new trial is granted, within 60 days after the order granting the motion is signed.

35.3. Responsibility for Filing Record.

(a) Clerk's Record. The trial court clerk is responsible for preparing, certifying, and timely filing the clerk's record if:

(1) a notice of appeal has been filed, and in criminal proceedings, the trial court has certified the defendant's right of appeal, as required by Rule 25.2(d); and

(2) the party responsible for paying for the preparation of the clerk's record has paid the clerk's fee, has made satisfactory arrangements with the clerk to pay the fee, or is entitled to appeal without paying the fee.

(b) Reporter's Record. The official or deputy reporter is responsible for preparing, certifying, and timely filing the reporter's record if:

(1) a notice of appeal has been filed;

(2) the appellant has requested that the reporter's record be prepared; and

(3) the party responsible for paying for the preparation of the reporter's record has paid the reporter's fee, or has made satisfactory arrangements with the reporter to pay the fee, or is entitled to appeal without paying the fee.

(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.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order Dec. 13, 2006, eff. Jan. 1, 2007; Order Dec. 12, 2011, eff. March 1, 2012; Order Feb. 13, 2012, eff. March 1, 2012.)

Comment to 1997 change: This is former Rule 54. In subdivision 35.1, the time to file the record in civil cases is based on the date the judgment is signed except in accelerated and restricted appeals, in which the time to file the record is based on the date the notice of appeal is filed. Subdivision 35.3 is new and makes it the responsibility of the trial court clerk and court reporter to file the record. Former Rule 54(c), providing for an extension of time to file the record, is repealed as unnecessary. The trial court clerk and court reporter should make arrangements with the court of appeals if additional time is required to file the record, as suggested in Rule 37.3.

RULE 36. AGENCY RECORD IN ADMINISTRATIVE APPEALS.

36.1. Scope.

This rule applies only to cases involving judicial review of state agency decisions in contested cases under the Administrative Procedure Act.

36.2. Inclusion in Appellate Record.

The record of an agency proceeding filed in the trial court may be included in either the clerk's record or the reporter's record.

36.3. Correcting the Record.

(a) Correction by Agreement. At any stage of the proceeding, the parties may agree to correct an agency record filed under Section 2001.175(b) of the Government Code to ensure that the agency record accurately reflects the contested case proceedings before the agency. The court reporter need not recertify the agency record.

(b) Correction by Trial Court. If the parties cannot agree to a correction to the agency record, the appellate court must—on any party's motion or its own incentive—send the question to the trial court. After notice and hearing, the trial court must determine what constitutes an accurate copy of the agency record and order the agency to send an accurate copy to the clerk of the court in which the case is pending.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: The rule is new.

RULE 37. DUTIES OF THE APPELLATE CLERK ON RECEIVING THE NOTICE OF APPEAL AND RECORD.

37.1. On Receiving the Notice of Appeal.

If the appellate clerk determines that the notice of appeal or certification of defendant's rights of appeal in a criminal case is defective, the clerk must notify the parties of the defect so that it can be remedied, if possible. If a proper notice of appeal or certification of a criminal defendant's right of appeal is not filed in the trial court within 30 days of the date of the clerk's notice, the clerk must refer the matter to the appellate court, which will make an appropriate order under this rule or Rule 34.5(c)(2).

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003.)

37.2. On Receiving the Record.

On receiving the clerk's record or the reporter's record, the appellate clerk must determine whether each complies with the Supreme Court's and Court of Criminal Appeals' order on preparation of the record. If so, the clerk must endorse on each the date of receipt, file it, and notify the parties of the filing and the date. If not, the clerk must endorse on the clerk's record or reporter's record—whichever is defective—the date of receipt and return it to the official responsible for filing it. The appellate court clerk must specify the defects and instruct the official to correct the defects and return the record to the appellate court by a specified date. In a criminal case, the record must not be posted on the Internet.

(Amended by Order Dec. 13, 2013, eff. Jan. 1, 2014.)

37.3. If No Record Filed.

(a) Notice of Late Record.

(1) Civil Cases. If the clerk's record or reporter's record has not been timely filed, the appellate clerk must send notice to the official responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days if an ordinary or restricted appeal, or 10 days if an accelerated appeal. The appellate clerk must send a copy of this notice to the parties and the trial court. If the clerk does not receive the record within the stated period, the clerk must refer the matter to the appellate court. The court must make whatever order is appropriate to avoid further delay and to preserve the parties' rights.

(2) Criminal Cases. If the clerk's record or reporter's record has not been timely filed, the appellate court clerk must refer the matter to the appellate court. The court must make whatever order is appropriate to avoid further delay and to preserve the parties' rights.

(b) If No Clerk's Record Filed Due to Appellant's Fault. If the trial court clerk failed to file the clerk's record because the appellant failed to pay or make arrangements to pay the clerk's fee for preparing the clerk's record, the appellate court may—on a party's motion or its own initiative—dismiss the appeal for want of prosecution unless the appellant was entitled to proceed without payment of costs. The court must give the appellant a reasonable opportunity to cure before dismissal.

(c) If No Reporter's Record Filed Due to Appellant's Fault. Under the following circumstances, and if the clerk's record has been filed, the appellate court may—after first giving the appellant notice and a reasonable opportunity to cure—consider and decide those issues or points that do not require a reporter's record for a decision. The court may do this if no reporter's record has been filed because:

(1) the appellant failed to request a reporter's record; or

(2)(A) appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and

(B) the appellant is not entitled to proceed without payment of costs.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Former Rules 56 and 57(a) are merged. Subdivisions 37.2 and 37.3 are new.

RULE 38. REQUISITES OF BRIEFS.

38.1. Appellant's Brief.

The appellant's brief must, under appropriate headings and in the order here indicated, contain the following:

(a) Identity of Parties and Counsel. The brief must give a complete list of all parties to the trial court's judgment or order appealed from, except as otherwise provided in Rule 9.8. The brief must also give a complete list of the names of all counsel appearing in the trial or appellate courts; their firm or office name at the time of the appearance; and, for counsel currently appearing, their mailing address, telephone number, and email address. If new counsel appears or if any counsel currently appearing changes their firm or office affiliation during the pendency of the appeal, lead counsel for the party must notify the clerk by filing a supplemental disclosure.

(b) Table of Contents. The brief must have a table of contents with references to the pages of the brief. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.

(c) Index of Authorities. The brief must have an index of authorities arranged alphabetically and indicating the pages of the brief where the authorities are cited.

(d) Statement of the Case. The brief must state concisely the nature of the case (e.g., whether it is a suit for damages, on a note, or involving a murder prosecution), the course of proceedings, and the trial court's disposition of the case. The statement should be supported by record references, should seldom exceed one-half page, and should not discuss the facts.

(e) Any Statement Regarding Oral Argument. The brief may include a statement explaining why oral argument should, or should not, be permitted. Any such statement must not exceed one page and should not address how the court's decisional process would, or would not, be aided by oral argument. As required by Rule 39.7, any party requesting oral argument must note that request on the front cover of its brief.

(f) Issues Presented. The brief must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included.

(g) Statement of Facts. The brief must state concisely and without argument the facts pertinent to the issues or points presented. In a civil case, the court will accept as true the facts stated unless another party contradicts them. The statement must be supported by record references.

(h) Summary of the Argument. The brief must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief. This summary must not merely repeat the issues or points presented for review.

(i) Argument. The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.

(j) Prayer. The brief must contain a short conclusion that clearly states the nature of the relief sought.

(k) Appendix in Civil Cases.

(1) Necessary Contents. Unless voluminous or impracticable, the appendix must contain a copy of:

(A) the trial court's judgment or other appealable order from which relief is sought;

(B) the jury charge and verdict, if any, or the trial court's findings of fact and conclusions of law, if any; and

(C) the text of any rule, regulation, ordinance, statute, constitutional provision, or other law (excluding case law) on which the argument is based, and the text of any contract or other document that is central to the argument.

(2) Optional Contents. The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, laws, documents on which the suit was based, pleadings, excerpts from the reporter's record, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the brief.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Tex. Sup. Ct. Misc. Docket No. 22-9029, April 8, 2022 and Tex. Sup. Ct. Misc. Docket No. 22-9057, July 25, 2022, eff. Aug. 1, 2022.)

Comment to 2008 change: A party may choose to include a statement in the brief regarding oral argument.

38.2. Appellee's Brief.

(a) Form of Brief.

(1) An appellee's brief must conform to the requirements of Rule 38.1, except that:

(A) the list of parties and counsel is not required unless necessary to supplement or correct the appellant's list;

(B) the appellee's brief need not include a statement of the case, a statement of the issues presented, or a statement of facts, unless the appellee is dissatisfied with that portion of the appellant's brief; and

(C) the appendix to the appellee's brief need not contain any item already contained in an appendix filed by the appellant.

(2) When practicable, the appellee's brief should respond to the appellant's issues or points in the order the appellant presented those issues or points.

(b) Cross-Points.

(1) Judgment Notwithstanding the Verdict. When the trial court renders judgment notwithstanding the verdict on one or more questions, the appellee must bring forward by cross-point any issue or point that would have vitiated the verdict or that would have prevented an affirmance of the judgment if the trial court had rendered judgment on the verdict. Failure to bring forward by cross-point an issue or point that would vitiate the verdict or prevent an affirmance of the judgment waives that complaint. Included in this requirement is a point that:

(A) the verdict or one or more jury findings have insufficient evidentiary support or are against the overwhelming preponderance of the evidence as a matter of fact; or

(B) the verdict should be set aside because of improper argument of counsel.

(2) When Evidentiary Hearing Needed. The appellate court must remand a case to the trial court to take evidence if:

(A) the appellate court has sustained a point raised by the appellant; and

(B) the appellee raised a cross-point that requires the taking of additional evidence.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003.)

38.3. Reply Brief.

The appellant may file a reply brief addressing any matter in the appellee's brief. However, the appellate court may consider and decide the case before a reply brief is filed.

38.4. Repealed by Order Nov. 13, 2012, eff. Dec. 1, 2012.

38.5. Appendix for Cases Recorded Electronically.

In cases where the proceedings were electronically recorded, the following rules apply:

(a) Appendix.

(1) In General. At or before the time a party's brief is due, the party must file one copy of an appendix containing a transcription of all portions of the recording that the party considers relevant to the appellate issues or points. Unless another party objects, the transcription will be presumed accurate.

(2) Repetition Not Required. A party's appendix need not repeat evidence included in any previously filed appendix.

(3) Form. The form of the appendix and transcription must conform to any specifications of the Supreme Court and Court of Criminal Appeals concerning the form of the reporter's record except that it need not have the reporter's certificate.

(4) Notice. At the time the appendix is filed, the party must give written notice of the filing to all parties to the trial court's judgment or order. The notice must specify, by referring to the index numbers in the court recorder's logs, those parts of the recording that are included in the appendix. The filing party need not serve a copy of the appendix but must make a copy available to all parties for inspection and copying.

(b) Presumptions. The same presumptions that apply to a partial reporter's record under Rule 34.6(c)(4) apply to the parties' appendixes. The appellate court need not review any part of the electronic recording.

(c) Supplemental Appendix. The appellate court may direct or allow a party to file a supplemental appendix containing a transcription of additional portions of the recording.

(d) Inability to Pay. A party who cannot pay the cost of an appendix must file the affidavit provided for by Rule 20. The party must also state in the affidavit or a supplemental affidavit that the party has neither the access to the equipment necessary nor the skill necessary to prepare the appendix. If a contest to the affidavit is not sustained by written order, the court recorder must transcribe or have transcribed those portions of the recording that the party designates and must file the transcription as that party's appendix, along with all exhibits.

(e) Inaccuracies.

(1) Correction by Agreement. The parties may agree to correct an inaccuracy in the transcription of the recording.

(2) Correction by Appellate or Trial Court. If the parties dispute whether an electronic recording or transcription accurately discloses what occurred in the trial court but cannot agree on corrections, the appellate court may:

(A) settle the dispute by reviewing the recording; or

(B) submit the dispute to the trial court, which must—after notice and hearing—settle the dispute and ensure that the recording or transcription is made to conform to what occurred in the trial court.

(f) Costs. The actual expense of preparing the appendixes or the amount prescribed for official reporters, whichever is less, is taxed as costs. The appellate court may disallow the cost of any portion of the appendixes that it considers surplusage or that does not conform to any specifications prescribed by the Supreme Court or Court of Criminal Appeals.

38.6. Time to File Briefs.

(a) Appellant's Filing Date. Except in a habeas corpus or bail appeal, which is governed by Rule 31, an appellant must file a brief within 30 days—20 days in an accelerated appeal—after the later of:

(1) the date the clerk's record was filed; or

(2) the date the reporter's record was filed.

(b) Appellee's Filing Date. The appellee's brief must be filed within 30 days—20 days in an accelerated appeal—after the date the appellant's brief was filed. In a civil case, if the appellant has not filed a brief as provided in this rule, an appellee may file a brief within 30 days—20 days in an accelerated appeal—after the date the appellant's brief was due.

(c) Filing Date for Reply Brief. A reply brief, if any, must be filed within 20 days after the date the appellee's brief was filed.

(d) Modifications of Filing Time. On motion complying with Rule 10.5(b), the appellate court may extend the time for filing a brief and may postpone submission of the case. A motion to extend the time to file a brief may be filed before or after the date the brief is due. The court may also, in the interests of justice, shorten the time for filing briefs and for submission of the case.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003.)

Comment to 2002 change: Rule 38.6(d) is amended to clarify that an appellate court may postpone the filing of any brief, not just the appellant's brief.

38.7. Amendment or Supplementation.

A brief may be amended or supplemented whenever justice requires, on whatever reasonable terms the court may prescribe.

38.8. Failure of Appellant to File Brief.

(a) Civil Cases. If an appellant fails to timely file a brief, the appellate court may:

(1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure and the appellee is not significantly injured by the appellant's failure to timely file a brief;

(2) decline to dismiss the appeal and give further direction to the case as it considers proper; or

(3) if an appellee's brief is filed, the court may regard that brief as correctly presenting the case and may affirm the trial court's judgment upon that brief without examining the record.

(b) Criminal Cases.

(1) Effect. An appellant's failure to timely file a brief does not authorize either dismissal of the appeal or, except as provided in (4), consideration of the appeal without briefs.

(2) Notice. If the appellant's brief is not timely filed, the appellate clerk must notify counsel for the parties and the trial court of that fact. If the appellate court does not receive a satisfactory response within ten days, the court must order the trial court to immediately conduct a hearing to determine

whether the appellant desires to prosecute his appeal, whether the appellant is indigent, or, if not indigent, whether retained counsel has abandoned the appeal, and to make appropriate findings and recommendations.

(3) Hearing. In accordance with (2), the trial court must conduct any necessary hearings, make appropriate findings and recommendations, and have a record of the proceedings prepared, which record—including any order and findings—must be sent to the appellate court.

(4) Appellate Court Action. Based on the trial court's record, the appellate court may act appropriately to ensure that the appellant's rights are protected, including initiating contempt proceedings against appellant's counsel. If the trial court has found that the appellant no longer desires to prosecute the appeal, or that the appellant is not indigent but has not made the necessary arrangements for filing a brief, the appellate court may consider the appeal without briefs, as justice may require.

38.9. Briefing Rules to Be Construed Liberally.

Because briefs are meant to acquaint the court with the issues in a case and to present argument that will enable the court to decide the case, substantial compliance with this rule is sufficient, subject to the following.

(a) Formal Defects. If the court determines that this rule has been flagrantly violated, it may require a brief to be amended, supplemented, or redrawn. If another brief that does not comply with this rule is filed, the court may strike the brief, prohibit the party from filing another, and proceed as if the party had failed to file a brief.

(b) Substantive Defects. If the court determines, either before or after submission, that the case has not been properly presented in the briefs, or that the law and authorities have not been properly cited in the briefs, the court may postpone submission, require additional briefing, and make any other order necessary for a satisfactory submission of the case.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 74. The rule is substantially rewritten. Paragraph 38.1(e) now specifically allows a party to either present issues or points of error. Paragraphs 38.1(f) and (g) are new and require a brief to include a statement of facts and summary of the argument. Paragraph 38.2(b) is new and gives specific requirements for cross-points. *See also* TEX. R. CIV. P. 324(c). Subdivision 38.3 is new and provides for a reply brief. Subdivision 38.4 imposes a total brief limit of 90 pages on each party. Thus, if more than one party has filed a notice of appeal, there will be multiple appellant's, appellee's, and reply briefs, but each party is limited to a total of 90 pages. Subdivision 38.5 is new and provides for an appendix in cases recorded electronically in the trial court. Paragraph 38.6(b) now provides that the appellee has 30—rather than 25—days to file a brief. The provisions of former Rules 74(i) (Number of Copies), (j) (Briefs Typewritten or Printed), and (q) (Service of Briefs) are omitted as unnecessary. *See* Rule 9.

RULE 39. ORAL ARGUMENT; DECISION WITHOUT ARGUMENT.

39.1. Right to Oral Argument.

Any party who has filed a brief and who has timely requested oral argument may argue the case to the court unless the court, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

(1) the appeal is frivolous;

(2) the dispostive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

39.2. Purpose of Argument.

Oral argument should emphasize and clarify the written arguments in the briefs. Counsel should not merely read from prepared text. Counsel should assume that all members of the court have read the briefs before oral argument and counsel should be prepared to respond to questions. A party should not refer to or comment on matters not involved in or pertaining to what is in the record.

39.3 Time Allowed.

The court will set the time that will be allowed for argument. Counsel must complete argument in the time allotted and may continue after the expiration of the allotted time only with permission of the court. Counsel is not required to use all the allotted time. The appellant must be allowed to conclude the argument.

39.4. Number of Counsel.

Generally, only one counsel should argue for each side. Except on leave of court, no more than two counsel on each side may argue. Only one counsel may argue in rebuttal.

39.5. Argument by Amicus.

With leave of court obtained before the argument and with a party's consent, an amicus curiae may share allotted time with that party. Otherwise, counsel for amicus may not argue.

39.6. When Only One Party Files a Brief.

If counsel for only one party has filed a brief, the court may allow that party to argue.

39.7. Request and Waiver.

A party desiring oral argument must note that request on the front cover of the party's brief. If the court sets the case for oral argument, then all parties that filed a brief are entitled to participate in the oral argument, even if a party did not request oral argument on the cover of the party's brief. The court may direct a party that has not requested argument to appear and argue.

(Amended Tex. Sup. Ct. Misc. Docket No. 22-9089, Sept. 30, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9001, Jan. 24, 2022, eff. Feb. 1, 2023.

39.8 Clerk's Notice.

The clerk must send to the parties—at least 21 days before the date the case is set for argument or submission without argument—a notice telling the parties:

(a) whether the court will allow oral argument or will submit the case without argument;

(b) the date of argument or submission without argument;

(c) if argument is allowed, the time allotted for argument; and.

(d) the names of the members of the panel to which the case will be argued or submitted, subject to change by the court.

A party's failure to receive the notice does not prevent a case's argument or submission on the scheduled date.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order March 10, 2008 eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

Comment to 1997 change: This is former Rule 75. Technical and nonsubstantive changes are made.

Comment to 2008 change: Subdivision 39.1 is amended to provide for oral argument unless the court determines it is unnecessary and to set out the reasons why argument may be unnecessary. The appellate court must evaluate these reasons in view of the traditional importance of oral argument. The court need not agree on, and generally should not announce, a specific reason or reasons for declining oral argument.

RULE 40. ORDER OF DECISION.

40.1. Civil Cases.

The court of appeals may determine the order in which civil cases will be decided. But the following types of cases have precedence over all others:

(a) a case given precedence by law;

(b) an accelerated appeal; and

(c) a case that the court determines should be given precedence in the interest of justice.

40.2. Criminal Cases.

In cases not otherwise given precedence by law, the court of appeals must hear and determine a criminal appeal at the earliest possible time, having due regard for the parties' rights and for the proper administration of justice.

(Adopted by Order eff. Sept. 1, 1997.)

Reference

See Code of Criminal Procedure article 44.01(f).

Comment on 1997 change: The provisions of former Rules 76, 77 and 78 are merged. Civil cases involving the Railroad Commission, the State, and "cases submitted on oral argument for all parties" are no longer given preference unless given preference by law.

RULE 41. PANEL AND EN BANC DECISION.

41.1. Decision by Panel.

(a) Constitution of Panel. Unless a court of appeals with more than three justices votes to decide a case en banc, a case must be assigned for decision to a panel of the court consisting of three justices, although not every member of the panel must be present for argument. If the case is decided without argument, three justices must participate in the decision. A majority of the panel, which constitutes a quorum, must agree on the judgment. Except as otherwise provided in these rules, a panel's opinion constitutes the court's opinion, and the court must render a judgment in accordance with the panel opinion.

(b) When Panel Cannot Agree on Judgment. After argument, if for any reason a member of the panel cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, the chief justice of the court of appeals must:

(1) designate another justice of the court to sit on the panel to consider the case;

(2) request the Chief Justice of Supreme Court to temporarily assign an eligible justice of judge to sit on the panel to consider the case; or

(3) or convene the court en banc to consider the case.

The reconstituted panel or the en banc court may order the case reargued.

(c) When Court Cannot Agree on Judgment. After argument, if for any reason a member of a court consisting of only three justices cannot participate in deciding a case, the case may be decided by the two remaining justices. If they cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief Justice may then temporarily assign an eligible justice or judge to sit with the court of appeals to consider the case. The reconstituted court may order the case reargued.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

41.2. Decision by En Banc Court.

(a) Constitution of En Banc Court. An en banc court consists of all members of the court who are not disqualified or recused and—if the case was originally argued before or decided by a panel—any members of the panel who are not members of the court but remain eligible for assignment to the court. A majority of the en banc court constitutes a quorum. A majority of the en banc court must agree on a judgment.

(b) When En Banc Court Cannot Agree on Judgment. If a majority of an en banc court cannot agree on a judgment, that fact must be certified to the Chief Justice of the Supreme Court. The Chief Justice may then temporarily assign an eligible justice or judge to sit with the court of appeals to consider the case. The reconstituted court may order the case reargued.

(c) En Banc Consideration Disfavored. En banc consideration of a case is not favored and should not be ordered unless necessary to secure or maintain uniformity of the court's decisions or unless extraordinary circumstances require en banc consideration. A vote to determine whether a case will be considered or reconsidered en banc need not be taken unless a justice of the court requests a vote. If a vote is requested and a majority of the court's members vote to consider or reconsider the case en banc, the en banc court will consider or reconsider the case. Otherwise, a panel of the court will consider the case.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order March 10, 2008, eff. Sept. 1, 2008 ; Order Aug. 20, 2008, eff. Sept. 1, 2008; Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

41.3. Precedent in Transferred Cases.

In cases transferred by the Supreme Court from on court of appeals to another, the court of appeals to which the case is transferred must decide the case in accordance with the precedent of the transferor court under principles of stare decisis if the transferee court's decision otherwise would have been inconsistent with the precedent of the transferor court. The court's opinion may state whether the outcome would have been different had the transferee court not been required to decide the case in accordance with the transferor court's precedent.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

Comment to 1997 change: This is former Rule 79. The rule is reorganized. Paragraphs 41.1(b) and (c) are amended to make clear that a three judge panel must hear the case. Therefore, only if a member of a panel is lost after argument do the provisions for appointment of another justice to break a deadlock come into play. Paragraph 41.2(a) is amended to define an en banc court.

Comment to 2008 changes: Subdivisions 41.1 and 41.2 are amended to acknowledge the full authority of the Chief Justice of the Supreme Court to temporarily assign a justice or judge to hear a matter pending in an appellate court. The statutory provisions governing the assignment of judges to appellate courts are located in Chapters 74 and 75 of the Government Code. Other minor changes are made for consistency. Subdivision 41.3 is added to require, in appellate cases transferred by the Supreme Court under Section 73.001 of the Government Code for docket equalization or other purposes, that the transferee court must generally resolve any conflict between the precedent of the transferor court and the precedent of the transferee court—or that of any other intermediate appellate court the transferee court otherwise would have followed—by following the precedent of the transferor court, unless it appears that the transferor court itself would not be bound by that precedent. The rule requires the transferee court to "stand in the shoes" of the transferor court so that an appellate transfer will not produce a different outcome, based on application of substantive law, than would have resulted had the case not been transferred. The transferee court is not expected to follow the transferor courts local rules or otherwise supplant its own local procedures with those of the transferor court.

RULE 42. DISMISSAL; SETTLEMENT.

42.1. Voluntary Dismissal and Settlement in Civil Cases.

(a) On Motion or By Agreement. The appellate court may dispose of an appeal as follows:

(1) On Motion of Appellant. In accordance with a motion of appellant, the court may dismiss the appeal of affirm the appealed judgment or order unless such disposition would prevent a party from seeking relief to which it would otherwise be entitled.

(2) By Agreement. In accordance with an agreement signed by the parties or their attorneys and filed with the clerk, the court may:

(A) render judgment effectuating the parties' agreement;

(B) set aside the trial court's judgment without regard to the merits and remand the case to the trial court for rendition of judgment in accordance with the agreement; or

(C) abate the appeal and permit proceedings in the trial court to effectuate the agreement.

(b) Partial Disposition. A severable portion of the proceeding may be disposed of under (a) if it will not prejudice the remaining parties.

(c) Effect on Court's Opinion. In dismissing a proceeding, the appellate court will determine whether to withdraw any opinion it has already issued. An agreement or motion for dismissal cannot be conditioned on withdrawal of the opinion.

(d) Costs. Absent agreement of the parties, the court will tax costs against the appellant.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003.)

Comment to 2002 change: Rule 42.1 is amended to clarify the procedures for implementing settlements on appeal and to expressly give courts flexibility in effectuating settlements. The rule is also clarified to expressly permit the dismissal of an appeal without dismissal of the action itself. The rule does not permit an appellate court to order a new trial merely on the agreement of the parties absent reversible error, or to vacate a trial court's judgment absent reversible error or a settlement.

42.2. Voluntary Dismissal in Criminal Cases.

(a) At any time before the appellate court's decision, the appellate court may dismiss the appeal upon the appellant's motion. The appellant and his or her attorney must sign the written motion to dismiss and file it in duplicate with the appellate clerk, who must immediately send the duplicate copy to the trial court clerk.

(b) After the court of appeals hands down its opinion, it may not grant a appellant's motion to dismiss the appeal unless the other parties consent. It the other parties consent and the court of appeals grants the appellant's motion to dismiss the appeal, the appellate opinion must be withdrawn and the appeal dismissed. The appellate clerk must send notice of the dismissal to the trial court clerk.

(Amended by Order Oct. 16, 2000, eff. Jan. 1, 2001. Amended by Order Dec. 13, 2006, eff. Jan. 1, 2007.)

Comment to 2000 change: In the first sentence of Rule 42.2(a) "appellant" is replaced by "party that appealed," to make it clear that the rule applies to the State when it is the appealing party. *See State v. Miles*, 994 S.W.2d 410 (Tex.App.—Waco 1999). The requirement that the appellant's attorney must sign the withdrawal is deleted, and the last sentence is added, to remove any implication that the attorney may veto the appellant's decision to withdraw the notice of appeal. The word "personally" is added to emphasize that the appellant must participate in the withdrawal of his or her appeal. The provisions of Rule 9.1(a) do not restrict the appellant's ability to withdraw the notice of appeal.

42.3. Involuntary Dismissal in Civil Cases.

Under the following circumstances, on any party's motion—or on its own initiative after giving ten days' notice to all parties—the appellate court may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

(a) for want of jurisdiction;

(b) for want of prosecution; or

(c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

42.4. Involuntary Dismissal in Criminal Cases.

The appellate court must dismiss an appeal on the State's motion, supported by affidavit, showing that the appellant has escaped from custody pending the appeal and that to the affiant's knowledge, the appellant has not, within ten days after escaping, voluntarily returned to lawful custody within the state.

(a) Timely Return to Custody; Reinstatement. The appeal may not be dismissed—or, if dismissed, must be reinstated—if an affidavit of an officer or other credible person is filed showing that the appellant, within ten days after escaping, voluntarily returned to lawful custody within the state.

(b) Life Sentence. The appellate court may overrule the motion to dismiss—or, if the motion was granted, may reinstate the appeal—if:

(1) the appellant received a life sentence; and

(2) the appellant is recaptured or voluntarily surrenders within 30 days after escaping.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Former Rules 59 and 60 are merged. Paragraph 42.1(c), allowing a court of appeals to withdraw its opinion, is new. Provision is made in paragraph 42.3(c) for dismissal of an appeal for failure to comply with a notice from the clerk. Other changes are made.

RULE 43. JUDGMENT OF THE COURT OF APPEALS.

43.1. Time.

The court of appeals should render its judgment promptly after submission of a case.

43.2. Types of Judgment.

The court of appeals may:

(a) affirm the trial court's judgment in whole or in part;

(b) modify the trial court's judgment and affirm it as modified;

(c) reverse the trial court's judgment in whole or in part and render the judgment that the trial court should have rendered;

(d) reverse the trial court's judgment and remand the case for further proceedings;

(e) vacate the trial court's judgment and dismiss the case; or

(f) dismiss the appeal.

43.3. Rendition Appropriate Unless Remand Necessary.

When reversing a trial court's judgment, the court must render the judgment that the trial court should have rendered, except when:

(a) a remand is necessary for further proceedings; or

(b) the interests of justice require a remand for another trial.

43.4. Judgment for Costs in Civil Cases.

The court of appeals' judgment should award to the prevailing party costs incurred by that party related to the appeal, including filing fees in the court of appeals and costs for preparation of the record. The court of appeals may tax costs otherwise as required by law or for good cause. But the judgment must not require the payment of costs by a party who was entitled to proceed without payment of costs under Rule 20.1, and a provision in the judgment purporting to do so is void.

(Amended by Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016.)

[Statement of Inability to Afford Payment of Court Costs as provided in Tex. Sup. Ct. Misc. Docket No. 16-9122, eff. Sept. 1, 2016 and applies to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1, 2016. Amended by Tex. Sup. Ct. Misc. Docket No. 20-9154, Dec. 23, 2020, and Tex. Sup. Ct. Misc. Docket No. 22-9090, Oct. 20, 2022, eff. Oct. 20, 2022.]

43.5. Judgment Against Sureties in Civil Cases.

When a court of appeals affirms the trial court judgment, or modifies that judgment and renders judgment against the appellant, the court of appeals must render judgment against the sureties on the appellant's supersedeas bond, if any, for the performance of the judgment and for any costs taxed against the appellant.

43.6. Other Orders.

The court of appeals may make any other appropriate order that the law and the nature of the case require.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 changes: Former Rules 80(a)-(c) and 82 are merged. Paragraph 43.2(e) allows the court of appeals to vacate the trial court's judgment and dismiss the case; paragraph 43.2(f) allows the court of appeals to dismiss the appeal. Both provisions are new but codify current practice. Paragraph 43.3(a) is moved here from former Rule 81(c). Paragraph 43.3(b), allowing a remand in the interest of justice, is new. Subdivisions 43.4 and 43.5 are from former Rule 82.

RULE 44. REVERSIBLE ERROR.

44.1. Reversible Error in Civil Cases.

(a) Standard for Reversible Error. No judgment may be reversed on appeal on the ground that the trial court made an error of law unless the court of appeals concludes that the error complained of:

(1) probably caused the rendition of an improper judgment; or

(2) probably prevented the appellant from properly presenting the case to the court of appeals.

(b) Error Affecting Only Part of Case. If the error affects part of, but not all, the matter in controversy and that part is separable without unfairness to the parties, the judgment must be reversed and a new trial ordered only as to the part affected by the error. The court may not order a separate trial solely on unliquidated damages if liability is contested.

44.2. Reversible Error in Criminal Cases.

(a) Constitutional Error. If the appellate record in a criminal case reveals constitutional error that is subject to harmless error review, the court of appeals must reverse a judgment of conviction or punishment unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment.

(b) Other Errors. Any other error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

(c) Presumptions. Unless the following matters were disputed in the trial court, or unless the record affirmatively shows the contrary, the court of appeals must presume:

(1) that venue was proved in the trial court;

(2) that the jury was properly impaneled and sworn;

(3) that the defendant was arraigned;

(4) that the defendant pleaded to the indictment or other charging instrument; and

(5) that the court's charge was certified by the trial court and filed by the clerk before it was read to the jury.

44.3. Defects in Procedure.

A court of appeals must not affirm or reverse a judgment or dismiss an appeal for formal defects or irregularities in appellate procedure without allowing a reasonable time to correct or amend the defects or irregularities.

44.4. Remediable Error of the Trial Court.

(a) Generally. A court of appeals must not affirm or reverse a judgment or dismiss an appeal if:

(1) the trial court's erroneous action or failure or refusal to act prevents the proper presentation of a case to the court of appeals; and

(2) the trial court can correct its action or failure to act.

(b) Court of Appeals Direction if Error Remediable. If the circumstances described in (a) exist, the court of appeals must direct the trial court to correct the error. The court of appeals will then proceed as if the erroneous action or failure to act had not occurred.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Former Rules 80(d), 81 and 83 are merged. The reversible error standard in subdivision 44.1 is amended to omit the reference to an action "reasonably calculated to cause" an improper judgment, but no substantive change is intended. Paragraph 44.2(a) is amended to limit its standard of review to constitutional errors that are subject to harmless error review. Paragraph 44.2(b) is new and is taken from Federal Rule of Criminal Procedure 52(a) without substantive change. Paragraph 44.2(c) is former Rule 80(d) without substantive change. Subdivision 44.3 is amended to delete the reference to defects of "substance" and to delete the provisions regarding the late filing of the record.

RULE 45. DAMAGES FOR FRIVOLOUS APPEALS IN CIVIL CASES.

If the court of appeals determines that an appeal is frivolous, it may—on motion of any party or on its own initiative, after notice and a reasonable opportunity for response—award each prevailing party just damages. In determining whether to award damages, the court must not consider any matter that does not appear in the record, briefs, or other papers filed in the court of appeals.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 84. The limit on the amount of the sanction that may be imposed is repealed. A requirement of notice and opportunity to respond is added.

RULE 46. REMITTITUR IN CIVIL CASES.

46.1. Remittitur After Appeal Perfected.

If the trial court suggests a remittitur but the case is appealed before the remittitur is filed, the party who would make the remittitur may do so in the court of appeals in the same manner as in the trial court. The court of appeals must then render the judgment that the trial court should have rendered if the remittitur had been made in the trial court.

46.2. Appeal on Remittitur.

If a party makes the remittitur at the trial judge's suggestion and the party benefiting from the remittitur appeals, the remitting party is not barred from contending in the court of appeals that all or part of the remittitur should not have been required, but the remitting party must perfect an appeal to raise that point. If the court of appeals sustains the remitting party's contention that remittitur should not have been required, the court must render the judgment that the trial court should have rendered.

46.3. Suggestion of Remittitur by Court of Appeals.

The court of appeals may suggest a remittitur. If the remittitur is timely filed, the court must reform and affirm the trial court's judgment in accordance with the remittitur. If the remittitur is not timely filed, the court must reverse the trial court's judgment.

46.4. Refusal to Remit Must Not Be Mentioned in Later Trial.

If the court of appeals suggests a remittitur, but no remittitur is filed, evidence of the court's determination regarding remittitur is inadmissible in a later trial of the case.

46.5. Voluntary Remittitur.

If a court of appeals reverses the trial court's judgment because of a legal error that affects only part of the damages awarded by the judgment, the affected party may—within 15 days after the court of appeals' judgment—voluntarily remit the amount that the affected party believes will cure the reversible error. A party may include in a motion for rehearing—without waiving any complaint that the court of appeals erred—a conditional request that the court accept the remittitur and affirm the trial court's judgment as reduced. If the court of appeals determines that the voluntary remittitur is not sufficient to cure the reversible error, but that remittitur is appropriate, the court must suggest a remittitur in accordance with Rule 46.3. If the remittitur is timely filed and the court of appeals determines that the voluntary remittitur cures the reversible error, then the court must accept the remittitur and reform and affirm the trial court judgment in accordance with the remittitur.

(Amended by Order Dec. 23, 2002 eff. Jan. 1, 2003.)

Comment to 2002 change: Subdivision 46.5 is amended to clarify the procedure for offering a voluntary remittitur. The offer may be made in a motion for rehearing without waiving any complaint that the court of appeals erred, thereby extending the deadlines for further appeal.

RULE 47. OPINIONS, DISTRIBUTION, PUBLICATION, AND CITATION.

47.1. Written Opinions.

The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.

(Amended by Order Dec. 23, 2002 eff. Jan. 1, 2003.)

47.2. Designation and Signing of Opinions; Participating Justices.

(a) Civil and Criminal Cases. Each opinion of the court must be designated either an "Opinion" or a "Memorandum Opinion." A majority of the justices who participate in considering the case must determine whether the opinion will be signed by a justice or will be per curiam and whether it will be designated an opinion or memorandum opinion. The names of the participating justices must be noted on all written opinions or orders of the court or a panel of the court.

(b) Criminal Cases. In addition, each opinion and memorandum opinion in a criminal case must bear the notation "publish" or "do not publish" as determined—before the opinion is handed down—by a majority of the justices who participate in considering the case. Any party may move the appellate court to change the notation, but the court of appeals must not change the notation after the Court of Criminal Appeals has acted on any party's petition for discretionary review or other request for relief. The Court of Criminal Appeals may, at any time, order that a "do not publish" notation be changed to "publish."

(c) Civil Cases. Opinions and memorandum opinions in civil cases issued on or after January 1, 2003 shall not be designated "do not publish."

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003. Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

47.3. Distribution of Opinions.

All opinions of the courts of appeals are open to the public and must be made available to public reporting services, print or electronic.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003.)

47.4. Memorandum Opinions.

If the issues are settled, the court should write a brief memorandum opinion no longer than necessary to advise the parties of the court's decision and the basic reasons for it. An opinion may not be designated a memorandum opinion if the author of a concurrence or dissent opposes that designation. An opinion must be designated a memorandum opinion unless it does any of the following:

(a) establishes a new rule of law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases;

(b) involves issues of constitutional law or other legal issues important to the jurisprudence of Texas;

(c) criticizes existing law; or

(d) resolves an apparent conflict of authority.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003.)

47.5. Concurring and Dissenting Opinions.

Only a justice who participated in the decision of a case may file or join in an opinion concurring in or dissenting from the judgment of the court of appeals. Any justice on the court may file an opinion in connection with a denial of consideration or reconsideration en banc.

(Amended by Order Dec. 23, 2002 eff. Jan. 1, 2003; Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

47.6. Change in Designation by En Banc Court.

A court en banc may change a panel's designation of an opinion.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003.)

47.7. Citation of Unpublished Opinions.

(a) Criminal Cases. Opinions and memorandum opinions not designated for publication by the court of appeals under these or prior rules have no precedential value but may be cited with the notation, "(not designated for publication)."

(b) Civil Cases. Opinions and memorandum opinions designated "do not publish" under these rules by the court of appeals prior to January 1, 2003 have no precedential value but may be cited with the notation, "(not designated for publication)." If an opinion or memorandum opinion issued on or after that date is erroneously designated "do not publish," the erroneous designation will not affect the precedential value of the decision.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003. Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

Comment to 2002 change: The rule is substantively changed to discontinue the use of the "do no publish" designation in civil cases, to require that all opinions of the court of appeals be made available to public reporting services, and to remove prospectively any prohibition against the citation of opinions as authority in civil cases. The rule favors the use of "memorandum opinions" designated as such except in certain types of cases but does not change other requirements, such as those in *Pool v. Ford Motor Co*., 715 S.W.2d 629, 635-636 (Tex. 1986). An opinion previously designated "do not publish" has no precedential value but may be cited. The citation must include the notation, "(not designated for publication)." Of course, whenever an opinion not readily available is cited, copies should be furnished to the court and opposing counsel.

Comment to 2008 changes: Effective January 1, 2003, Rule 47 was amended to discontinue in civil cases, on a prospective basis, the practice of allowing courts of appeals to designate opinions as either "published" or "unpublished." Rule 47.7 is revised to clarify that, with respect to civil cases, only opinions issued prior to the 2003 amendment and affirmatively designated "do not publish" should be considered "unpublished" cases lacking precedential value. All opinions and memorandum opinions in civil cases issued after the 2003 amendment have precedential value. The provisions governing citation of unpublished opinions in criminal cases are substantively unchanged. Rules 47.2 and 47.7 are amended to clarify that memorandum opinions are subject to those rules.

RULE 48. COPY OF OPINION AND JUDGMENT TO INTERESTED PARTIES AND OTHER COURTS.

48.1. recipients of Opinion and Judgment in All Cases.

On the date when an appellate court's opinion is handed down, the appellate clerk must send or deliver copies of the opinion and judgment to the following persons:

(a) the trial judge;

(b) the trial court clerk;

(c) the regional administrative judge; and

(d) all parties to the appeal.

(Amended by Order Dec. 13, 2013, eff. Jan. 1, 2014.)

48.2. Additional Recipients in Criminal Cases.

In criminal cases, copies of the opinion and judgment will also be mailed or delivered to the State Prosecuting Attorney.

48.3. Filing Opinion and Judgment.

The trial court clerk must file a copy of the opinion and judgment among the papers of the case in that court.

48.4. Opinion Sent to Criminal Defendant.

In criminal cases, the attorney representing the defendant on appeal shall, within five days after the opinion is handed down, send his client a copy of the opinion and judgment, along with notification of the defendant's right to file a *pro se* petition for discretionary review under Rule 68. This notification shall be sent certified mail, return receipt requested, to the defendant at his last known address. The attorney shall also send the court of appeals a letter certifying his compliance with this rule and attaching a copy of the return receipt within the time for filing a motion for rehearing. The court of appeals shall file this letter in its record of the appeal.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order May 2, 2007, eff. Sept. 1, 2007.)

Comment to 1997 change: This is former Rule 91 with changes.

RULE 49. MOTION FOR REHEARING AND EN BANC RECONSIDERATION.

49.1. Motion for Rehearing

A motion for rehearing may be filed within 15 days after the court of appeals' judgment or order is rendered. The motion must clearly state the issues relied on for the rehearing.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

49.2. Response to Motion for Rehearing

No response to a motion for rehearing need be filed unless the court so requests. The motion will not be granted unless a response has been filed or requested by the court.

(Amended by Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

49.3. Decision on Motion for Rehearing

A motion for rehearing may be granted by a majority of the justices who participated in the decision of the case. Unless two justices who participated in the decision of the case agree on the disposition of the motion for rehearing, the chief justice of the court of appeals must assign a justice to replace any justice who participated in the panel decision but cannot participate in deciding the motion for rehearing. If rehearing is granted, the court may dispose of the case with or without rebriefing and oral argument.

(Amended by Order of Tex. Sup. Ct. Misc. Docket No. 20-9105, Aug. 21, 2020 and Tex. Sup. Ct. Misc. Docket No. 20-9141, Dec. 8, 2020, eff. Jan. 1, 2021; Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

49.4. Further Motion for Rehearing

After a court decides a motion for rehearing, a further motion for rehearing may be filed within 15 days of the court's action if the court:

(a) modifies its judgment;

(b) vacates its judgment and renders a new judgment; or

(c) issues a different opinion.

(Adopted by Order Aug. 20, 2008, eff. Sept. 1, 2008. Renumbered and amended Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

49.5. En Banc Reconsideration

A party may file a motion for en banc reconsideration as a separate motion, with or without filing a motion for rehearing. The motion must be filed within the time prescribed by Rule 49.1 for filing a motion for rehearing. The motion should address the standard for en banc consideration in Rule 41.2(c). No response to a motion for en banc reconsideration need be filed unless the court so requests. While the court has plenary power, a majority of the en banc court may, on its own initiative, order en banc reconsideration of a decision. If a majority orders reconsideration, the judgment or order does not become final, and the case will be resubmitted to the court for en banc review and disposition. The court may dispose of the case with or without rebriefing and oral argument.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Order Aug. 25, 2008, eff. Sept. 1, 2008. Renumbered and amended by Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

49.6. Further Motion for En Banc Reconsideration

After a court decides a motion for en banc reconsideration, a further motion for en banc reconsideration may be filed within 15 days of the court's action if the court:

(a) modifies its judgment;

(b) vacates its judgment and renders a new judgment; or

(c) issues a different opinion.

(Adopted by Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

49.7 Accelerated Appeals

In an accelerated appeal, the appellate court may deny the right to file a motion for rehearing or en banc reconsideration or shorten the time to file such a motion.

(Renumbered by Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

49.8. Amendments

A motion for rehearing or a motion for en banc reconsideration may be amended as a matter of right anytime before the 15-day period allowed for filing the motion expires, and with leave of the court, anytime before the court of appeals decides the motion.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008. Renumbered by Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

49.9. Extensions of Time

A court of appeals may extend the time for filing a motion for rehearing or en banc reconsideration if a party files a motion complying with Rule 10.5(b) no later than 15 days after the last date for filing the motion.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008. Renumbered by Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

49.10. Not Required for Review

A motion for rehearing or for en banc reconsideration is not a prerequisite to filing a petition for review in the Supreme Court or a petition for discretionary review in the Court of Criminal Appeals nor is it required to preserve error.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008. Renumbered and amended by Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

49.11. Relationship to Petition for Review

A party may not file a motion for rehearing or en banc reconsideration in the court of appeals after that party has filed a petition for review in the Supreme Court unless the court of appeals modifies its opinion or judgment after the petition for review is filed. The filing of a petition for review does not preclude another party from filing a motion for rehearing or en banc reconsideration or preclude the court of appeals from ruling on the motion. If a motion for rehearing or en banc reconsideration is timely filed after a petition for review is filed, the petitioner must immediately notify the Supreme Court clerk of the filing of the motion, and must notify the clerk when the last timely filed motion is overruled by the court of appeals.

(Adopted by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

49.12. Certificate of Conference Not Required

A certificate of conference is not required for a motion for rehearing or for a motion for en banc reconsideration.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

Comment to 1997 change: This is former Rule 100. Subdivision 49.4 is moved here from former Rule 43(h). Subdivisions 49.9 and 49.10 are added.

Comment to 2008 changes: Rule 49 is revised to treat a motion for en banc reconsideration as having the effect of a motion for rehearing and to include procedures governing the filing of a motion for en banc reconsideration. Subdivision 49.5(c) is amended to clarify that a further motion for rehearing may be filed if the court issues a different opinion, irrespective of whether the opinion is issued in connection with the overruling of a prior motion for rehearing. Issuance of a new opinion that is not substantially different should not occasion a further motion for rehearing, but a motion's lack of merit does not affect appellate deadlines. The provisions of former Rule 53.7(b) that address motions for rehearing are moved to new subdivision 49.11 without change, leaving the provisions of Rule 53.7(b) that address petitions for review undisturbed. Subdivision 49.12 mirrors Rule 10.1(a)(5) in excepting motions for rehearing and motions for en banc reconsideration from the certificate-of-conference requirement.

Comment to 2021 change: Rule 49 is revised to clarify when a motion for en banc reconsideration may be filed. Some subdivisions have been rearranged. Amended subdivision 49.5 adds a cross-reference to the standard for en banc consideration in Rule 41.2(c).

RULE 50. RECONSIDERATION ON PETITION FOR DISCRETIONARY REVIEW.

Within 60 days after a petition for discretionary review is filed with the clerk of the court of appeals that delivered the decision, the justices who participated in the decision may, as provided by subsection (a), reconsider and correct or modify the court's opinion or judgment. Within the same period of time, any of the justices who participated in the decision may issue a concurring of dissenting opinion.

(a) If the court's original opinion or judgment is corrected or modified, that opinion or judgment is withdrawn and the modified or corrected opinion or judgment is substituted as the opinion or judgment of the court. No further opinions may be issued by the court of appeals. The original petition for discretionary review is not dismissed by operation of law, unless the filing party files a new petition in the court of appeals. In the alternative, the petitioning party shall submit to the court of appeals copies of the corrected or modified opinion or judgment as an amendment to the original petition.

(b) Any party may then file with the court of appeals a new petition for discretionary review seeking review of the corrected or modified opinion or judgment, including any dissents or concurrences, under Rule 68.2.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

Comment to 1997 change: This is former Rule 101. The rule is amended to allow 30 days for the court of appeals to review the petition for discretionary review and to require the withdrawal of the prior opinion and judgment if the court of appeals renders a new judgment or hands down a new opinion.

RULE 51. ENFORCEMENT OF JUDGMENTS AFTER MANDATE.

51.1. Civil Cases.

(a) Statement of Costs. The appellate clerk must prepare, and send to the trial court clerk with the mandate, a statement of costs showing:

(1) the preparation costs for the appellate record, and any court of appeals filing fees, with a notation of those items that have been paid and those that are owing; and

(2) the party or parties against whom costs have been adjudged.

(b) Enforcement of Judgment. When the trial court clerk receives the mandate, the appellate court's judgment must be enforced. Appellate court costs must be included with the trial court costs in any process to enforce the judgment. If all or part of the costs are collected, the trial court clerk must immediately remit to the appellate court clerk any amount due to that clerk. The trial court need not make any further order in the case, and the appellate court's judgment may be enforced as in other cases, when the appellate judgment:

(1) affirms the trial court's judgment;

(2) modifies the trial court's judgment and, as so modified, affirms that judgment; or

(3) renders the judgment the trial court should have rendered.

51.2. Criminal Cases.

When the trial court clerk receives the mandate, the appellate court's judgment must be enforced as follows:

(a) Clerk's Duties. The trial court clerk must:

(1) send an acknowledgment to the appellate clerk of the mandate's receipt; and

(2) immediately file the mandate.

(b) Judgment of Affirmance; Defendant Not in Custody.

(1) Capias to Be Issued. If the judgment contains a sentence of confinement or imprisonment that has not been suspended, the trial court must promptly issue a capias for the defendant's arrest so that the court's sentence can be executed.

(2) Contents of Capias. The capias may issue to any county of this state and must be executed and returned as in felony cases, except that no bail may be taken. The capias must:

(A) recite the fact of conviction;

(B) set forth the offense and the court's judgment and sentence;

(C) state that the judgment was appealed from and affirmed, and that the mandate has been filed; and

(D) command the sheriff to arrest and take the defendant into his custody, and to place and keep the defendant in custody until delivered to the proper authorities as directed by the sentence.

(3) Sheriff's Duties. The sheriff must promptly execute the capias as directed. The sheriff must notify the trial court clerk and the appellate clerk when the mandate has been carried out and executed.

(c) Judgment of Reversal.

(1) When New Trial Ordered. When the appellate court reverses the trial court's judgment and grants the defendant a new trial, the procedure is governed by Code of Criminal Procedure article 44.29. If the defendant is in custody and entitled to bail, the defendant must be released upon giving bail.

(2) When Case Dismissed. When the appellate court reverses the trial court's judgment and orders the case to be dismissed, the defendant—if in custody—must be discharged.

(d) Judgment of Acquittal. When the appellate court reverses a judgment and orders the defendant's acquittal, the defendant—if in custody—must be discharged, and no further order or judgment of the trial court is necessary.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Former Rules 87 and 88 are merged. The reference to costs in tax suits is deleted.

SECTION THREE.
ORIGINAL PROCEEDINGS IN THE SUPREME COURT AND THE COURTS OF APPEALS

RULE 52. ORIGINAL PROCEEDINGS.

52.1. Commencement.

An original appellate proceeding seeking extraordinary relief—such as a writ of habeas corpus, mandamus, prohibition, injunction, or quo warranto—is commenced by filing a petition with the clerk of the appropriate appellate court. The petition must be captioned "In re [name of relator]."

52.2. Designation of Parties.

The party seeking the relief is the relator. In original proceedings other than habeas corpus, the person against whom relief is sought—whether a judge, court, tribunal, officer, or other person—is the respondent. A person whose interest would be directly affected by the relief sought is a real party in interest and a party to the case.

52.3. Form and Contents of Petition.

The petition must, under appropriate headings and in the order here indicated, contain the following:

(a) Identity of Parties and Counsel. The petition must give a complete list of all parties. The petition must also give a complete list of the names of all counsel appearing in the trial or appellate courts; their firm or office name at the time of the appearance; and, for counsel currently appearing, their mailing address, telephone number, and email address. If new counsel appears or if any counsel currently appearing changes firm or office affiliation during the pendency of the appeal, lead counsel for the party must notify the clerk by filing a supplemental disclosure.

(b) Table of Contents. The petition must include a table of contents with references to the pages of the petition. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.

(c) Index of Authorities. The petition must include an index of authorities arranged alphabetically and indicating the pages of the petition where the authorities are cited.

(d) Statement of the Case. The petition must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:

(1) a concise description of the nature of any underlying proceeding (e.g., a suit for damages, a contempt proceeding for failure to pay child support, or the certification of a candidate for inclusion on an election ballot);

(2) if the respondent is a judge, the name of the judge, the designation of the court in which the judge was sitting, and the county in which the court is located; and if the respondent is an official other than a judge, the designation and location of the office held by the respondent;

(3) a concise description of the respondent's action from which the relator seeks relief;

(4) if the relator seeks a writ of habeas corpus, a statement describing how and where the relator is being deprived of liberty;

(5) if the petition is filed in the Supreme Court after a petition requesting the same relief was filed in the court of appeals:

(A) the date the petition was filed in the court of appeals;

(B) the district of the court of appeals and the names of the justices who participated in the decision;

(C) the author of any opinion for the court of appeals and the author of any separate opinion;

(D) the citation of the court's opinion;

(E) the disposition of the case by the court of appeals, and the date of the court of appeals' order.

(e) Statement of Jurisdiction. The petition must state, without argument, the basis of the court's jurisdiction. If the Supreme Court and the court of appeals have concurrent jurisdiction, the petition must be presented first to the court of appeals unless there is a compelling reason not to do so. If the petition is filed in the Supreme Court without first being presented to the court of appeals, the petition must state the compelling reason why the petition was not first presented to the court of appeals.

(f) Issues Presented. The petition must state concisely all issues or points presented for relief. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included.

(g) Statement of Facts. The petition must state concisely and without argument the facts pertinent to the issues or points presented. Every statement of fact in the petition must be supported by citation to competent evidence included in the appendix or record.

(h) Argument. The petition must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the appendix or record.

(i) Prayer. The petition must contain a short conclusion that clearly states the nature of the relief sought.

(j) Certification. The person filing the petition must certify that he or she has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

(k) Appendix.

(1) Necessary Contents. The appendix must contain:

(A) a certified or sworn copy of any order complained of, or any other document showing the matter complained of;

(B) any order or opinion of the court of appeals, if the petition is filed in the Supreme Court;

(C) unless voluminous or impracticable, the text of any rule, regulation, ordinance, statute, constitutional provision, or other law (excluding case law) on which the argument is based; and

(D) if a writ of habeas corpus is sought, proof that the relator is being restrained.

(2) Optional Contents. The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, statutes, constitutional provisions, documents on which the suit was based, pleadings, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the petition. The appendix should not contain any evidence or other item that is not necessary for a decision.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008 ; Order Aug. 20, 2008, eff. Sept. 1, 2008; Tex. Sup. Ct. Misc. Docket No. 22-9029, April 8, 2022 and Tex. Sup. Ct. Misc. Docket No. 22-9057, July 25, 2022, eff. Aug. 1, 2022.)

Comment to 2008 changes: The reference to "unpublished" opinions in Subdivision 52.3(d)(5)(D) is deleted. The filer should provide the best cite available for the court of appeals' opinion, which may be a LEXIS, Westlaw, or other citation to an electronic medium. Subdivision 52.3 is further amended to delete the requirement that all factual statements be verified by affidavit. Instead, the filer—in the usual case of a party with legal representation, the lead counsel—must include a statement certifying that all factual statements are supported by competent evidence in the appendix or record to which the petition has cited. The certification required by subdivision 52.3(j) does not count against the page limitations.

52.4. Response.

Any party may file a response to the petition, but it is not mandatory. The court must not grant relief—other than temporary relief—before a response has been filed or requested by the court. The response must conform to the requirements of 52.3, except that:

(a) the list of parties and counsel is not required unless necessary to supplement or correct the list contained in the petition;

(b) the response need not include a statement of the case, a statement of the issues presented, or a statement of the facts unless the responding party is dissatisfied with that portion of the petition;

(c) a statement of jurisdiction should be omitted unless the petition fails to assert valid grounds for jurisdiction, in which case the reasons why the court lacks jurisdiction must be concisely stated;

(d) the argument must be confined to the issues or points presented in the petition; and

(e) the appendix to the response need not contain any item already contained in an appendix filed by the relator.

52.5. Relator's Reply to Response.

The relator may file a reply addressing any matter in the response. However, the court may consider and decide the case before a reply brief is filed.

52.6. Repealed by Order Nov. 13, 2012, Eff. Dec. 1, 2012.

52.7. Record.

(a) Filing by Relator Required. Relator must file with the petition:

(1) a certified or sworn copy of every document that is material to the relator's claim for relief and that was filed in any underlying proceeding; and

(2) a properly authenticated transcript of any relevant testimony from any underlying proceeding, including any exhibits offered in evidence, or a statement that no testimony was adduced in connection with the matter complained.

(b) Supplementation Permitted. After the record is filed, relator or any other party to the proceeding may file additional materials for inclusion in the record.

(c) Service of Record on All Parties. Relator and any party who files materials for inclusion in the record must—at the same time—serve on each party:

(1) those materials not previously served on that party as part of the record in another original appellate proceeding in the same or another court; and

(2) an index listing the materials filed and describing them in sufficient detail to identify them.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003.)

Comment to 2002 change: Subdivision 52.7(c) is added to specify how record materials in original proceedings are to be served. Ordinarily, a party must serve record materials and an index of those materials on all other parties. But when materials have already been served in related original proceedings, they need not be served again. Examples are when original proceedings raising the same issues are brought in both the court of appeals and the Supreme Court, or when separate original proceedings are filed arising out of the same underlying lawsuit. The purpose of this procedure is to ensure that all parties have record materials readily available without requiring unnecessary duplication.

52.8. Action on Petition.

(a) Relief Denied. If the court determines from the petition and any response and reply that the relator is not entitled to the relief sought, the court must deny the petition. If the relator in a habeas corpus proceeding has been released on bond, the court must remand the relator to custody and issue an order of commitment. If the relator is not returned to custody, the court may declare the bond to be forfeited and render judgment against the surety.

(b) Interim Action. If the court is of the tentative opinion that relator is entitled to the relief sought or that a serious question concerning the relief requires further consideration:

(1) the court must request a response if one has not been filed;

(2) the Supreme Court may request full briefing under Rule 55;

(3) in a habeas corpus proceeding, the court may order that relator be discharged on execution and filing of a bond in an amount set by the court; and

(4) the court may set the case for oral argument.

(c) Relief Granted. If the court determines that relator is entitled to relief, it must make an appropriate order. The court may grant relief without hearing oral argument.

(d) Opinion. When denying relief, the court may hand down an opinion but is not required to do so. When granting relief, the court must hand down an opinion as in any other case. Rule 47 is applicable to an order or opinion by a court of appeals except that the court of appeals may not order an unpublished opinion published after the Supreme Court or Court of Criminal Appeals has acted on any party's petition for extraordinary relief addressing the same issues.

52.9. Motion for Rehearing.

Any party may file a motion for rehearing within 15 days after the final order is rendered. The motion must clearly state the points relied on for the rehearing. No response to a motion for rehearing need be filed unless the court so requests. The court will not grant a motion for rehearing unless a response has been filed or requested.

(Amended by Order March 4, 2013, eff. March 4, 2013.)

52.10. Temporary Relief.

(a) Motion for Temporary Relief; Certificate of Compliance. The relator may file a motion to stay any underlying proceedings or for any other temporary relief pending the court's action on the petition. The relator must notify or make a diligent effort to notify all parties by expedited means (such as by telephone or fax) that a motion for temporary relief has been or will be filed and must certify to the court that the relator has complied with this paragraph before temporary relief will be granted.

(b) Grant of Temporary Relief. The court—on motion of any party or on its own initiative—may without notice grant any just relief pending the court's action on the petition. As a condition of granting temporary relief, the court may require a bond to protect the parties who will be affected by the relief. Unless vacated or modified, an order granting temporary relief is effective until the case is finally decided.

(c) Motion to Reconsider. Any party may move the court at any time to reconsider a grant of temporary relief.

52.11. Groundless Petition or Misleading Statement or Record.

On motion of any party or on its own initiative, the court may—after notice and a reasonable opportunity to respond—impose just sanctions on a party or attorney who is not acting in good faith as indicated by any of the following:

(a) filing a petition that is clearly groundless;

(b) bringing the petition solely for delay of an underlying proceeding;

(c) grossly misstating or omitting an obviously important and material fact in the petition or response; or

(d) filing an appendix or record that is clearly misleading because of the omission of obviously important and material evidence or documents.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Former Rules 120, 121, and 122 are merged into this rule. The requirement of a motion for leave in original proceedings is repealed. The form of the petition and response, contents of the appendix and record, page limits, and relief that may be granted are specifically stated. Specific provision is now made for a motion for rehearing. A provision for sanctions is added.

SECTION FOUR.
PROCEEDINGS IN THE SUPREME COURT

RULE 53. PETITION FOR REVIEW.

53.1. Method of Review.

The Supreme Court may review a court of appeals' final judgment on a petition for review addressed to "The Supreme Court of Texas." A party who seeks to alter the court of appeals' judgment must file a petition for review. The petition for review procedure replaces the writ of error procedure. Statutes pertaining to the writ of error in the Supreme Court apply equally to the petition for review.

53.2. Contents of Petition.

The petition for review must, under appropriate headings and in the order here indicated, contain the following items:

(a) Identity of Parties and Counsel. The petition must give a complete list of all parties to the trial court's final judgment. The petition must also give a complete list of the names of all counsel appearing in the trial or appellate courts; their firm or office name at the time of the appearance; and, for counsel currently appearing, their mailing address, telephone number, and email address. If new counsel appears or if any counsel currently appearing changes firm or office affiliation during the pendency of the appeal, lead counsel for the party must notify the clerk by filing a supplemental disclosure.

(b) Table of Contents. The petition must have a table of contents with references to the pages of the petition. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.

(c) Index of Authorities. The petition must have an index of authorities arranged alphabetically and indicating the pages of the petition where the authorities are cited.

(d) Statement of the Case. The petition must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:

(1) a concise description of the nature of the case (e.g., whether it is a suit for damages, on a note, or in trespass to try title);

(2) the name of the judge who signed the order or judgment appealed from;

(3) the designation of the trial court and the county in which it is located;

(4) the disposition of the case by the trial court;

(5) the parties in the court of appeals;

(6) the district of the court of appeals;

(7) the names of the justices who participated in the decision in the court of appeals, the author of the opinion for the court, and the author of any separate opinion;

(8) the citation for the court of appeals' opinion; and

(9) the disposition of the case by the court of appeals, including the court's disposition of any motions for rehearing or motions for en banc reconsideration and whether any motions for rehearing or motions for en banc reconsideration are pending in the court of appeals at the time the petition for review is filed.

(e) Statement of Jurisdiction. The petition must state, without argument, the basis of the Court's jurisdiction.

(f) Issues Presented. The petition must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included. If the matter complained of originated in the trial court, it should have been preserved for appellate review in the trial court and assigned as error in the court of appeals.

(g) Introduction. The petition must contain an introduction summarizing the reasons the Court should grant review.

(h) Statement of Facts. The petition must affirm that the court of appeals correctly stated the nature of the case, except in any particulars pointed out. The petition must state concisely and without argument the facts and procedural background pertinent to the issues or points presented. The statement must be supported by record references.

(i) Summary of the Argument. The petition must contain a succinct, clear, and accurate statement of the arguments made in the body of the petition. This summary must not merely repeat the issues or points presented for review.

(j) Argument. The petition must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record. The argument need not address every issue or point included in the statement of issues or points. Any issue or point not addressed may be addressed in the brief on the merits if one is requested by the Court. The argument should state the reasons why the Supreme Court should exercise jurisdiction to hear the case with specific reference to the factors listed in Rule 56.1(a). The petition need not quote at length from a matter included in the appendix; a reference to the appendix is sufficient. The Court will consider the court of appeals' opinion along with the petition, so statements in that opinion need not be repeated.

(k) Prayer. The petition must contain a short conclusion that clearly states the nature of the relief sought.

(l) Appendix.

(1) Necessary Contents. Unless voluminous or impracticable, the appendix must contain a copy of:

(A) the judgment or other appealable order of the trial court from which relief in the court of appeals was sought;

(B) the jury charge and verdict, if any, or the trial court's findings of fact and conclusions of law, if any;

(C) the opinion and judgment of the court of appeals; and

(D) the text of any rule, regulation, ordinance, statute, constitutional provision, or other law on which the argument is based (excluding case law), and the text of any contract or other document that is central to the argument.

(2) Optional Contents. The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, statutes, constitutional provisions, documents on which the suit was based, pleadings, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the petition.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Tex. Sup. Ct. Misc. Docket No. 22-9029, April 8, 2022 and Tex. Sup. Ct. Misc. Docket No. 22-9057, July 25, 2022, eff. Aug. 1, 2022; Tex. Sup. Ct. Misc. Docket No. 23-9082, Oct. 3, 2023, expected eff. Feb. 1, 2024 and Tex. Sup. Ct. Misc. Docket No. 24-9003, Feb. 6, 2024, eff. March 1, 2024.)

53.3. Response to Petition for Review.

Any other party to the appeal may file a response to the petition for review, but it is not mandatory. If no response is timely filed, or if a party files a waiver of response, the Court will consider the petition without a response. A petition will not be granted before a response has been filed or requested by the Court. The response must conform to the requirements of 53.2, except that:

(a) the list of parties and counsel is not required unless necessary to supplement or correct the list contained in the petition;

(b) a statement of the case and a statement of the facts need not be made unless the respondent is dissatisfied with that portion of the petition;

(c) a statement of the issues presented need not be made unless:

(1) the respondent is dissatisfied with the statement made in the petition;

(2) the respondent is asserting independent grounds for affirmance of the court of appeals' judgment; or

(3) the respondent is asserting grounds that establish the respondent's right to a judgment that is less favorable to the respondent than the judgment rendered by the court of appeals but more favorable to the respondent than the judgment that might be awarded to the petitioner (e.g., a remand for a new trial rather than a rendition of judgment in favor of the petitioner);

(d) a statement of jurisdiction should be omitted unless the petition fails to assert valid grounds for jurisdiction, in which case the reasons why the Supreme Court lacks jurisdiction must be concisely stated;

(e) the introduction should summarize the reasons the Court should deny review;

(f) the respondent's argument must be confined to the issues or points presented in the petition or asserted by the respondent in the respondent's statement of issues; and

(g) the appendix to the response need not contain any item already contained in an appendix filed by the petitioner.q

53.4. Points Not Considered in Court of Appeals.

To obtain a remand to the court of appeals for consideration of issues or points briefed in that court but not decided by that court, or to request that the Supreme Court consider such issues or points, a party may raise those issues or points in the petition, the response, the reply, any brief, or a motion for rehearing.

53.5. Petitioner's Reply to Response.

The petitioner may file a reply addressing any matter in the response. However, the Court may consider and decide the case before a reply brief is filed.

53.6. Repealed by Order Nov. 13, 2012, Eff. Dec. 1, 2012.

53.7. Time and Place of Filing.

(a) Petition. Unless the Supreme Court for good cause orders an earlier filing deadline, the petition must be filed with the Supreme Court clerk within 45 days after the following:

(1) the date the court of appeals rendered judgment, if no motion for rehearing or motion for enbanc reconsideration is timely filed; or

(2) the date of the court of appeals' last ruling on all timely filed motions for rehearing or en banc reconsideration.

(b) Premature Filing. A petition filed before the last ruling on all timely filed motions for rehearing and en banc reconsideration is treated as having been filed on the date of, but after, the last ruling on any such motion. If a party files a petition for review while a motion for rehearing or en banc reconsideration is pending in the court of appeals, the party must include that information in its petition for review.

(c) Petitions Filed by Other Parties. If a party files a petition for review within the time specified in 53.7(a)—or within the time specified by the Supreme Court in an order granting an extension of time to file a petition—any other party required to file a petition may do so within 45 days after the last timely motion for rehearing or en banc reconsideration is overruled or within 30 days after any preceding petition is filed, whichever date is later.

(d) Response. Any response must be filed with the Supreme Court clerk within 30 days after the petition is filed.

(e) Reply. Any reply must be filed with the Supreme Court clerk within 15 days after the response is filed.

(f) Extension of Time. The Supreme Court may extend the time to file a petition for review if a party files a motion complying with Rule 10.5(b) no later than 15 days after the last day for filing the petition. The Supreme Court may extend the time to file a response or reply if a party files a motion complying with Rule 10.5(b) either before or after the response or reply is due.

(g) Petition Filed in Court of Appeals. If a petition is mistakenly filed in the court of appeals, the petition is deemed to have been filed the same day with the Supreme Court clerk, and the court of appeals clerk must immediately send the petition to the Supreme Court clerk.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Order Tex. Sup. Ct. Misc. Docket No. 21-9059, May 25, 2021 and Tex. Sup. Ct. Misc. Docket No. 21-9110, Sept. 13, 2021, eff. Oct.. 1, 2021.)

53.8. Amendment.

On motion showing good cause, the Court may allow the petition, response, or reply to be amended on such reasonable terms as the Court may prescribe.

53.9. Court May Require Revision.

If a petition, response, or reply does not conform with these rules, the Supreme Court may require the document to be revised or may return the document to the party who filed it and consider the case without allowing the document to be revised.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Former Rules 130 and 131 are merged. The 50-page application for writ of error is replaced by a 15-page petition for review, which is filed in the Supreme Court and should concentrate on the reasons the Court should exercise jurisdiction to hear the case. The contents of the petition and response, the length of the documents, the time for filing are all specifically stated.

Comment to 2008 change: Subdivision 53.7(a)is amended to clarify that the Supreme Court may shorten the time for filing a petition for review and that the timely filing of a motion for en banc reconsideration tolls the commencement of the 45-day period for filing a petition for review until the motion is overruled. Subdivision 53.2(d)(8) is amended to delete the reference to unpublished opinions in civil cases. Subdivision 53.2(d)(9) is amended to require a party that prematurely files a petition for review to notify the Supreme Court of any panel rehearing or en banc reconsideration motions still pending in the court of appeals. Subdivision 53.7(b) is revised to reference this new requirement and to relocate to new Rule 49.11 those provisions governing motions for rehearing.

RULE 54. FILING THE RECORD.

54.1. Request for Record.

With or without granting the petition for review, the Supreme Court may request that the record from the court of appeals be filed with the clerk of the Supreme Court.

54.2. Duty of Court of Appeals Clerk.

(a) Request for Record. The court of appeals clerk must not send the record to the Supreme Court unless it is requested. Upon receiving the Supreme Court clerk's request for the record, the court of appeals clerk must promptly send to the Supreme Court clerk all of the following:

(1) the original record;

(2) any motion filed in the court of appeals;

(3) copies of all orders of the court of appeals; and

(4) copies of all opinions and the judgment of the court of appeals.

(b) Nondocumentary Exhibits. The clerk should not send any nondocumentary exhibits unless the Supreme Court specifically requests.

54.3. Expenses.

The petitioner must pay to the court of appeals clerk a sum sufficient to pay the cost of mailing or shipping the record to and from the Supreme Court clerk.

54.4. Duty of Supreme Court Clerk.

Upon receiving the record, the Supreme Court clerk must file it and enter the filing on the docket. The clerk may refuse the record if the charges for mailing or shipping have not been paid.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 132. Subdivision 54.1 is new and provides for the Supreme Court to request the filing of the record. Other changes are made.

RULE 55. BRIEFS ON THE MERITS.

55.1. Request by Court.

A brief on the merits must not be filed unless requested by the Court. With or without granting the petition for review, the Court may request the parties to file briefs on the merits. In appropriate cases, the Court may realign parties and direct that parties file consolidated briefs.

(Amended by Order Dec. 23, 2002 eff. Jan. 1, 2003.)

Comment to 2002 change: Subdivision 55.1 is clarified to provide that the Court may realign parties require consolidated briefing for a clearer and more efficient presentation of the case.

55.2. Petitioner's Brief on the Merits.

The petitioner's brief on the merits must be confined to the issues or points stated in the petition for review and must, under appropriate headings and in the order here indicated, contain the following items:

(a) Identity of Parties and Counsel. The brief must give a complete list of all parties to the trial court's final judgment. The brief must also give a complete list of the names of all counsel appearing in the trial or appellate courts; their firm or office name at the time of the appearance; and, for counsel currently appearing, their mailing address, telephone number, and email address. If new counsel appears or if any counsel currently appearing changes firm or office affiliation during the pendency of the appeal, lead counsel for the party must notify the clerk by filing a supplemental disclosure.

(b) Table of Contents. The brief must have a table of contents with references to the pages of the brief. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.

(c) Index of Authorities. The brief must have an index of authorities arranged alphabetically and indicating the pages of the brief where the authorities are cited.

(d) Statement of the Case. The brief must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:

(1) a concise description of the nature of the case (e.g., whether it is a suit for damages, on a note, or in trespass to try title);

(2) the name of the judge who signed the order or judgment appealed from;

(3) the designation of the trial court and the county in which it is located;

(4) the disposition of the case by the trial court;

(5) the parties in the court of appeals;

(6) the district of the court of appeals;

(7) the names of the justices who participated in the decision in the court of appeals, the author of the opinion for the court, and the author of any separate opinion;

(8) the citation for the court of appeals' opinion, if available, or a statement that the opinion was unpublished; and

(9) the disposition of the case by the court of appeals;

(e) Statement of Jurisdiction. The brief must state, without argument, the basis of the Court's jurisdiction.

(f) Issues Presented. The brief must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included. The phrasing of the issues or points need not be identical to the statement of issues or points in the petition for review, but the brief may not raise additional issues or points or change the substance of the issues or points presented in the petition.

(g) Statement of Facts. The brief must affirm that the court of appeals correctly stated the nature of the case, except in any particulars pointed out. The brief must state concisely and without argument the facts and procedural background pertinent to the issues or points presented. The statement must be supported by record references.

(h) Summary of the Argument. The brief must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief. This summary must not merely repeat the issues or points presented for review.

(i) Argument. The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.

(j) Prayer. The brief must contain a short conclusion that clearly states the nature of the relief sought.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003; Tex. Sup. Ct. Misc. Docket No. 22-9029, April 8, 2022,and Tex. Sup. Ct. Misc. Docket No. 22-9057, July 25, 2022, eff. Aug. 1, 2022.)

55.3. Respondent's Brief.

If the petitioner files a brief on the merits, any other party to the appeal may file a brief in response, which must conform to 55.2, except that:

(a) the list of parties and counsel is not required unless necessary to supplement or correct the list contained in the petitioner's brief;

(b) a statement of the case and a statement of the facts need not be made unless the respondent is dissatisfied with that portion of the petitioner's brief; and

(c) a statement of the issues presented need not be made unless:

(1) the respondent is dissatisfied with the statement made in the petitioner's brief;

(2) the respondent is asserting independent grounds for affirmance of the court of appeals' judgment; or

(3) the respondent is asserting grounds that establish the respondent's right to a judgment that is less favorable to the respondent than the judgment rendered by the court of appeals but more favorable to the respondent than the judgment that might be awarded to the petitioner (e.g., a remand for a new trial rather than a rendition of judgment in favor of the petitioner);

(d) a statement of jurisdiction should be omitted unless the petition fails to assert valid grounds for jurisdiction; and

(e) the respondent's argument must be confined to the issues or points presented in the petitioner's brief or asserted by the respondent in the respondent's statement of issues.

55.4. Petitioner's Brief in Reply.

The petitioner may file a reply brief addressing any matter in the brief in response. However, the Court may consider and decide the case before a reply brief is filed.

55.5. Reliance on Prior Brief.

As a brief on the merits or a brief in response, a party may file the brief that the party filed in the court of appeals.

55.6. Repealed by Order Nov. 13, 2012, eff. Dec. 1, 2012.

55.7. Time and Place of Filing; Extension of Time.

Briefs must be filed with the Supreme Court clerk in accordance with the schedule stated in the clerk's notice that the Court has requested briefs on the merits. If no schedule is stated in the notice, petitioner must file a brief on the merits within 30 days after the date of the notice, respondent must file a brief in response within 20 days after receiving petitioner's brief, and petitioner must file any reply brief within 15 days after receiving respondent's brief. On motion complying with Rule 10.5(b) either before or after the brief is due, the Supreme Court may extend the time to file a brief.

55.8. Amendment.

On motion showing good cause, the Court may allow a party to amend a brief on such reasonable terms as the Court may prescribe.

55.9. Court May Require Revision.

If a brief does not conform with these rules, the Supreme Court may require the brief to be revised or may return it to the party who filed it and consider the case without further briefing by that party.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: The rule is new and provides for a 50 page brief on the merits if requested by the Supreme Court.

RULE 56. ORDERS ON PETITION FOR REVIEW.

56.1. Orders on Petition for Review.

(a) Considerations in Granting Review. Whether to grant review is a matter of judicial discretion. Among the factors the Supreme Court considers in deciding whether to grant a petition for review are the following:

(1) whether the justices of the court of appeals disagree on an important point of law;

(2) whether there is a conflict between the courts of appeals on an important point of law;

(3) whether a case involves the construction or validity of a statute;

(4) whether a case involves constitutional issues;

(5) whether the court of appeals appears to have committed an error of law of such importance to the state's jurisprudence that it should be corrected; and

(6) whether the court of appeals has decided an important question of state law that should be, but has not been, resolved by the Supreme Court.

(b) Petition Denied or Dismissed. When the petition has been on file in the Supreme Court for 30 days, the Court may deny or dismiss the petition—whether or not a response has been filed—with one of the following notations:

(1) "Denied." If the Supreme Court is not satisfied that the opinion of the court of appeals has correctly declared the law in all respects, but determines that the petition presents no error that requires reversal or that is of such importance to the jurisprudence of the state as to require correction, the Court will deny the petition with the notation "Denied."

(2) "Dismissed w.o.j." If the Supreme Court lacks jurisdiction, the Court will dismiss the petition with the notation "Dismissed for Want of Jurisdiction."

(c) Petition Refused. If the Supreme Court determines—after a response has been filed or requested—that the court of appeals' judgment is correct and that the legal principles announced in the opinion are likewise correct, the Court will refuse the petition with the notation "Refused." The court of appeals' opinion in the case has the same precedential value as an opinion of the Supreme Court.

(d) Improvident Grant. If the Court has granted review but later decides that review should not have been granted, the Court may, without opinion, set aside the order granting review and dismiss the petition or deny or refuse review as though review had never been granted.

56.2. Moot Cases.

If a case is moot, the Supreme Court may, after notice to the parties, grant the petition and, without hearing argument, dismiss the case or the appealable portion of it without addressing the merits of the appeal.

56.3. Settled Cases.

If a case is settled by agreement of the parties and all parties so move, the Supreme Court may grant the petition if it has not already been granted and, without hearing argument or considering the merits, render a judgment to effectuate the agreement. The Supreme Court's action may include setting aside the judgment of the court of appeals or the trial court without regard to the merits and remanding the case to the trial court for rendition of a judgment in accordance with the agreement. The Supreme Court may abate the case until the lower court's proceedings to effectuate the agreement are complete. A severable portion of the proceeding may be disposed of if it will not prejudice the remaining parties. In any event, the Supreme Court's order does not vacate the court of appeals' opinion unless the order specifically provides otherwise. An agreement or motion cannot be conditioned on vacating the court of appeals' opinion.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003.)

Comment to 2002 change: Subdivision 56.3 is clarified to provide for partial settlements.

56.4. Notice to Parties.

When the Supreme Court grants, denies, refuses, or dismisses a petition for review, the Supreme Court clerk must send a written notice of the disposition to the court of appeals, the trial court, and all parties to the appeal.

56.5. Return of Documents to Court of Appeals.

When the Supreme Court denies, refuses, or dismisses a petition for review, the clerk will retain the petition, together with the record and accompanying papers, for 30 days after the order is rendered. If no motion for rehearing has been filed by the end of that period or when any motion for rehearing of the order has been overruled, the clerk must send a certified copy of its order to the court of appeals and return the record and all papers (except for documents filed in the Supreme Court) to the court of appeals clerk.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: The rule is from former Rule 133. Subdivision 56.3 regarding settled cases is added.

RULE 57. DIRECT APPEALS TO THE SUPREME COURT.

57.1. Application

Except when inconsistent with a statute, this rule governs direct appeals to the Supreme Court that are authorized by the Constitution and by statute.

57.2. Perfecting Direct Appeal

(a) *Notice of Direct Appeal*. A direct appeal to the Supreme Court authorized by law is perfected when a written notice of direct appeal is filed with the trial court clerk. The notice of direct appeal must be filed within the time provided by Rule 26.1 or as extended by Rule 26.3. The trial court clerk must immediately send a copy of the notice of direct appeal to the clerk of the Supreme Court. If a notice of direct appeal is mistakenly filed with the Supreme Court or the court of appeals, the notice is deemed filed the same day with the trial court clerk, and the Supreme Court clerk or the court of appeals' clerk must immediately send the trial court clerk a copy of the notice.

(b) *Contents of Notice*. The notice of direct 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 take a direct appeal to the Supreme Court;

(4) state the name of each party filing the notice;

(5) specify the law or laws under which the direct appeal is authorized;

(6) in an accelerated appeal, state that the appeal is accelerated; and

(7) state, if applicable, that the appellant is presumed indigent and may proceed without advance payment of costs as provided in Rule 20.1.

(c) *Amending the Notice*. An amended notice of direct appeal correcting a defect or omission in an earlier filed notice may be filed with the Supreme 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 Supreme Court and on such terms as the Supreme Court may prescribe.

(d) *Other Requirements*. Promptly upon filing the notice of direct appeal, appellant must file in the Supreme Court a docketing statement as provided in Rule 32.1 and pay all required fees authorized to be collected by the clerk of the Supreme Court.

(e) *The Appellate Record*. Rules 34 and 35 governing the appellate record apply to direct appeals to the Supreme Court.

57.3. Jurisdiction of Supreme Court

(a) *Statement of Jurisdiction.* The appellant must file with the Supreme Court a statement of jurisdiction within ten days after the notice of appeal is filed with the trial court clerk.

(b) *Contents of Statement.* The statement of jurisdiction must plainly state the basis for the exercise of the Supreme Court's direct appeal jurisdiction; insofar as appropriate, follow the form and contents of a petition for review prescribed by Rule 53; and conform to the length requirements prescribed for a petition for review by Rule 9.4.

(c) *Response to Statement.* An appellee may file a response to the appellant's statement of jurisdiction challenging the exercise of direct appeal jurisdiction or a waiver of the response within ten days after the statement is filed with the Supreme Court. If filed, the response must, insofar as appropriate, follow the form and contents of a response to a petition for review prescribed by Rule 53 and conform to the length requirements prescribed for a response to a petition to review by Rule 9.4.

57.4. Preliminary Ruling on Probable Jurisdiction; Dismissal of Appeal

The Supreme Court may determine whether the Court has probable jurisdiction based on the statement of jurisdiction and any response. If the Supreme Court determines that it does not have or will not exercise jurisdiction over a direct appeal, the Court will dismiss the appeal.

57.5. Direct Appeal Exclusive While Pending

If a direct appeal to the Supreme Court is filed, the parties to the appeal must not, while that appeal is pending, pursue an appeal to the court of appeals. But if the direct appeal is dismissed, any party may pursue any other appeal available at the time when the direct appeal was filed. The other appeal must be perfected within 15 days after dismissal of the direct appeal or the date of the Supreme Court's ruling on a timely filed motion for rehearing.

57.6. Determination of Direct Appeal

(a) *Ruling on Merits*. If the Supreme Court determines that it has probable jurisdiction, the Court:

(1) may request full briefing under Rule 55;

(2) may set the case for submission under Rule 59; and

(3) may render judgment or make an appropriate order under Rule 60.

(b) *Rehearing*. A motion for rehearing may be filed with the Supreme Court clerk within 15 days after the Court renders judgment or makes an order disposing of the direct appeal. The motion must clearly state the issues relied on for rehearing.

(Adopted by Order eff. Sept. 1, 1997. Amended by Tex. Sup. Ct. Misc. Docket No. 21-9100 and Tex. Sup. Ct. Misc. Docket No. 21-9155, eff. Jan. 1, 2022)

Comment to 1997 change: This is former Rule 140. The rule is amended without substantive change except subdivision 57.5 is amended to make clear that no party to the direct appeal may pursue the appeal in the court of appeals while the direct appeal is pending, but allowing 10 days to perfect a subsequent appeal.

RULE 58. CERTIFICATION OF QUESTIONS OF LAW BY UNITED STATES COURTS.

58.1. Certification.

The Supreme Court of Texas may answer questions of law certified to it by any federal appellate court if the certifying court is presented with determinative questions of Texas law having no controlling Supreme Court precedent. The Supreme Court may decline to answer the questions certified to it.

58.2. Contents of the Certification Order.

An order from the certifying court must set forth:

(a) the questions of law to be answered; and

(b) a stipulated statement of all facts relevant to the questions certified, showing fully the nature of the controversy in which the questions arose.

58.3. Transmission of Certification Order.

The clerk of the certifying court must send to the clerk of the Supreme Court of Texas the following:

(a) the certification order under the certifying court's official seal;

(b) a list of the names of all parties to the pending case, giving the address and telephone number, if known, of any party not represented by counsel; and

(c) a list of the names, addresses, and telephone numbers of counsel for each party.

58.4. Transmission of Record.

The certifying court should not send the Supreme Court of Texas the record in the pending case with the certification order. The Supreme Court may later require the original or copies of all or part of the record before the certifying court to be filed with the Supreme Court clerk.

58.5. Fees and Costs.

Unless the certifying court orders otherwise in its certification order, the parties must bear equally the fees under Rule 5.

58.6. Notice.

If the Supreme Court agrees to answer the questions certified to it, the Court will notify all parties and the certifying court. The Supreme Court clerk must also send a notice to the Attorney General of Texas if:

(a) the constitutionality of a Texas statute is the subject of a certified question that the Supreme Court has agreed to answer; and

(b) the State of Texas or an officer, agency, or employee of the state is not a party to the proceeding in the certifying court.

58.7. Briefs and Oral Argument.

(a) Briefs. The appealing party in the certifying court must file a brief with the Supreme Court clerk within 30 days after the date of the notice. Opposing parties must file an answering brief within 20 days after receiving the opening brief. Briefs must comply with Rule 55 to the extent its provisions apply. On motion complying with Rule 10.5(b), either before or after the brief is due, the Supreme Court may extend the time to file a brief.

(b) Oral Argument. Oral argument may be granted either on a party's request or on the Court's own initiative. Argument is governed by Rule 59.

58.8. Intervention by the State.

If the constitutionality of a Texas statute is the subject of a certified question that the Supreme Court has agreed to answer the State of Texas may intervene at any reasonable time for briefing and oral argument (if argument is allowed), on the question of constitutionality.

58.9. Opinion on Certified Questions.

If the Supreme Court has agreed to answer a certified question, it will hand down an opinion as in any other case.

58.10. Answering Certified Questions.

After all motions for rehearing have been overruled, the Supreme Court clerk must send to the certifying court the written opinion on the certified questions. The opinion must be under the Supreme Court's seal.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 114. The rule is substantially revised, but no substantive change in procedure is intended.

RULE 59. SUBMISSION AND ARGUMENT.

59.1. Submission Without Argument.

If at least six members of the Court so vote, a petition may be granted and an opinion handed down without oral argument.

59.2. Submission With Argument.

If the Supreme Court decides that oral argument would aid the Court, the Court will set the case for argument. The clerk will notify all parties of the submission date.

59.3. Purpose of Argument.

Oral argument should emphasize and clarify the written arguments in the briefs. Counsel should not merely read from a prepared text. Counsel should assume that all Justices have read the briefs before oral argument and should be prepared to respond to the Justices' questions.

59.4. Time for Argument.

Each side is allowed only as much time as the Court orders. Counsel is not required to use all the allotted time. On motion filed before the day of argument, the Court may extend the time for argument. The Court may also align the parties for purposes of presenting argument.

59.5. Number of Counsel.

Generally, only one counsel should argue for each side. Except on leave of court, no more than two counsel on each side may argue. Only one counsel may argue in rebuttal.

59.6. Argument by Amicus Curiae.

With leave of court obtained before the argument and with a party's consent, an amicus may share allotted time with that party. Otherwise, counsel for amicus curiae may not argue.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Former Rules 170, 171, and 172 are merged. Subdivisions 59.2 and 59.3 are new. Other changes are made.

RULE 60. JUDGMENTS IN THE SUPREME COURT.

60.1. Announcement of Judgments.

The Court's judgments will be announced by the clerk.

60.2. Types of Judgment.

The Supreme Court may:

(a) affirm the lower court's judgment in whole or in part;

(b) modify the lower court's judgment and affirm it as modified;

(c) reverse the lower court's judgment in whole or in part and render the judgment that the lower court should have rendered;

(d) reverse the lower court's judgment and remand the case for further proceedings;

(e) vacate the judgments of the lower courts and dismiss the case; or

(f) vacate the lower court's judgment and remand the case for further proceedings in light of changes in the law.

60.3. Remand in the Interest of Justice.

When reversing the court of appeals' judgment, the Supreme Court may, in the interest of justice, remand the case to the trial court even if a rendition of judgment is otherwise appropriate.

60.4. Judgment for Costs.

The Supreme Court's judgment will award to the prevailing party the costs incurred by that party in the Supreme Court. If appropriate, the judgment may also award the prevailing party the costs—including preparation costs for the record—incurred by that party in the court of appeals and in the trial court. But the Court may tax costs otherwise as required by law or for good cause.

60.5. Judgment Against Sureties.

When affirming, modifying, or rendering a judgment against the party who was the appellant in the court of appeals, the Supreme Court must render judgment against the sureties on that party's supersedeas bond, if any, for the performance of the judgment. If the Supreme Court taxes costs against the party who was the appellant in the court of appeals, the Court must render judgment for those costs against the sureties on that party's supersedeas bond, if any.

60.6. Other Orders.

The Supreme Court may make any other appropriate order required by the law and the nature of the case.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Former Rules 180 and 182(a) are merged. Subdivision 60.1 is from former Rule 181. Paragraphs 60.2(b), (e), and (f) are new but codify current practice. Subdivision 60.6 is new. Other changes are made.

RULE 61. REVERSIBLE ERROR.

61.1. Standard for Reversible Error.

No judgment may be reversed on appeal on the ground that the trial court made an error of law unless the Supreme Court concludes that the error complained of:

(a) probably caused the rendition of an improper judgment; or

(b) probably prevented the petitioner from properly presenting the case to the appellate courts.

61.2. Error Affecting Only Part of the Case.

If the error affects a part, but not all, of the matter in controversy, and that part is separable without unfairness to the parties, the judgment must be reversed and a new trial ordered only as to the part affected by the error. The Court may not order a separate trial solely on unliquidated damages if liability is contested.

61.3. Defects in Procedure.

The Supreme Court will not affirm or reverse a judgment or dismiss a petition for review for formal defects or irregularities in appellate procedure without allowing a reasonable time to correct or amend the defects or irregularities.

61.4. Remediable Error of the Trial Court or Court of Appeals.

(a) Generally. The Supreme Court will not affirm or reverse a judgment or dismiss a petition for review if:

(1) the trial court's or court of appeals' erroneous action or failure or refusal to act prevents the proper presentation of a case to the Supreme Court; and

(2) the trial court or court of appeals can correct its action or failure to act.

(b) Supreme Court Direction if Error Remediable. If the circumstances described in (a) exist, the Supreme Court will direct the trial court or court of appeals to correct the error. The Supreme Court will then proceed as if the error had not occurred.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Former Rules 184 and 185 are merged. The reversible error standard is amended to omit the reference to an action "reasonably calculated to cause" an improper judgment, but no substantive change is intended. Subdivision 61.3 is amended to delete the reference to defects of "substance."

RULE 62. DAMAGES FOR FRIVOLOUS APPEALS.

If the Supreme Court determines that a direct appeal or a petition for review is frivolous, it may—on motion of any party or on its own initiative, after notice and a reasonable opportunity for response—award to each prevailing party just damages. In determining whether to award damages, the Court must not consider any matter that does not appear in the record, briefs, or other papers filed in the court of appeals or the Supreme Court.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 182(b). The rule is changed from allowing a sanction when an appeal "filed for delay and without sufficient cause" to allowing a sanction when the appeal is "frivolous." A requirement for notice and an opportunity to respond is included.

RULE 63. OPINIONS; COPY OF OPINION AND JUDGMENT TO INTERESTED PARTIES AND OTHER COURTS.

The Supreme Court will hand down a written opinion in all cases in which it renders a judgment. The clerk will send a copy of the opinion and judgment to the court of appeals clerk, the trial court clerk, the regional administrative judge, and all parties to the appeal.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 181 with changes.

RULE 64. MOTION FOR REHEARING.

64.1. Time for Filing.

A motion for rehearing may be filed with the Supreme Court clerk within 15 days from the date when the Court renders judgment or makes an order disposing of a petition for review. In exceptional cases, if justice requires, the Court may shorten the time within which the motion may be filed or even deny the right to file it altogether.

64.2. Contents.

The motion must specify the points relied on for the rehearing.

64.3. Response and Decision.

No response to a motion for rehearing need be filed unless the Court so requests. A motion will not be granted unless a response has been filed or requested by the Court. But in exceptional cases, if justice so requires, the Court may deny the right to file a response and act on a motion any time after it is filed.

64.4. Second Motion.

The Court will not consider a second motion for rehearing unless the Court modifies its judgment, vacates its judgment and renders a new judgment, or issues a different opinion.

(Amended by Order Aug. 20, 2008, eff. Sept. 1, 2008.)

Comment to 2008 change: Subdivision 64.4 is amended to reflect the Court's practice of considering a second motion for rehearing after modifying its judgment or opinion in response to a prior motion for rehearing. When the Court modifies its opinion without modifying its judgment, the Court will ordinarily deny a second motion for rehearing unless the new opinion is substantially different from the original opinion.

64.5. Extensions of Time.

The Court may extend the time to file a motion for rehearing in the Supreme Court, if a motion complying with Rule 10.5(b) is filed with the Court no later than 15 days after the last date for filing a motion for rehearing.

64.6. Repealed by Order Nov. 13, 2012, eff. Dec. 1, 2012.

Comment to 1997 change: This is former Rule 190. The service and notice provisions of former subdivisions (b) and (c) are deleted. *See* Rule 9.5. Other changes are made.

RULE 65. ENFORCEMENT OF JUDGMENT AFTER MANDATE.

65.1. Statement of Costs.

The Supreme Court clerk will prepare, and send to the clerk to whom the mandate is directed, a statement of costs showing:

(a) the costs that were incurred in the Supreme Court, with a notation of those items that have been paid and those that are owing; and

(b) the party or parties against whom costs have been adjudged.

65.2. Enforcement of Judgment.

If the Supreme Court renders judgment, the trial court need not make any further order. Upon receiving the Supreme Court's mandate, the trial court clerk must proceed to enforce the judgment of the Supreme Court's as in any other case. Appellate court costs must be included with the trial court costs in any process to enforce the judgment. If all or part of the costs are collected, the trial court clerk must immediately remit to the appellate court clerk any amount due to that clerk.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: Subdivision 65.1 is new. Subdivision 65.2 is from former Rule 183.

SECTION FIVE.
PROCEEDINGS IN THE COURT OF CRIMINAL APPEALS

RULE 66. DISCRETIONARY REVIEW IN GENERAL.

66.1. With or Without Petition.

The Court of Criminal Appeals may review a court of appeals' decision in a criminal case on its own initiative under Rule 67 or on the petition of a party under Rule 68.

66.2. Not a Matter of Right.

Discretionary review by the Court of Criminal Appeals is not a matter of right, but of the Court's discretion.

66.3. Reasons for Granting Review.

While neither controlling nor fully measuring the Court of Criminal Appeals' discretion, the following will be considered by the Court in deciding whether to grant discretionary review:

(a) whether a court of appeals' decision conflicts with another court of appeals' decision on the same issue;

(b) whether a court of appeals has decided an important question of state or federal law that has not been, but should be, settled by the Court of Criminal Appeals;

(c) whether a court of appeals has decided an important question of state or federal law in a way that conflicts with the applicable decisions of the Court of Criminal Appeals or the Supreme Court of the United States;

(d) whether a court of appeals has declared a statute, rule, regulation, or ordinance unconstitutional, or appears to have misconstrued a statute, rule, regulation, or ordinance;

(e) whether the justices of a court of appeals have disagreed on a material question of law necessary to the court's decision; and

(f) whether a court of appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of the Court of Criminal Appeals' power of supervision.

66.4. Documents to Aid Decision.

(a) Acquiring Documents. The Court of Criminal Appeals—or any judge of the Court—may order the court of appeals clerk to promptly send the following items to the Court in order to aid it in deciding whether to grant discretionary review:

(1) the appellate record;

(2) a copy of the opinions of the court of appeals;

(3) a copy of the motions filed in the court of appeals; and

(4) certified copies of any judgment or order of the court of appeals.

(b) Return of Documents. If discretionary review is not granted, the clerk of the Court of Criminal Appeals will return the appellate record to the court of appeals clerk.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 200. The former rule's reference to motions for rehearing now appears in Rule 49.9. The rule is otherwise amended without substantive change.

RULE 67. DISCRETIONARY REVIEW WITHOUT PETITION.

67.1. Four Judges' Vote.

By a vote of at least four judges, the Court of Criminal Appeals may grant review of a court of appeals' decision in a criminal case at any time before the mandate of the court of appeals issues. An order granting review will be filed with the clerk of the Court of Criminal Appeals, who must send a copy to the court of appeals clerk.

(Amended by Order Oct. 16, 2000 eff. Jan. 1, 2003.)

Comment to 2000 change: Language which was in the catchline of former Rule 201 has been deleted from Rule 67.1, to restore the substance of the rule, and to remove any implication that the court may not grant review on its own motion when a petition for discretionary review has been filed.

67.2. Order Staying Mandate.

To provide enough time for the Court of Criminal Appeals to decide whether to grant discretionary review under 67.1, the Court—or any judge of the Court—may file with the clerk of the court of appeals an order staying the court of appeals' mandate. The order must be signed by a judge of the Court of Criminal Appeals. The clerk of the Court of Criminal Appeals must immediately send a copy of the order to the court of appeals clerk.

67.3. Time to Issue Mandate Extended.

Unless otherwise limited in the order itself, an order staying the court of appeals' mandate under 67.2 will extend for an additional 45 days the time before issuance of the court of appeals' mandate. An order granting review prevents the issuance of the court of appeals' mandate pending the further order of the Court of Criminal Appeals. If four judges do not agree to grant review within that time the court of appeals clerk must issue the mandate.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 201. The rule is amended without substantive change.

RULE 68. DISCRETIONARY REVIEW WITH PETITION.

68.1. Generally.

On petition by any party, the Court of Criminal Appeals may review a court of appeals' decision in a criminal case.

68.2. Time to File Petition.

(a) First Petition. The petition must be filed within 30 days after either the day the court of appeals' judgment was rendered or the day the last timely motion for rehearing was overruled by the court of appeals.

(b) Subsequent Petition. Even if the time specified in (a) has expired, a party who otherwise may file a petition may do so within 10 days after the timely filing of another party's petition.

(c) Extension of Time. The Court of Criminal Appeals may extend the time to file a petition for discretionary review if a party files a motion complying with Rule 10.5(b) no later than 15 days after the last day for filing the petition. The Court of Criminal Appeals may extend the time to file a response or reply if a party files a motion complying with Rule 10.5(b) either before or after the response or reply is due.

68.3. Where to File Petition.

The petition and all copies of the petition must be filed with the clerk of the court of appeals, but if the State's Prosecuting Attorney files a petition, the State's Prosecuting Attorney may file the copies of the petition—but not the original—with the clerk of the Court of Criminal Appeals instead of with the court of appeals clerk.

68.4. Contents of Petition.

A petition for discretionary review must be as brief as possible. It must be addressed to the "Court of Criminal Appeals of Texas" and must state the name of the party or parties applying for review. The petition must contain the following items:

(a) Identity of Judge, Parties, and Counsel. The petition must list the trial court judge, all parties to the judgment or order appealed from, and the names and addresses of all trial and appellate counsel.

(b) Table of Contents. The petition must include a table of contents with references to the pages of the petition. The table of contents must indicate the subject matter of each ground or question presented for review.

(c) Index of Authorities. The petition must include an index of authorities arranged alphabetically and indicating the pages of the petition where the authorities are cited.

(d Statement Regarding Oral Argument. The petition must include a short statement of why oral argument would be helpful, or a statement that oral argument is waived. If a reply or cross-petition is filed, it likewise must include a statement of why oral argument should or should not be heard.

(e) Statement of the Case. The petition must state briefly the nature of the case. This statement should seldom exceed half a page. The details of the case should be reserved and stated with the pertinent grounds or questions.

(f) Statement of Procedural History. The petition must state:

(1) the date any opinion of the court of appeals was handed down, or the date of any order of the court of appeals disposing of the case without an opinion;

(2) the date any motion for rehearing was filed (or a statement that none was filed); and

(3) the date the motion for rehearing was overruled or otherwise disposed of.

(g) Grounds for Review. The petition must state briefly, without argument, the grounds on which the petition is based. The grounds must be separately numbered. If the petitioner has access to the record, the petitioner must (after each ground) refer to the page of the record where the matter complained of is found. Instead of listing grounds for review, the petition may contain the questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of questions should be short and concise, not argumentative or repetitious.

(h) Argument. The petition must contain a direct and concise argument, with supporting authorities, amplifying the reasons for granting review. *See* Rule 66.3. The court of appeals' opinions will be considered with the petition, and statements in those opinions need not be repeated if counsel accepts them as correct.

(i) Prayer for Relief. The petition must state clearly the nature of the relief sought.

(j) Appendix. The petition must contain a copy of any opinion of the court of appeals.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003; Dec. 13, 2013, eff. Jan. 1, 2014.)

Comment to 2002 change: The original catchline of subdivision 68.4(g) was "Reasons for Review," which caused confusion because of its similarity to the catch line in subdivision 66.3 ("Reasons for Granting Review"). It is changed to "Argument."

68.5. Repealed by Order Nov. 13, 2012, eff. Dec. 1, 2012.

68.6. Nonconforming Petition.

The Court may strike, order redrawn, or summarily refuse a petition for discretionary review that is unnecessarily lengthy or that does not conform to these rules.

68.7. Court of Appeals Clerk's Duties.

(a) On Filing of the Petition. Upon receiving the petition, the court of appeals clerk must file the original petition and note the filing on the docket.

(b) Reply. The opposing party has 30 days after the timely filing of the petition in the court of appeals to file a reply to the petition with the clerk of the court of appeals. Upon receiving a reply to the petition, the clerk for the court of appeals must file the reply and note the filing on the docket.

(c) Sending Petition and Reply to Court of Criminal Appeals. Unless a petition for discretionary review is dismissed under Rule 50, the clerk of the court of appeals must, within 60 days after the petition is filed, send to the clerk of the Court of Criminal Appeals the petition and any copies furnished by counsel, the reply, if any, and any copies furnished by counsel, together with the record, copies of the motions filed in the case, and copies of any judgments, opinions, and orders of the court of appeals. The clerk need not forward any nondocumentary exhibits unless ordered to do so by the Court of Criminal Appeals.

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008.)

68.8. Court of Criminal Appeals Clerk's Duties on Receipt of Petition.

The clerk of the Court of Criminal Appeals will receive a petition for discretionary review, file the petition and the accompanying record from the court of appeals, note the filing of the petition and record on the docket, and notify the parties by U.S. Mail of the filing. The Court may dispense with notice and grant or refuse the petition immediately upon its filing.

68.9. Amendment.

The petition or a reply may be amended or supplemented within 30 days after the original petition was filed in the court of appeals or at any time when justice requires. The record may be amended in the Court of Criminal Appeals under the same circumstances and in the same manner as in the court of appeals.

68.10. Service on State Prosecuting Attorney.

In addition to the service required by Rule 9.5, service of the petition, the reply, and any amendment or supplementation of a petition or reply must be made on the State Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 202. Subdivisions (k) and (l) of the former rule have been relocated to Rule 69. The new rule limits the length of a petition and reply. The time for amendment of a petition or reply is increased to conform with the amendment in Rule 50. The rule is otherwise amended without substantive change.

68.11. Deleted by Tex. Sup. Ct. Misc. Docket No. 19-9106, Nov. 7, 2019, eff. Dec. 1, 2019.

RULE 69. ACTION OF COURT ON PETITION FOR DISCRETIONARY REVIEW AND AFTER GRANTING REVIEW.

69.1. Granting or Refusal.

If four judges do not vote to grant a petition for discretionary review, the Court will enter a docket notation that the petition is refused. If four judges vote to grant a petition, the Court will enter a docket notation that discretionary review is granted.

69.2. Setting Case for Submission.

If discretionary review is granted, either on the petition of a party or by the Court on its own initiative, the case will be set for submission.

69.3. Improvident Grant of Review.

If, after granting discretionary review, five judges are of the opinion that discretionary review should not have been granted, the case will be dismissed.

69.4. Clerk's Duties.

(a) On Refusal or Dismissal. When the Court refuses or dismisses a petition, the clerk will send to the parties and the State Prosecuting Attorney a notice informing them that the petition was refused or dismissed. The clerk will retain the petition and all other items filed in the case for at least 15 days from the date of the refusal or dismissal. At the end of that time, if no motion for rehearing has been timely filed, or upon the overruling or dismissal of such a motion, the clerk will send to the court of appeals clerk a certified copy of the order refusing or dismissing the petition (as well as any order overruling a motion for rehearing). The clerk of the Court of Criminal Appeals will return the appellate record to the court of appeals clerk but will retain the petition, and other documents filed in the Court of Criminal Appeals.

(b) On Granting Review. If the Court grants discretionary review, the clerk will send to the parties and the State Prosecuting Attorney a notice informing them that discretionary review was granted.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former subdivisions (k) and (l) of Rule 202. Internal procedures of the Court are deleted. Provisions are added in 69.4(a) and (b) for the clerk to send notice of the granting, refusal, or dismissal of a petition for discretionary review. Other nonsubstantive changes are made.

RULE 70. BRIEF ON THE MERITS.

70.1. Initial Brief.

If review is granted, the petitioner—or, if there was no petition, the party who lost in the court of appeals—must file a brief within 30 days after review is granted.

70.2. Respondent's Brief.

The opposing party must file a brief within 30 days after the petitioner's brief is filed.

(Amended by Order Dec. 13, 2013, eff. Jan. 1, 2014.)

70.3. Brief Contents and Form.

Briefs must comply with the requirements of Rules 9 and 38, except that they need not contain the appendix (Rule 38.1(k)).

(Amended by Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Order Aug. 10, 2012, eff. Dec. 1, 2012; Order Nov. 13, 2012, eff. Dec. 1, 2012; Tex. Sup. Ct. Misc. Docket No. 19-9106, Nov. 7, 2019, eff. Dec. 1, 2019.)

70.4. Other Briefs.

The Court of Criminal Appeals may direct that a party file a brief, or an additional brief, in a particular case. Additionally, upon motion by a party the Court may permit the filing of additional briefs.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order Dec. 13, 2013, eff. Jan. 1, 2014.)

Comment to 1997 change: This is former Rule 203. The rule is amended without substantive change.

RULE 71. DIRECT APPEALS.

71.1. Direct Appeal.

Cases in which the death penalty has been assessed under Code of Criminal Procedure article 37.071, and cases in which bail has been denied in non-capital cases under Article I, Section 11a of the Constitution, are appealed directly to the Court of Criminal Appeals.

(Amended by Order Dec. 23, 2002 eff. Jan. 1, 2003.)

71.2. Record.

The appellate record should be prepared and filed in accordance with Rules 31, 32, 34, 35 and 37, except that the record must be filed in the Court of Criminal Appeals. After disposition of the appeal, the Court may discard copies of juror information cards or other portions of the clerk's record that are not relevant to an issue on appeal.

(Amended by Order Dec. 23, 2002 eff. Jan. 1, 2003.)

71.3. Briefs.

Briefs in a direct appeal should be prepared and filed in accordance with Rule 38, except that the brief need not contain an appendix (Rule 38.1(k)). All briefs must be filed in the Court of Criminal Appeals. The brief must include a short statement of why oral argument would be helpful, or a statement that oral argument is waived.

(Amended by Order Dec. 23, 2002, eff. Jan. 1, 2003; Order March 10, 2008, eff. Sept. 1, 2008; Order Aug. 20, 2008, eff. Sept. 1, 2008; Order Aug. 10, 2012, eff. Dec. 1, 2012; Order Nov. 13, 2012, eff. Dec. 1, 2012.)

Comment to 2002 change: A requirement that briefs include a statement regarding oral argument is added.

71.4. Additional briefs.

Upon motion by a party the Court may permit the filing of additional briefs other than those provided for in Rule 38.

(Adopted by Order Dec. 13, 2013, eff. Jan. 1, 2014.)

RULE 72. EXTRAORDINARY MATTERS.

72.1. Leave to File.

A motion for leave to file must accompany an original petition for writ of habeas corpus, mandamus, procedendo, prohibition, certiorari, or other extraordinary writ, or any other motion not otherwise provided for in these rules.

72.2. Disposition.

If five judges tentatively believe that the case should be filed and set for submission, the motion for leave will be granted and the case will then be handled and disposed of in accordance with Rule 52.7. If the motion for leave is denied, no motions for rehearing or reconsideration will be entertained. But the Court may, on its own initiative, reconsider a denial of a motion for leave.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 211. The rule is amended to include all the Court's jurisdiction of extraordinary matters. Internal procedures of the Court are deleted. Other nonsubstantive changes are made.

RULE 73. POSTCONVICTION APPLICATIONS FOR WRITS OF HABEAS CORPUS.

73.1. Form for Application Filed Under Article 11.07 of the Code of Criminal Procedure.

(a) Prescribed Form. An application filed under Article 11.07 must be on the form prescribed by the Court of Criminal Appeals.

(b) Availability of Form. The district clerk of the county of conviction shall make the forms available to applicants on request, without charge.

(c) Contents. The applicant or petitioner must provide all information required by the form. The form must include all grounds for relief and set forth in summary fashion the facts supporting each ground. Any ground not raised on the form will not be considered. Legal citations and arguments may be made in a separate memorandum. The form must be computer-generated, typewritten, or legibly handwritten.

(d) Length. Each ground for relief and supporting facts raised on the form shall not exceed the two pages provided for each ground in the form. The applicant or petitioner may file a separate memorandum. This memorandum shall comply with these rules and shall not exceed 15,000 words if

computer-generated or 50 pages if not. If the total number of pages, including those in the original and any additional memoranda, exceed the word or page limits, an application may be dismissed unless the convicting court for good cause shown grants leave to exceed the prescribed limits. The prescribed limits do not include appendices, exhibits, cover page, table of contents, table of authorities, and certificate of compliance.

(e) Typeface. A computer-generated memorandum must be printed in a conventional typeface no smaller than 14-point except for footnotes, which must be no smaller than 12-point. A typewritten document must be printed in standard 10-character-per-inch (cpi) monospaced typeface.

(f) Certificate of Compliance. A computer-generated memorandum, including any additional memoranda, must include a certificate by the applicant or petitioner stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(g) Verification. The application must be verified by either:

(1) oath made before a notary public or other officer authorized to administer oaths; or

(2) an unsworn declaration in substantially the form required by Civil Practice and Remedies Code chapter 132 as set out in the verification section of the application form.

(Adopted by Order Oct. 16, 2000, eff. Jan. 1, 2001. Amended by Order Dec. 13, 2013, eff. Jan. 1, 2014; Order Nov. 5, 2018, eff. Dec. 1, 2018.)

73.2. Noncompliant Applications.

The Court of Criminal Appeals may dismiss an application that does not comply with these rules.

(Adopted by Order Oct. 16, 2000, eff. Jan. 1, 2001. Amended by Order Dec. 13, 2013, eff. Jan. 1, 2014.)

73.3. State's Response.

Any response by the State must comply with length, typeface, and certificate of compliance requirements set out in rule 73.1 (d),(e) and (f).

(Adopted by Order Dec. 13, 2013, eff. Jan. 1, 2014.)

73.4. Filing and Transmission of Habeas Record.

(a) The district clerk of the county of conviction shall accept and file all Code of Criminal Procedure article 11.07 applications.

(b) In addition to the duties set out in Article 11.07, the clerk shall do the following:

(1) If the convicting court enters an order designating issues, the clerk shall immediately transmit to the Court of Criminal Appeals a copy of that order and proof of the date the district attorney received the habeas application.

(2) When any pleadings, objections, motions, affidavits, exhibits, proposed or entered findings of fact and conclusions of law, or other orders are filed or made a part of the record, the district clerk shall immediately send a copy to all parties in the case. A party has ten days from the date he receives the trial court's findings of fact and conclusions of law to file objections, but the trial court may, nevertheless, order the district clerk to transmit the record to the Court of Criminal Appeals before the expiration of the ten days. Upon transmission of the record, the district clerk shall immediately notify all parties in the case.

(3) When a district clerk transmits the record in a postconviction application for a writ of habeas corpus under Code of Criminal Procedure articles 11.07 or 11.071, the district clerk must prepare and transmit a summary sheet that includes the following information:

(A) the convicting court's name and county, and the name of the judge who tried the case;

(B) the applicant's name, the offense, the plea, the cause number, the sentence, and the date of sentence, as shown in the judgment of conviction;

(C) the cause number of any appeal from the conviction and the citation to any published report;

(D) whether a hearing was held on the application, whether findings of fact were made, any recommendation of the convicting court, and the name of the judge who presided over the application;

(E) the name of counsel if applicant is represented; and

(F) the following certification:

> I certify that all applicable requirements of Texas Rule of Appellate Procedure 73.4 have been complied with in this habeas proceeding, including the requirement to serve on all the parties in the case any objections, motions, affidavits, exhibits, proposed findings of fact and conclusions of law, findings of fact and conclusions of law, and any other orders entered or pleadings filed in the habeas case.
>
> _____ _____
>
> Signature of District Clerk or Clerk's Representative Date Signed.

The Court of Criminal Appeals may by order adopt a form of summary sheet that the district clerks must use.

(4) The district clerk shall also include in the record transmitted to the Court of Criminal Appeals, among any other pertinent papers or supplements, the indictment or information, any plea papers, the court's docket sheet, the court's charge and the jury's verdict, any proposed findings of fact and conclusions of law, the court's findings of fact and conclusions of law, any objections to the court's findings of fact and conclusions of law filed by either party, and the transcript of any hearings held.

(5) On the 181st day from the date of receipt of the application by the State of a postconviction application for writ of habeas corpus under Article 11.07, the district clerk shall forward the writ record to this Court unless the district court has received an extension of time from the Court of Criminal Appeals pursuant to Rule 73.5.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order Nov. 8, 2000, eff. Jan. 1, 2001; Dec. 13, 2013, eff. Jan. 1, 2014; Tex. Sup. Ct. Misc. Docket No. 15-006 Dec. 7, 2015, eff. Jan. 1, 2016; Tex. Sup. Ct. Misc. Docket No. 16-9012 Feb. 29, 2016, eff. Jan. 1, 2016; Order Nov. 5, 2018, eff. Dec. 1, 2018; Order Nov. 5, 2018, eff. Dec. 1, 2018.)

Comment to 2018 change: Rules 73.1 and 73.4 are amended in conjunction with amendments to the form for applications filed under Article 11.07 of the Code of Criminal Procedure (Appendix E to these rules) and the Clerk's Summary Sheet (Appendix F to these rules). The amendments clarify terminology and procedures for filing Article 11.07 writ applications and update the Article 11.07 writ application form to incorporate current technologies and filing procedures. The application form will be made available on the internet through the Court of Criminal Appeals' website. In addition, the amendments bring the application and filing procedures into conformity with Civil Practice and Remedies Code chapter 132, which permits both inmates and non-inmates to file unsworn declarations in lieu of notarized oaths. Further, the rules amendments and changes to the clerk's summary sheet clarify the information that district clerks must provide to the Court of Criminal Appeals and add a new requirement that clerks certify that they have complied with all the requirements of Rule 73.4, including the requirement to serve on all parties in the case all objections, motions, affidavits, exhibits, proposed findings of fact and conclusions of law, findings of fact and conclusions of law, and any other orders entered or pleadings filed in the habeas case. The phrase "all parties in the case" as used in Rule 73.4 includes: the attorney representing the State; the applicant (including pro se and inmate applicants); and, if the applicant is represented by counsel, applicant's attorney.

73.5. Time Frame for Resolution of Claims Raised in Application.

Within 180 days from the date of receipt of the application by the State, the convicting court shall resolve any issues that the court has timely designated for resolution. Any motion for extension of time must be filed in the Court of Criminal Appeals before the expiration of the 180-day period.

(Adopted by Order Dec. 13, 2013, eff. Jan. 1, 2014.)

73.6. Action on Application.

The Court may deny relief based upon its own review of the application or may issue such other instructions or orders as may be appropriate.

(Adopted by Order eff. Sept. 1, 1997. Amended by Order Nov. 8, 2000, eff. Jan. 1, 2001.)

Comment to 1997 change: This is former Rule 4 of the Appendix for Criminal Cases. The rule is amended without substantive change.

Comment to 2000 change: Rules 73.1 and 73.2 are added, and a form is added in an appendix. [Appendix is omitted.]

73.7. New Evidence After Application Forwarded to Court of Criminal Appeals.

If an Article 11.07 or 11.071 application has been forwarded to this Court, and a party wishes this Court to consider evidence not filed in the trial court, then the party must comply with the following procedures or the evidence will not be considered.

(a) If the Court of Criminal Appeals has received an Article 11.07 or 11.071 application from the district clerk of the county of conviction and has filed and set the application for submission, a party has two options:

(1) The party may file the evidence directly in the Court of Criminal Appeals with a motion for the Court of Criminal Appeals to consider the evidence. In this motion, the party should describe the evidence, explain its evidentiary value, and state why compelling and extraordinary circumstances exist for the Court of Criminal Appeals to consider the evidence directly. The moving party must immediately serve copies of the motion and the evidence the party seeks to file on the other party or parties in the case. If the Court of Criminal Appeals grants this motion, the Court will consider the evidence in its review of the application. The Court of Criminal Appeals will grant such a motion only if the Court concludes the circumstances are truly exceptional.

(2) The party may file in the Court of Criminal Appeals a motion to supplement the record in the trial court. In this motion, the party should describe the evidence the party intends to file, explain its evidentiary value, and state why the evidence could not have been filed in the trial court before the Court of Criminal Appeals filed and set the application for submission. The moving party must immediately serve copies of the motion and the evidence the party seeks to file on the other party or parties in the case. If the Court of Criminal Appeals grants the motion, the party may file the evidence with the district clerk of the county of conviction, and should attach a copy of the motion to supplement and the Court of Criminal Appeals' order granting said motion. The district clerk shall immediately send a copy ofthe filed materials to the trial judge assigned to the habeas case and to the other party or parties in the case, and otherwise comply with the procedures set out in Rule 73.4(b) of these rules.

(b) If the Court of Criminal Appeals has received an Article 11.07 or 11.071 application from the district clerk of the county of conviction, but the Court has not yet filed and set the application for submission, the party must file in the Court of Criminal Appeals a motion to stay the proceedings pending the filing of the evidence in the trial court. In this motion, the party should describe the evidence the party intends to file and explain its evidentiary value. The moving party must immediately servecopies of the motion and the evidence the party seeks to file on the other party or parties in the case. If the Court of Criminal Appeals grants the motion, the Court will specify a designated time frame for the party to file the evidence with the district clerk of the county of conviction. The party should attach a copy of the motion to stay proceedings and the Court of Criminal Appeals' order granting said motion to the evidentiary filing. The district clerk of the county of conviction shall immediately send a copy of the filed materials to the trial judge assigned to the habeas case and to the other party or parties in the case, and otherwise comply with the procedures set out in Rule 73.4(b) of these rules.

Notes and Comments

Comment to 1997 change: This is former Rule 4 of the Appendix for Criminal Cases. The rule is amended without substantive change.Comment to 2000 change: Rules 73.1 and 73.2 are added, and a form is added in an appendix.

Comment to 2017 change: Rule 73.7 is added. This rule only applies after an Article 11.07 or 11.071 application has been forwarded to the Court of Criminal Appeals. If an Article 11.07 or 11.071 application is pending in the trial court and has not been forwarded to the Court of Criminal Appeals, a party may file additional evidentiary materials with the district clerk of the county of conviction without filing any special motion in the Court of Criminal Appeals or the trial court. But the district clerk of the county of conviction still must immediately send a copy of the filed materials to the trial judge assigned to the habeas case and to the other party or parties in the case, and otherwise comply with the procedures set out in Rule 73.4(b) of these rules.

Comment to 2018 change: Rules 73.1 and 73.4 are amended in conjunction with amendments to the form for applications filed under Article 11.07 of the Code of Criminal Procedure (Appendix E to these rules) and the Clerk's Summary Sheet (Appendix F to these rules). The amendments clarify terminology and procedures for filing Article 11.07 writ applications and update the Article 11.07 writ application form to incorporate current technologies and filing procedures. The application form will be made available on the internet through the Court of Criminal Appeals' website. In addition, the amendments bring the application and filing procedures into conformity with Civil Practice and Remedies Code chapter 132, which permits both inmates and non-inmates to file unsworn declarations in lieu of notarized oaths. Further, the rules amendments and changes to the clerk's summary sheet clarify the information that district clerks must provide to the Court of Criminal Appeals and add a new requirement that clerks certify that they have complied with all the requirements of Rule 73.4, including the requirement to serve on all parties in the case all

objections, motions, affidavits, exhibits, proposed findings of fact and conclusions of law, findings of fact and conclusions of law, and any other orders entered or pleadings filed in the habeas case. The phrase "all parties in the case" as used in Rule 73.4 includes: the attorney representing the State; the applicant (including pro se and inmate applicants); and, if the applicant is represented by counsel, applicant's attorney.

73.8. Rules of Evidence.

The Texas Rules of Evidence apply to a hearing held on a postconviction application for a writ of habeas corpus filed under Code of Criminal Procedure Article 11.07 or 11.071.

(Adopted by Tex. Sup. Ct. Misc. Docket No. 19-9105, Nov. 7, 2019, eff. Dec. 1, 2019.)

Comment to 2019 change: Rule 73.8 is added to clarify that the Rules of Evidence apply in hearings held in Article 11.07 and 11.071 habeas corpus cases. This rule does not limit the ability of an applicant to attach supporting documents to an application for a writ of habeas corpus.

RULE 74. REVIEW OF CERTIFIED STATE CRIMINAL-LAW QUESTIONS.

74.1. Certification.

The Court of Criminal Appeals may answer questions of Texas criminal law certified to it by any federal appellate court if the certifying court is presented with determinative questions of Texas criminal law having no controlling Court of Criminal Appeals precedent. The Court may decline to answer the questions certified to it.

74.2. Contents of the Certification Order.

An order from the certifying court must set forth:

(a) the questions of law to be answered; and

(b) a stipulated statement of all facts relevant to the questions certified, showing fully the nature of the controversy in which the questions arose.

74.3. Transmission of Certification Order.

The clerk of the certifying court must send to the clerk of the Court of Criminal Appeals the following:

(a) the certification order under the certifying court's official seal;

(b) a list of the names of each party to the pending case, giving the address and telephone number, if known, of any party not represented by counsel; and

(c) a list of the names and addresses of counsel for each party.

74.4. Transmission of Record.

The certifying court should not send to the Court of Criminal Appeals the record in the pending case with the certification order. The Court of Criminal Appeals may later require the original or copies of all or part of the record before the certifying court to be filed with the Court of Criminal Appeals clerk.

74.5. Notice.

If the Court of Criminal Appeals agrees to answer the questions certified to it, the Court will notify all parties and the certifying court. The Court of Criminal Appeals clerk must also send a notice to the Attorney General of Texas if:

(a) the constitutionality of a Texas statute is the subject of a certified question that the Court of Criminal Appeals has agreed to answer; and

(b) the State of Texas or an officer, agency, or employee of the State is not a party to the proceeding in the certifying court.

74.6. Briefs and Oral Argument.

(a) Briefs. The appealing party in the certifying court must file a brief with the clerk of the Court of Criminal Appeals within 30 days after the date of the notice. Opposing parties must file an answering brief within 15 days of receiving the opening brief. Briefs must comply with Rule 38 to the extent that its provisions apply.

(b) Oral Argument. Oral argument may be granted either on a party's request or on the Court's own initiative. Argument is governed by Rule 39.

74.7. Intervention by the State.

If the constitutionality of a Texas statute is the subject of a certified question that the Court of Criminal Appeals has agreed to answer, the State of Texas may intervene at any reasonable time for briefing and oral argument (if argument is allowed) on the question of constitutionality.

74.8. Opinion on Certified Question.

If the Court of Criminal Appeals has agreed to answer a certified question, it will hand down an opinion as in any other case.

74.9. Motion for Rehearing.

Any party may file a motion for rehearing within 15 days after the opinion is handed down. The motion must clearly state the points relied on for the rehearing. No reply to a motion for rehearing need be filed unless the Court so requests. The Court will not grant a motion for rehearing unless a response has been filed or requested.

74.10. Answering Certified Questions.

After all motions for rehearing have been overruled, the clerk of the Court of Criminal Appeals must send to the certifying court the written opinion on the certified questions. The opinion must be under the Court of Criminal Appeals' seal.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 214. The rule is amended without substantive change.

RULE 75. NOTIFICATION; ORAL ARGUMENT.

75.1. Notification of Argument or Submission.

Oral argument will be permitted only in cases designated by the Court of Criminal Appeals. If the Court permits argument in a case, the clerk will notify the parties of the date set for argument. If a case will be submitted without argument, the clerk will notify the parties of the date of submission. The clerk must use all reasonable diligence to notify counsel of settings, but counsel's failure to receive notice will not necessarily prevent argument or submission of the case on the day it is set.

75.2. Request for Argument.

If a case is not designated for oral argument but counsel desires oral argument, counsel may—within 30 days of the date of the clerk's notice—petition the Court to allow oral argument. This petition must contain specific reasons why oral argument is desired.

75.3. Oral Argument.

Unless extended in a special case, the total maximum time for oral argument is 20 minutes per side. Counsel for the appellant or petitioner is entitled to open and conclude the argument. Counsel should not read at length from the briefs, records, or authorities. Counsel may orally correct a brief, but multiple additional citations should not be given orally; instead, these citations should be filed in writing with the clerk.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 220. The rule is amended without substantive change.

RULE 76. SUBMISSIONS EN BANC.

The Court will sit en banc to consider the following types of cases:

(a) direct appeals;

(b) cases of discretionary review;

(c) cases in which leave to file was granted under Rule 72;

(d) cases that were docketed under Code of Criminal Procedure articles 11.07 or 11.071;

(e) certified questions; and

(f) rehearings under Rule 79.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 222. The rule is expanded to include other kinds of cases. Internal procedures of the Court are deleted. Other nonsubstantive changes are made.

RULE 77. OPINIONS.

77.1. Generally.

In each case that is argued or submitted without argument to the Court of Criminal Appeals, the Court will hand down a written opinion setting forth the reasons for its decision and any germane precedent. Any judge may file an opinion dissenting from or concurring in the Court's judgment.

77.2. Signing; Publication.

A majority of the judges will determine whether an opinion will be signed by a judge or issued per curiam, and whether the opinion (or a portion of the opinion) will be published.

77.3. Unpublished Opinions.

Unpublished opinions have no precedential value and must not be cited as authority by counsel or by a court.

77.4. Copies.

On the date when an opinion is handed down or an order rendered, the clerk of the Court of Criminal Appeals must mail copies of the opinion or order to:

(a) the parties;

(b) the State Prosecuting Attorney;

(c) the trial court clerk; and

(d) if the case is of discretionary review, the court of appeals clerk.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: This is former Rule 223. The rule is amended without substantive change.

RULE 78. JUDGMENTS IN THE COURT OF CRIMINAL APPEALS.

78.1. Types of Judgment.

The Court of Criminal Appeals may:

(a) affirm the lower court's judgment in whole or in part;

(b) modify the lower court's judgment and affirm it as modified;

(c) reverse the court's judgment in whole or in part and render the judgment that the lower court should have rendered;

(d) reverse the lower court's judgment and remand the case for further proceedings;

(e) vacate the judgments of the lower courts and dismiss the case;

(f) vacate the lower court's judgment and remand the case for further proceedings in light of changes in the law; or

(g) dismiss the appeal.

78.2. Remand in the Interests of Justice.

When reversing the court of appeals' judgment, the Court of Criminal Appeals may, in the interests of justice, remand the case to the trial court even if a rendition of judgment is otherwise appropriate.

78.3. Other Orders.

The Court of Criminal Appeals may make any other appropriate order required by the law and the nature of the case.

(Adopted by Order eff. Sept. 1, 1997.)

Comment to 1997 change: The rule is new.

RULE 79. REHEARINGS.

79.1. Motion for Rehearing.

A motion for rehearing may be filed with the Court of Criminal Appeals clerk within 15 days from the date of the judgment or order. In exceptional cases, if justice requires, the Court may shorten the time within which the motion may be filed or even deny the right to file it altogether.

79.2. Contents.

(a) The motion must briefly and distinctly state the grounds and arguments relied on for rehearing.

(b) A motion for rehearing an order that grants discretionary review may not be filed.

(c) A motion for rehearing an order that refuses a petition for discretionary review may be grounded only on substantial intervening circumstances or on other significant circumstances which are specified in the motion. Counsel must certify that the motion is so grounded and that the motion is made in good faith and not for delay.

(d) A motion for rehearing an order that denies habeas corpus relief or dismisses a habeas corpus application under Code of Criminal Procedure, articles 11.07 or 11.071, may not be filed. The Court may on its own initiative reconsider the case.

(Amended by Tex. Sup. Ct. Misc. Docket No. 15-006 Dec. 7, 2015, eff. Jan. 1, 2016; Tex. Sup. Ct. Misc. Docket No. 16-9012 Feb. 29, 2016, eff. Jan. 1, 2016.)

79.3. Amendments.

A motion for rehearing may be amended anytime before the period allowed for filing the motion expires, and with leave of the court, anytime before the Court decides the motion.

79.4. Decision.

If the Court grants rehearing, the case will be set for submission. Oral argument may, but normally will not, be permitted.

79.5. Further Motion for Rehearing.

The Court will not consider a second motion for rehearing after rehearing is denied. If rehearing is granted and the Court delivers an opinion on rehearing, a party may file a further motion for rehearing.

79.6. Extension of Time.

The Court may extend the time for filing a motion or a further motion for rehearing if a party files a motion complying with Rule 10.5(b) within the time for filing a motion or further motion for rehearing.

79.7. Service.

The requirements of Rule 80.1 apply.

(Adopted by Order eff. Sept. 1, 1997; Tex. Sup. Ct. Misc. Docket No. 19-9106, Nov. 7, 2019, eff. Dec. 1, 2019.)

Comment to 1997 change: This is former Rule 230, and the portion of former Rule 213 that prohibited motions for rehearing. The Court may now permit oral argument after granting rehearing, although it is disfavored. A further motion for rehearing may now be filed by any party, rather than only the losing party. Other nonsubstantive changes are made.

RULE 80. STATE PROSECUTING ATTORNEY.

80.1. Service on State Prosecuting Attorney.

The State Prosecuting Attorney must be served on every petition for discretionary review or brief filed by any party or amicus curiae in the Court of Criminal Appeals, including replies, responses, amendments, and supplements.

Comment to 2019 change: This rule incorporates and expands former Rule 68.11 to require service on the State Prosecuting Attorney of all petitions for discretionary review and all substantive briefing in the Court of Criminal Appeals. In using the phrase "brief filed by any party or amicus curiae in the Court of Criminal Appeals," the rule does not intend to require service on the State Prosecuting Attorney of petitions for a writ of mandamus (or responses) or applications for a writ of habeas corpus (or answers) and their accompanying memoranda. However, if the Court of Criminal Appeals has filed and set a mandamus petition or habeas corpus application, the rule does require service on the State Prosecuting Attorney of the briefs filed in the case.

(Adopted by Tex. Sup. Ct. Misc. Docket No. 19-9106, Nov. 7, 2019, eff. Dec. 1, 2019.)

Texas Rules of Judicial Administration

Adopted effective February. 4, 1987 including amendments received through March 23, 2020.

RULE 1. AUTHORITY.

These rules are promulgated pursuant to Section 74.024 of the Texas Government Code.

(Adopted by Order Feb. 4. 1987. Amended by Order Dec. 6, 1988.)

RULE 2. DEFINITIONS.

In these rules:

a. "Chief Justice" means the Chief Justice of the Supreme Court.

b. "Presiding Judge" means the presiding judge of an administrative region.

c. "Administrative region" means an administrative judicial region created by Section 74.042 of the Texas Government Code.

d. "Statutory county court" means a court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, county criminal courts, county criminal courts of appeals, and county civil courts at law, but not including statutory probate courts as defined by Section 3(ii) of the Texas Probate Code.

(Adopted by Order Feb. 4. 1987. Amended by Order Dec. 6, 1988.)

RULE 3. COUNCIL OF PRESIDING JUDGES.

a. There is hereby created the Council of Presiding Judges, composed of the Chief Justice as chairman and the nine presiding judges of the administrative regions.

b. The Chief Justice shall call and preside over an annual meeting of the Council on a date and at a time and place in the State designated by the Chief Justice.

c. The Chief Justice may call and convene additional meetings of the Council that he considers necessary for the promotion of the orderly and efficient administration of justice.

d. At the will of the Chief Justice, the Council may choose one of its members to serve as chairman, who will serve for a period of two years.

e. At the meetings, the Council shall:

(1) study the condition of the dockets of the courts of the State to determine the existence of:

(a) a significant increase in the number of new cases filed;

(b) a disposition rate below the state average;

(c) fewer cases disposed of than new cases filed;

(d) an excessive number of cases pending on the docket for a lengthy period of time;

(e) a large number of inactive tax cases, non-arrest criminal cases, cases held pending action in other courts or other cases which are not ready for disposition;

(f) cases tried and awaiting the entry of judgment;

(g) the need for technical assistance in caseflow or case management; and

(h) the need for the assignment of visiting judges to any court;

(2) compare the regional and local rules of court to achieve the uniformity of rules that is practicable and consistent with local conditions;

(3) consider uniformity in the administration of Chapter 74 of the Texas Government Code in the various administrative regions; and

(4) promote more effective administration of justice through the use of Chapter 74 of the Texas Government Code.

f. The Office of Court Administration shall provide the necessary staff support for the operation of the Council and at the direction of the Chief Justice shall provide the Council with information concerning the operation of the courts of this State.

(Adopted by Order Feb. 4. 1987. Amended by Order Dec. 6, 1988.)

RULE 4. COUNCIL OF JUDGES.

a. There is hereby created in each of the administrative regions a Council of Judges, composed of the Presiding Judge as Chairman, judges of the district courts and statutory county courts within the region, senior judges, and former district and statutory county court judges residing in the region who have qualified to serve as judicial officers under the provisions of Section 74.055 of the Texas Government Code.

b. The Presiding Judge shall call at least one meeting each year of the Council of Judges of the administrative region, at a time and place designated by the Presiding Judge, for consultation and counseling on the state of the dockets and the civil and criminal business in the district and statutory county courts of the administrative region and arranging for the disposition of cases and other business pending on the court dockets. At the meeting, the Council shall study and act upon the matters listed in Rule 3.e and such other matters as may be presented to the meeting by the judges in attendance.

c. The Council of Judges shall adopt rules for the administration of the affairs of the district and statutory county courts within the administrative region, including, but not limited to, rules for:

(1) management of the business, administrative and nonjudicial affairs of the courts;

(2) docket management systems to provide the most efficient use of available court resources;

(3) the reporting of docket status information to reflect not only the numbers of cases on the dockets but also the types of cases relevant to the time needed to dispose of them;

(4) meaningful procedures for achieving the time standards for the disposition of cases provided by Rule 6;

(5) such other matters necessary to the administrative operations of the courts; and

(6) judicial budget matters.

d. The expenses of judges attending meetings of the Council of Judges may be paid from funds provided by law.

(Adopted by Order Feb. 4. 1987. Amended by Order Dec. 6, 1988; Oct. 16, 1991.)

RULE 5. DUTIES OF THE PRESIDING JUDGE.

In addition to the duties placed on Presiding Judges by law and these rules, each Presiding Judge should oversee the general docket management, the prompt disposition of all cases filed in each district and statutory county court within the region, and the proper administration of the affairs of the courts within the administrative region. The Presiding Judge shall:

a. ensure the adoption of uniform local rules;

b. hold periodic meetings with the judges in counties with more than one court;

c. consult with each trial judge of the administrative region to implement more efficient methods of docket management;

d. study in detail the condition of the dockets in each county;

e. discover and encourage the implementation of systems to reduce delay in local dockets;

f. provide for the orientation and training of new judges in the administrative regions;

g. ensure adherence to the time standards provided by Rule 6 in the courts of the administrative region;

h. direct the district and county clerks within the regions to submit such statistical reports as may be requested by either the local administrative judge or the presiding judge; and

i. perform such other duties as may be assigned by the Chief Justice.

(Adopted by Order Feb. 4. 1987.)

RULE 6. TIME STANDARDS FOR THE DISPOSITION OF CASES.

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) 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.

(b) 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.

(c) 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.

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

(Adopted by Order Feb. 4. 1987. Amended by Order Dec. 6, 1988; Order Dec. 12, 2011, eff. May 1, 2012; Order March 1, 2012, eff. May 1, 2012; Misc. Docket No. 17-9045 May 2, 2017, eff. May 2, 2017.)

6.2. Appeals in Certain Cases Involving the Parent-Child Relationship and From Orders Certifying a Juvenile to Stand Trial as an Adult.

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, or an appeal from an order under Family Code section 54.02 certifying a juvenile to stand trial as an adult, 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.

(Amended by Order Dec. 12, 2011, eff. May 1, 2012; Order March 1, 2012, eff. May 1, 2012; Tex. Sup. Ct. Misc. Docket No. 22-9104, Nov. 30, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9029, May 30, 2023, eff. June. 1, 2023.)

Comment

Comment to 2023 change: Comment Comment to 2023 change: Rule 6.2 is amended to implement Texas Family Code section 56.01(h-1). Rule 6.2 is amended to implement Texas Family Code section 56.01(h-1).

RULE 7. ADMINISTRATIVE RESPONSIBILITIES.

7.1. All Courts.

(a) Court Confidentiality Policy Required. A court, including an appellate, district, statutory county, business, statutory probate, constitutional county, justice, and municipal court, must adopt a policy governing court confidentiality.

(b) Policy Contents. The policy must:

(1) define who the policy applies to;

(2) define confidential information;

(3) impose a duty of confidentiality on all court staff that continues after employment at the court ends;

(4) address when, if ever, the disclosure of confidential information is authorized;

(5) provide the language of relevant laws, including section 21.013 of the Texas Government Code and section 39.06 of the Texas Penal Code;

(6) address negligent or accidental disclosure of confidential information;

(7) warn of potential penalties for the unauthorized disclosure of confidential information, including:

(A) referral to relevant law enforcement agencies for investigation and prosecution;

(B) termination of employment;

(C) for attorneys, referral to the State Bar of Texas for discipline;

(D) for law students, referral to the Texas Board of Law Examiners for consideration in determining eligibility to practice law in Texas; and

(8) require all court staff to acknowledge receipt of the policy in writing.

(c) Distribution and Training Required. The court must:

(1) for all new court staff members, provide the policy and train on it before the new staff member begins any substantive work for the court;

(2) provide the policy to all existing court staff at least biannually.

7.2. District, Statutory County, and Business Courts.

A district or statutory county, or business court judge must:

(a) diligently discharge the administrative responsibilities of the office;

(b) rule on a case within three months after the case is taken under advisement;

(c) if an election contest or a suit for the removal of a local official is filed in the judge's court, request the presiding judge to assign another judge who is not a resident of the county to dispose of the suit;

(d) on motion by either party in a disciplinary action against an attorney, request the presiding judge to assign another judge who is not a resident of the administrative region where the action is pending to dispose of the case;

(e request the presiding judge to assign another judge of the administrative region to hear a motion relating to the recusal or disqualification of the judge from a case pending in his court; and

(f) to the extent consistent with due process, consider using, utilize methods to expedite the disposition of cases on the docket of the court, including

(1 adherence to firm trial dates with strict continuance policies;

(2) the use of teleconferencing, videoconferencing, or other available means in lieu of personal appearance for motion hearings, pretrial conferences, scheduling and other appropriate court proceedings;

(3) pretrial conferences to encourage settlements and to narrow trial issues;

(4) taxation of costs and imposition of other sanctions authorized by the Rules of Civil Procedure against attorneys or parties filing frivolous motions or pleadings or abusing discovery procedures; and

(5) local rules, consistently applied, to regulate docketing procedures and timely pleadings, discovery and motions.

(Adopted by Order Feb. 4. 1987. Amended by Order Dec. 6, 1988; Tex. Sup. Ct. Misc. Docket No. 22-9091, Oct. 14, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9015, March 10, 2023, eff. April. 1, 2023; Tex. Sup. Ct. Misc. Docket No. 23-9068, Aug. 25, 2023, eff. Sept. 1, 2023 and Tex. Sup. Ct. Misc. Docket No. 24-9006, Feb. 20, 2024, eff. March 1, 2024.)

Paragraph 3 and 4 of Tex. Sup. Ct. Misc. Docket No. 24-9006, Feb. 20, 2024, eff. March 1, 2024 provides:

3. Each court must adopt a confidentiality policy, as required by Rule of Judicial Administration 7.1, by May 1, 2024. Each court must also provide that policy to current court staff members and train them on it by May 1, 2024. Courts within the same county are encouraged to collaborate to adopt a uniform confidentiality policy.

4. The Court's confidentiality policy is attached to this Order and may serve as a model. Section 2(e) has been revised as shown since it was first published in Misc. Dkt. No. 23-9068.

Supreme Court of Texas
Confidentiality Policy and Agreement

Employees of this Court occupy positions of public trust. In the course of your duties, you will encounter confidential information about the prospective disposition of cases and the inner workings of the Court.

Preserving the confidentiality of the Court's documents and private deliberations is crucial to the Court's work. More specifically, confidentiality furthers the ability of judges and judicial staff to communicate openly and honestly and to reach the most legally correct outcomes for litigants. Confidentiality also builds public respect for the judiciary and impresses on others the gravity of the judicial process. Any breach of confidentiality would betray not only the Court and the individuals who work here, but also the public's interest in thorough, considered justice.

Confidentiality has long been an expectation within Texas courts. Canon 3B(10) of the Texas Code of Judicial Conduct demands that judges and court staff refrain from "public comment about a pending or impending proceeding which may come before the judge's court." Canon 3B(11) of the Texas Code of Judicial Conduct provides that "[t]he discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion or in accordance with Supreme Court guidelines for a court approved history project."

Texas Government Code Section 21.013 creates a Class A misdemeanor criminal offense for the unauthorized disclosure of non-public judicial work product, stating "[a] person . . . with access to non-public judicial work product commits an offense if the person knowingly discloses, wholly or partly, the contents of any nonpublic judicial work product . . . ." Additionally, Texas Penal Code Section 39.06 criminalizes the misuse of official information by a public servant who "discloses or uses information for a nongovernmental purpose that: (1) he has access to by means of his office or employment; and (2) has not been made public", with penalties ranging from a Class C misdemeanor to a felony of the third degree.

This confidentiality policy incorporates the Canons as well as the statutory penalties of both Texas Government Code Section 21.013 and Texas Penal Code Section 39.06. This policy applies to all Court staff, including interns.

1. Protection of information. Confidential information must not be shared with persons not employed within the Court, except as provided in Section 3 below. Employees must refrain from commenting about cases that are or may come before the Court to family, friends, or acquaintances.

2. Confidential information defined. Confidential information includes:

a) drafts of opinions not yet released, internal memoranda, emails between judges or staff, and any other document not intended for public use;

b) conversations between judges or court staff about litigants or cases before, previously before, or expected to come before the Court;

c) the private views of judges or court staff concerning the disposition of cases, litigants, anticipated cases, or each other;

d) the authorship of per curiam opinions or orders, the timing of opinion or order release, and any other procedural mechanism not ordinarily public;

e) documents submitted by litigants under seal properly filed under seal by litigants or counsel; and

f) other information, however communicated, that is not authorized to be made public.

3. Disclosures of confidential information.

a) **Intentional disclosure** of confidential information outside of the boundaries of (1) above may be met with maximum disciplinary action. See (5) below.

b) **Negligent or accidental disclosure** is an extremely serious matter that may, but will not necessarily, be met with penalties as described in (5) below. Employees who accidentally disclose confidential information have a duty to promptly report the disclosure to their supervisor, appointing authority, or human resources department so that mitigation can be attempted.

Employees are expected to exercise their discretion and judgment to minimize the risk of inadvertent disclosure. For example, employees should refrain from communicating about sensitive matters in crowded or public spaces where others may overhear, even within the public areas of the Court. Employees should use court-issued, password-protected equipment to transmit confidential documents. Employees should be mindful of who can see their screen when working at home, on aircraft, public transit, or in public spaces. Employees should carefully keep track of and password protect electronic devices containing confidential information and immediately report any loss or theft of those devices.

c) **Authorized disclosure** occurs when the Chief Justice or a Justice who supervises the employee authorizes the employee to share work product with a specific person or organization. For example, employees may be authorized to share draft rules or administrative orders with other judicial branch entities for review and comment before they are released to the public, and the Clerk of Court may be authorized to disclose information relating to case status as part of their job duties, provided the Court's internal, confidential deliberations are not disclosed.

d) **Disclosure as necessary to report misconduct or illegal acts** is permitted. Employees may disclose confidential information when such disclosure is necessary to adequately report to an appropriate authority the misconduct or illegal acts of any person, including sexual or other forms of harassment.

4. Continuing confidentiality obligation. An employee's duty to preserve confidentiality survives the employee's departure from the Court. An employee who leaves the Court has the same ongoing duty to protect confidential information that they had during their employment.

Further, the duty to protect information related to the disposition of cases, such as the substance of the Court's deliberations, persists even after an opinion or order is publicly released. Employees asked about a decision of the Court should offer no comment beyond a referral to the released opinion or order.

Finally, employees who depart from Court employment may not retain confidential materials. Employees should return or securely dispose of materials, such as in designated Court shredding bins, prior to an anticipated departure, or as soon as possible after an unanticipated departure.

5. Penalties for unauthorized disclosure: In the event of an unauthorized disclosure of confidential information, the Court will investigate the circumstances and take appropriate disciplinary action, as necessary. Potential disciplinary actions may include but are not limited to:

a) referral of the matter to the relevant law enforcement agency for investigation and prosecution. See Texas Government Code Section 21.013 and Texas Penal Code Section 39.06;

b) termination of employment;

c) for attorneys, referral to the State Bar of Texas or of other states for discipline and possible loss of the privilege to practice before Texas or other courts; and

d) for law students, referral to the Texas Board of Law Examiners for consideration in determining eligibility to practice law.

6. Acknowledgement. Please acknowledge your understanding and agreement to this policy by signing below.

_____ _____

Employee's or Intern's Signature Date

RULE 8. ASSIGNMENT OF JUDGES.

a. Judges may be assigned in the manner provided by Chapter 74 of the Texas Government Code to hold court when:

(1) the regular judge of the court is absent or is disabled, recuses himself, or is recused under the provisions of Rule 18a, T.R.C.P., or is disqualified for any cause;

(2) the regular judge of the court is present and is trying cases as authorized by the constitution and laws of this State; or

(3) the office of the judge is vacant because of death, resignation, or other cause.

b. A Presiding Judge from time to time shall assign the judges of the administrative region, including qualified retired appellate judges, to hold special or regular terms of court in any county of the administrative region to try cases and dispose of accumulated business.

c. The Presiding Judge of one administrative region may request the Presiding Judge of another administrative region to furnish judges to aid in the disposition of litigation pending in a court in the administrative region of the Presiding Judge who makes the request.

d. In addition to the assignment of judges by the Presiding Judges as authorized by Chapter 74 of the Texas Government Code, the Chief Justice may assign judges of one or more administrative regions for service in other administrative regions when he considers the assignment necessary to the prompt and efficient administration of justice. A judge assigned by the Chief Justice shall perform the same duties and functions that the judge would perform if he were assigned by the Presiding Judge.

(Adopted by Order Feb. 4. 1987. Amended by Order July 13, 1988; Dec. 6, 1988.)

RULE 9. LOCAL ADMINISTRATIVE JUDGES.

a. In any county in which there are two or more district courts, the judges of those courts shall elect one of the district judges as the local administrative district judge. In any county in which there are two or more statutory county courts, the judges of those courts shall elect one of the statutory county court judges as the local administrative statutory county court judge. If a local administrative district judge or a local administrative statutory county court judge is not so chosen, the Presiding Judge of the administrative region shall designate one of the qualified judges of the county as the local administrative district judge or the local administrative statutory county court judge. The local administrative judges shall be responsible to the Presiding Judge of the administrative region for the expeditious dispatch of business in the district and statutory county courts of the county.

b. Under the direction of the local administrative judge, the district and statutory county court judges of the county shall adopt rules to provide for the orderly administration of the affairs of the district and statutory county courts of the county. The rules shall employ a uniform and consistent numbering system approved by the Supreme Court and the Council of Presiding Judges. These rules shall provide, among other matters, for the orderly discharge of the local judicial responsibilities for matters relating to:

(1) docket management of the local courts;

(2) regular meetings to address the matters set forth in Rule 3.e.;

(3) judicial budget matters;

(4) adult and juvenile probation matters;

(5) County Auditor matters;

(6) county purchasing matters;

(7) relationship with other governmental bodies, the public, and the news media;

(8) such other matters necessary to provide for the orderly, prompt, efficient, and effective administration of justice in the county;

(9) court reporters and timely preparation of records; and

(10) dismissals for want of prosecution so as to achieve and maintain compliance with the time standards of Rule 6.

(Adopted by Order Feb. 4. 1987. Amended by Order Dec. 6, 1988; April 6, 1992.)

RULE 10. LOCAL RULES, FORMS, AND STANDING ORDERS.

(a) *General Rule*. Local rules, forms, and standing orders must not be inconsistent with other laws or rules and must be published on the Office of Court Administration's website.

(b) *Multi-Court Counties*. In multi-court counties having two or more court divisions, each division must adopt a single set of local rules, forms, and standing orders that govern all courts in the division.

(c) *Local Rule Contents*. Local rules must include:

(1) provisions for fair distribution of the caseload among the judges in the county;

(2) designation of the responsibility for emergency and special matters;

(3) plans for judicial vacation, sick leave, attendance at educational programs, and similar matters; and

(4) any other content required by sections 27.061 or 74.093(b) of the Texas Government Code.

(d) *Format*. Local rules, forms, and standing orders must be submitted in a format specified by the Office of Court Administration.

(e) *Presiding Judge Authority*. The presiding judge of an administrative judicial region may direct a court in the region to amend or withdraw a local rule, form, or standing order if the presiding judge determines that the rule, form, or standing order fails to comply with Rule 3a of the Texas Rules of Civil Procedure or that it is unfair or unduly burdensome.

(f) *Supreme Court Authority*. The Supreme Court may direct a court to amend or withdraw a local rule, form, or standing order if the Supreme Court determines that the rule, form, or standing order fails to comply with Rule 3a of the Texas Rules of Civil Procedure or Rule 1.2 of the Texas Rules of Appellate Procedure or that it is unfair or unduly burdensome.

(g) *Forms*. A court must not require a party to use a local form. A court must not reject a properly completed form approved by the Supreme Court or an organization that reports to the Supreme Court.

(Adopted by Order Feb. 4. 1987. Amended by Tex. Sup. Ct. Misc. Docket No. 22-9026, March 30, 2022 and Tex. Sup. Ct. Misc. Docket No. 22-9081, July 25, 2022, eff. Jan. 1, 2023; Tex. Sup. Ct. Misc. Docket No. 22-9087, July.27, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9015, March. 10, 2023, eff. April. 1, 2023.)

Comment to 2023 change: Rule 10 is amended to implement the changes to Texas Rule of Civil Procedure 3a and Texas Rule of Appellate Procedure 1.2. But it also applies to local justice court rules authorized by section 27.061 of the Texas Government Code. Paragraphs (e) and (f) expressly authorize the regional presiding judges and the Supreme Court to direct changes to or the repeal of local rules, forms, and standing orders. Paragraph (g) is added to prohibit a court from requiring the use of a local form. Paragraph (g) makes clear that access to the justice system cannot be denied because of a party's failure to use a local form. Paragraph (g) also specifies that a court cannot reject forms approved by the Supreme Court or organizations that report to the Supreme Court.

RULE 11. PRETRIAL PROCEEDINGS IN CERTAIN CASES.

11.1. Applicability.

This rule applies to any case filed before September 1, 2003, that involves material questions of fact and law in common with another case pending in another court in another county on or after October 1, 1997.

11.2. Definitions.

(a) *Presiding judge* means the presiding judge of an administrative judicial region in which a case is pending;

(b) *Regular judge* means the regular judge of a court in which a case is pending.

(c) *Pretrial judge* means a judge assigned under this rule.

(d) *Related* means that cases involve common material issues of fact and law.

11.3. Assignment of Pretrial Judge.

(a) *By presiding judge.* On motion or request under 11.4, a presiding judge may assign an active district judge, including himself or herself, to a case to conduct all pretrial proceedings and decide all pretrial matters.

(b) *Authority of pretrial judge.* The pretrial judge will preside over all pretrial proceedings in the case in place of the regular judge. The pretrial judge will decide all pretrial motions, including motions to transfer venue and motions for summary judgment. The pretrial judge and the regular judge must consult on setting a trial date.

(c) *Different judges assigned.* The same pretrial judge need not be assigned in all related cases. If more than one pretrial judge is assigned in related cases, either in the same region or in different regions, the pretrial judges must consult with each other in conducting pretrial proceedings and deciding pretrial matters.

(d) *Assignment outside region.* The Chief Justice of the Supreme Court may assign an active district judge to other administrative regions to allow the judge to be assigned as a pretrial judge under this rule.

(e) *No objections to pretrial judge.* An assignment under this rule is not made pursuant to section 74.054 of the Government Code, and therefore a pretrial judge is not subject to an objection under section 74.053 of the Government Code.

(f) *Termination of assignment.* An assignment under this rule terminates when:

(i) all pretrial proceedings in a case have been completed;

(ii) the pretrial judge ceases to be an active district judge; or

(iii) the presiding judge in the exercise of discretion terminates the assignment.

11.4. Procedure for Obtaining Assignment of a Pretrial Judge.

(a) *Motion or request required; who may file.* A pretrial judge may be assigned only on the motion of a party to a case or at the request of the regular judge.

(b) *Contents of motion or request.* The motion or request must state:

(1) the number and style of the case;

(2) the number and style of the related case, and the court and county in which it is pending;

(3) the material questions of fact and law common to the cases;

(4) the reasons why the assignment would promote the just and efficient conduct of the action; and

(5) whether all parties agree to the motion.

(c) *Where filed.* The motion or request must be filed in all cases identified under (b)(1) and (b)(2).

(d) *Response.* A response may be filed by:

(1) any other party to the case;

(2) the regular judge of the court in which the case is pending;

(3) the regular judge of the court in which the related case is pending, if no pretrial judge has already been assigned in that case;

(4) the pretrial judge assigned to the related case, if a pretrial judge has already been assigned; and

(5) any party to the related case.

(e) *Briefs.* A motion, request, or response may be accompanied by a brief. The presiding judge may request briefs.

(f) *Hearing.* Unless all parties in the case agree to a motion or request, the presiding judge may not grant the motion without conducting an oral hearing. The hearing may be held in any county within the region or in Travis County. The presiding judge must give notice of the time and place for the hearing to all parties and the regular or pretrial judges in the cases identified in (b)(1) and (b)(2).

(g) *Evidence.* In ruling on the motion or request, the presiding judge may consider all documents filed in the case or the related case, all discovery conducted in the case or the related case, any stipulations filed by the parties in the case or the related case, affidavits filed in connection with the motion, request, or response, and oral testimony.

(h) *Decision.* The presiding judge must grant the motion or request if the judge determines that:

(1) the case involves material questions of fact and law common to a case in another court and county; and

(2) assignment of a pretrial judge would promote the just and efficient conduct of the cases.

Otherwise, the presiding judge must deny the motion or request.

(i) *Order.* The presiding judge must issue an order deciding the motion or request. The order must be filed in the case in which assignment of a pretrial judge was sought.

(j) *Service and notice.* A party must serve any paper filed under this rule on all parties to the cases identified under (b)(1) and (b)(2) and on the presiding judge or judges for those cases. If a judge files any paper under this rule, the clerk of the court in which the paper is filed must send a copy to all parties to the cases identified under (b)(1) and (b)(2) and to the presiding judge or judges for those cases. The clerk of the court where a case is pending in which assignment of a pretrial judge is sought shall serve as the clerk for the presiding judge under this rule.

11.5. Review.

A presiding judge's order granting or denying a motion or request for appointment of a pretrial judge may be reviewed only by the Supreme Court in an original mandamus proceeding.

11.6. Expenses of Pretrial Judge.

If a pretrial judge travels outside the judge's county of residence to conduct proceedings, the county in which the proceedings are conducted must pay—on certification by the presiding judge of the administrative judicial region in which the other county is located—the pretrial judge's actual travel expenses and actual living expenses incurred for conducting the proceedings.

11.7. Relationship to Rule 13.

(a) G*enerally.* This rule is to be construed and applied so as to facilitate the implementation of Rule 13 to the greatest extent possible.

(b) *Application of Rule IS by Agreement of the Parties.* Parties may agree to the application of Rule 13. Such an agreement must be in writing and must be joined by all parties to the case. An agreement is effective and irrevocable when it is filed with the trial court if:

(1) no pretrial judge has been appointed in the case, or

(2) a pretrial judge has been appointed in the case, and the parties in all related cases to which the same pretrial judge has been assigned have likewise agreed to the application of Rule 13.

(c) *Assignments of Pretrial Judges After September 1, 2003.* An assignment of a pretrial judge to any case after September 1, 2003, must be made in consultation with the Chair of the Multidistrict Litigation Panel.

(d) *Consultation of Pretrial Judges.* In conducting pretrial proceedings and deciding pretrial matters, a pretrial judge assigned under this rule must consult with the judge of a pretrial court to which related cases have been transferred under Rule 13.

(Adopted by Order eff. Oct. 1, 1997. Amended by Order eff. Nov. 12, 1997. Rule 11.1 and 11.7 amended by Order Aug. 29, 2003, effective in all cases pending on Aug. 31, 2003.)

RULE 12. PUBLIC ACCESS TO JUDICIAL RECORDS.

12.1. Policy.

The purpose of this rule is to provide public access to information in the judiciary consistent with the mandates of the Texas Constitution that the public interests are best served by open courts and by an independent judiciary. The rule should be liberally construed to achieve its purpose.

12.2. Definitions.

In this rule:

(a) *Judge* means a regularly appointed or elected judge or justice.

(b) *Judicial agency* means an office, board, commission, or other similar entity that is in the Judicial Department and that serves an administrative function for a court. A task force or committee created by a court or judge is a "judicial agency".

(c) *Judicial officer* means a judge, former or retired visiting judge, referee, commissioner, special master, court-appointed arbitrator, or other person exercising adjudicatory powers in the judiciary. A mediator or other provider of non-binding dispute resolution services is not a "judicial officer".

(d) *Judicial record* means a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record. A record is a document, paper, letter, map, book, tape, photograph, film, recording, or other material, regardless of electronic or physical form, characteristics, or means of transmission.

(e) *Records custodian* means the person with custody of a judicial record determined as follows:

(1) The judicial records of a court with only one judge, such as any trial court, are in the custody of that judge. Judicial records pertaining to the joint administration of a number of those courts, such as the district courts in a particular county or region, are in the custody of the judge who presides over the joint administration, such as the local or regional administrative judge.

(2) The judicial records of a court with more than one judge, such as any appellate court, are in the custody of the chief justice or presiding judge, who must act under this rule in accordance with the vote of a majority of the judges of the court. But the judicial records relating specifically to the service of one such judge or that judge's own staff are in the custody of that judge.

(3) The judicial records of a judicial officer not covered by subparagraphs (1) and (2) are in the custody of that officer.

(4) The judicial records of a judicial agency are in the custody of its presiding officer, who must act under this rule in accordance with agency policy or the vote of a majority of the members of the agency.

12.3. Applicability.

This rule does not apply to:

(a) records or information to which access is controlled by:

(1) a state or federal court rule, including:

(A) a rule of civil or criminal procedure, including Rule 76a, Texas Rules of Civil Procedure;

(B) a rule of appellate procedure;

(C) a rule of evidence;

(D) a rule of administration;

(2) a state or federal court order not issued merely to thwart the purpose of this rule;

(3) the Code of Judicial Conduct;

(4) Chapter 552, Government Code, or another statute or provision of law;

(b) records or information to which Chapter 552, Government Code, is made inapplicable by statute, rule, or other provision of law, other than Section 552.003(1)(B);

(c) records or information relating to an arrest or search warrant or a supporting affidavit, access to which is controlled by:

(1) a state or federal court rule, including a rule of civil or criminal procedure, appellate procedure, or evidence; or

(2) common law, court order, judicial decision, or another provision of law

(d) elected officials other than judges.

12.4. Access to Judicial Records.

(a) Generally. Judicial records other than those covered by Rules 12.3 and 12.5 are open to the general public for inspection and copying during regular business hours. But this rule does not require a court, judicial agency, or records custodian to:

(1) create a record, other than to print information stored in a computer;

(2) retain a judicial record for a specific period of time;

(3) allow the inspection of or provide a copy of information in a book or publication commercially available to the public; or

(4) respond to or comply with a request for a judicial record from or on behalf of an individual who is imprisoned or confined in a correctional facility as defined in Section 1.07(a), Penal Code, or in any other such facility in any state, federal, or foreign jurisdiction.

(b) Voluntary Disclosure. A records custodian may voluntarily make part or all of the information in a judicial record available to the public, subject to Rules 12.2(e)(2) and 12.2(e)(4), unless the disclosure is expressly prohibited by law or exempt under this rule, or the information is confidential under law. Information voluntarily disclosed must be made available to any person who requests it.

12.5. Exemptions from Disclosure.

The following records are exempt from disclosure under this rule:

(a) ***Judicial Work Product and Drafts.*** Any record that relates to a judicial officer's adjudicative decision-making process prepared by that judicial officer, by another judicial officer, or by court staff, an intern, or any other person acting on behalf of or at the direction of the judicial officer.

(b) ***Security Plans.*** Any record, including a security plan or code, the release of which would jeopardize the security of an individual against physical injury or jeopardize information or property against theft, tampering, improper use, illegal disclosure, trespass, unauthorized access, or physical injury.

(c) ***Personnel Information.*** Any personnel record that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.

(d) ***Home Address and Family Information.*** Any record reflecting any person's home address, home or personal telephone number, social security number, or family members.

(e) ***Applicants for Employment or Volunteer Services.*** Any records relating to an applicant for employment or volunteer services.

(f) ***Internal Deliberations on Court or Judicial Administration Matters.*** Any record relating to internal deliberations of a court or judicial agency, or among judicial officers or members of a judicial agency, on matters of court or judicial administration.

(g) ***Court Law Library Information.*** Any record in a law library that links a patron's name with the materials requested or borrowed by that patron.

(h) ***Judicial Calendar Information.*** Any record that reflects a judicial officer's appointments or engagements that are in the future or that constitute an invasion of personal privacy.

(i) ***Information Confidential Under Other Law.*** Any record that is confidential or exempt from disclosure under a state or federal constitutional provision, statute or common law, including information that relates to:

(1) a complaint alleging misconduct against a judicial officer, if the complaint is exempt from disclosure under Chapter 33, Government Code, or other law;

(2) a complaint alleging misconduct against a person who is licensed or regulated by the courts, if the information is confidential under applicable law; or

(3) a trade secret or commercial or financial information made privileged or confidential by statute or judicial decision.

(j) ***Litigation or Settlement Negotiations.*** Any judicial record relating to civil or criminal litigation or settlement negotiations:

(1) in which a court or judicial agency is or may be a party; or

(2) in which a judicial officer or member of a judicial agency is or may be a party as a consequence of the person's office or employment.

(k) ***Investigations of Character or Conduct.*** Any record relating to an investigation of any person's character or conduct, unless:

(1) the record is requested by the person being investigated; and

(2) release of the record, in the judgment of the records custodian, would not impair the investigation.

(l) ***Examinations.*** Any record relating to an examination administered to any person, unless requested by the person after the examination is concluded.

12.6. Procedures for Obtaining Access to Judicial Records.

(a) ***Request.*** A request to inspect or copy a judicial record must be in writing and must include sufficient information to reasonably identify the record requested. The request must be sent to the records custodian and not to a court clerk or other agent for the records custodian. A requestor need not have detailed knowledge of the records custodian's filing system or procedures in order to obtain the information.

(b) ***Time for Inspection and Delivery of Copies.*** As soon as practicable—and not more than 14 days—after actual receipt of a request to inspect or copy a judicial record, if the record is available, the records custodian must either:

(1) allow the requestor to inspect the record and provide a copy if one is requested; or

(2) send written notice to the requestor stating that the record cannot within the prescribed period be produced or a copy provided, as applicable, and setting a reasonable date and time when the document will be produced or a copy provided, as applicable.

(c) ***Place for Inspection.*** A records custodian must produce a requested judicial record at a convenient, public area.

(d) ***Part of Record Subject to Disclosure.*** If part of a requested record is subject to disclosure under this rule and part is not, the records custodian must redact the portion of the record that is not subject to disclosure, permit the remainder of the record to be inspected, and provide a copy if requested.

(e) ***Copying; Mailing.*** The records custodian may deliver the record to a court clerk for copying. The records custodian may mail the copy to a requestor who has prepaid the postage.

(f) ***Recipient of Request not Custodian of Record.*** A judicial officer or a presiding officer of a judicial agency who receives a request for a judicial record not in his or her custody as defined by this rule must promptly attempt to ascertain who the custodian of the record is. If the recipient of the request can ascertain who the custodian of the requested record is, the recipient must promptly refer the request to that person and notify the requestor in writing of the referral. The time for response prescribed in Rule 12.6(b) does not begin to run until the referral is actually received by the records custodian. If the recipient cannot ascertain who the custodian of the requested record is, the recipient must promptly notify the requestor in writing that the recipient is not the custodian of the record and cannot ascertain who the custodian of the record is.

(g) ***Inquiry to Requestor.*** A person requesting a judicial record may not be asked to disclose the purpose of the request as a condition of obtaining the judicial record. But a records custodian may make inquiry to establish the proper identification of the requestor or to clarify the nature or scope of a request.

(h) ***Uniform Treatment of Requests.*** A records custodian must treat all requests for information uniformly without regard to the position or occupation of the requestor or the person on whose behalf a request is made, including whether the requestor or such person is a member of the media.

12.7. Costs for Copies of Judicial Records; Appeal of Assessment.

(a) ***Cost.*** The cost for a copy of a judicial record is either:

(1) the cost prescribed by statute, or

(2) if no statute prescribes the cost, the cost the Office of the Attorney General prescribes by rule in the Texas Adminstrative Code.

(b) ***Waiver or Reduction of Cost Assessment by Records Custodian.*** A records custodian may reduce or waive the charge for a copy of a judicial record if:

(1) doing so is in the public interest because providing the copy of the record primarily benefits the general public, or

(2) the cost of processing collection of a charge will exceed the amount of the charge.

(c) ***Appeal of Cost Assessment.*** A person who believes that a charge for a copy of a judicial record is excessive may appeal the overcharge in the manner prescribed by Rule 12.9 for the appeal of the denial of access to a judicial record.

(d) ***Records Custodian not Personally Responsible for Cost.*** A records custodian is not required to incur personal expense in furnishing a copy of a judicial record.

(Amended by Order Feb. 10, 2009, eff. March 31, 2009.)

Comment to 2008 change: The Attorney General's rule, adopted in accordance with Section 552.262 of the Government Code, is in Section 70.3 of Title 1 of the Texas Administrative Code.

12.8. Denial of Access to a Judicial Record.

(a) ***When Request May be Denied.*** A records custodian may deny a request for a judicial record under this rule only if the records custodian:

(1) reasonably determines that the requested judicial record is exempt from required disclosure under this rule; or

(2) makes specific, non-conclusory findings that compliance with the request would substantially and unreasonably impede the routine operation of the court or judicial agency.

(b) ***Time to Deny.*** A records custodian who denies access to a judicial record must notify the person requesting the record of the denial within a reasonable time—not to exceed 14 days—after receipt of the request, or before the deadline for responding to the request extended under Rule 12.6 (b)(2).

(c) ***Contents of Notice of Denial.*** A notice of denial must be in writing and must:

(1) state the reason for the denial;

(2) inform the person of the right of appeal provided by Rule 12.9; and

(3) include the name and address of the Administrative Director of the Office of Court Administration.

12.9. Relief from Denial of Access to Judicial Records.

(a) ***Appeal.*** A person who is denied access to a judicial record may appeal the denial by filing a petition for review with the Administrative Director of the Office of Court Administration.

(b) ***Contents of Petition for Review.*** The petition for review:

(1) must include a copy of the request to the record custodian and the records custodian's notice of denial;

(2) may include any supporting facts, arguments, and authorities that the petitioner believes to be relevant; and

(3) may contain a request for expedited review, the grounds for which must be stated.

(c) ***Time for Filing.*** The petition must be filed not later than 30 days after the date that the petitioner receives notice of a denial of access to the judicial record.

(d) ***Notification of Records Custodian and Presiding Judges.*** Upon receipt of the petition for review, the Administrative Director must promptly notify the records custodian who denied access to the judicial record and the presiding judge of each administrative judicial region of the filing of the petition.

(e) ***Response.*** A records custodian who denies access to a judicial record and against whom relief is sought under this section may—within 14 days of receipt of notice from the Administrative Director—submit a written response to the petition for review and include supporting facts and authorities in the response. The records custodian must mail a copy of the response to the petitioner. The records custodian may also submit for in camera inspection any record, or a sample of records, to which access has been denied.

(f) ***Formation of Special Committee.*** Upon receiving notice under Rule 12.9(d), the presiding judges must refer the petition to a special committee of not less than five of the presiding judges for review. The presiding judges must notify the Administrative Director, the petitioner, and the records custodian of the names of the judges selected to serve on the committee.

(g) ***Procedure for Review.*** The special committee must review the petition and the records custodian's response and determine whether the requested judicial record should be made available under this rule to the petitioner. The special committee may request the records custodian to submit for in camera inspection a record, or a sample of records, to which access has been denied. The records custodian may respond to the request in whole or in part but it not required to do so.

(h) ***Considerations.*** When determining whether the requested judicial record should be made available under this rule to petition, the special committee must consider:

(1) the text and policy of this Rule;

(2) any supporting and controverting facts, arguments, and authorities in the petition and the response; and

(3) prior applications of this Rule by other special committees or by courts.

(i) ***Expedited Review.*** On request of the petitioner, and for good cause shown, the special committee may schedule an expedited review of the petition.

(j) ***Decision.*** The special committee's determination must be supported by a written decision that must:

(1) issue within 60 days of the date that the Administrative Director received the petition for review;

(2) either grant the petition in whole or in part or sustain the denial of access to the requested judicial record;

(3) state the reasons for the decision, including appropriate citations to this rule; and

(4) identify the record or portions of the record to which access is ordered or denied, but only if the description does not disclose confidential information.

(k) ***Notice of Decision.*** The special committee must send the decision to the Administrative Director. On receipt of the decision from the special committee, the Administrative Director must:

(1) immediately notify the petitioner and the records custodian of the decision and include a copy of the decision with the notice; and

(2) maintain a copy of the special committee's decision in the Administrative Director's office for public inspection.

(l) ***Publication of Decisions.*** The Administrative Director must publish periodically to the judiciary and the general public the special committees' decisions.

(m) ***Final Decision.*** A decision of a special committee under this rule is not appealable but is subject to review by mandamus.

(n) ***Appeal to Special Committee Not Exclusive Remedy.*** The right of review provided under this subdivision is not exclusive and does not preclude relief by mandamus.

12.10. Sanctions.

A records custodian who fails to comply with this rule, knowing that the failure to comply is in violation of the rule, is subject to sanctions under the Code of Judicial Conduct.

(Adopted by Order March 24, 1999, eff. April 1, 1999.)

Comments

1. Although the definition of "judicial agency" in Rule 12.2(b) is comprehensive, applicability of the rule is restricted by Rule 12.3. The rule does not apply to judicial agencies whose records are expressly made subject to disclosure by statute, rule, or law. An example is the State Bar ("an administrative agency of the judicial department", TEX. GOV'T CODE § 81.011(a)), which is subject to the Public Information Act. TEX. GOV'T CODE § 81.033. Thus, no judicial agency must comply with both the Act and this rule; at most one can apply. Nor does the rule apply to judicial agencies expressly excepted from the Act by statute (other than by the general judiciary exception in section 552.003(b) of the Act), rule, or law. Examples are the Board of Legal Specialization, TEX. GOV'T CODE § 81.033, and the Board of Disciplinary Appeals, TEX. R. DISCIPLINARY APP. 7.12. Because these boards are expressly excepted from the Act, their records are not subject to disclosure under this rule, even though no law affirmatively makes their records confidential. The Board of Law Examiners is partly subject to the Act and partly exempt, TEX. GOV'T CODE § 82.003, and therefore this rule is inapplicable to it. An example of a judicial agency subject to the rule is the Supreme Court Advisory Committee, which is neither subject to nor expressly excepted from the Act, and whose records are not made confidential by any law.

2. As stated in Rule 12.4, this rule does not require the creation or retention of records, but neither does it permit the destruction of records that are required to be maintained by statute or other law, such as TEX. GOV'T CODE §§ 441.158-.167, .180-.203; TEX. LOCAL GOV'T CODE c. 203; and 13 TEX. ADMIN. CODE § 7.122.

3. Rule 12.8 allows a records custodian to deny a record request that would substantially and unreasonably impede the routine operation of the court or judicial agency. As an illustration, and not by way of limitation, a request for "all judicial records" that is submitted every day or even every few days by the same person or persons acting in concert could substantially and unreasonably impede the operations of a court or judicial agency that lacked the staff to respond to such repeated requests.

4. Comment to 2008 change: The Attorney General's rule, adopted in accordance with Section 552.262 of the Government Code, is in Section 70.3 of Title I of the Texas Administrative Code

RULE 13. MULTIDISTRICT LITIGATION

13.1. Authority and Applicability.

(a) *Authority.* This rule is promulgated under sections 74.161-74.164 of the Texas Government Code and chapter 90 of the Texas Civil Practices and Remedies Code.

(b) *Applicability.* This rule applies to:

(1) civil actions that involve one or more common questions of fact and that were filed in a constitutional county court, county court at law, probate court,

or district court on or after September 1, 2003;

(2) civil actions filed before September 1, 2003, that involve claims for asbestos- or silica-related injuries, to the extent permitted by chapter 90 of the Texas Civil Practice and remedies Code.

(c) *Other Cases*. Cases to which this rule does not apply are governed by Rule 11 of these rules.

(Amended by Order of Tex. Sup. Ct. Misc. Docket No. 19-9053, July 1, 2019 and Tex. Sup. Ct. Misc. Docket No. 20-9024, Feb. 11, 2020, eff. Sept. 1, 2019; Tex. Sup. Ct. Misc. Docket No. 21-9084, eff. June 16, 2021 (The amendments apply to actions commenced on or after June 16, 2021. An action commenced before June 16, 2021, is governed by the law in effect immediately before June 16, 2021.)).

Comment—2005: Subsections (a) and (b) are amended and subsection (c) is added to provide procedures for cases covered by chapter 90 of the Texas Civil Practices and Remedies Code, enacted effective September 1, 2005.

13.2. Definitions.

As used in this rule:

(a) *MDL Panel* means the judicial panel on multi-district litigation designated pursuant to section 74.161 of the Texas Government Code, including any temporary members designated by the Chief Justice of the Supreme Court of Texas in his or her discretion when regular members are unable to sit for any reason.

(b) *Chair* means the chair of the MDL Panel, who is designated by the Chief Justice of the Supreme Court of Texas.

(c) MDL Panel Clerk means the Clerk of the Supreme Court of Texas.

(d) *Trial court* means the court in which a case is filed.

(e) *Pretrial court* means the district court to which related cases are transferred for consolidated or coordinated pretrial proceedings under this rule.

(f) *Related* means that cases involve one or more common questions of fact.

(g) *Tag-along* case means a case related to cases in an MDL transfer order but not itself the subject of an initial MDL motion or order.

13.3. Procedure for Requesting Transfer.

(a) *Motion for Transfer; Who May File; Contents.* A party in a case may move for transfer of the case and related cases to a pretrial court. The motion must be in writing and must:

(1) state the common question or questions of fact involved in the cases;

(2) contain a clear and concise explanation of the reasons that transfer would be for the convenience of the parties and witnesses and would promote the just and efficient conduct of the cases;

(3) state whether all parties in those cases for which transfer is sought agree to the motion; and

(4) contain an appendix that lists:

(A) the cause number, style, and trial court of the related cases for which transfer is sought; and

(B) all parties in those cases and the names, addresses, telephone numbers, fax numbers, and email addresses of all counsel.

(b) *Request for Transfer by Judges.* A trial court or a presiding judge of an administrative judicial region may request a transfer of related cases to a pretrial court. The request must be in writing and must list the eases to be transferred.

(c) *Transfer on the MDL Panel's Own Initiative.* The MDL Panel may, on its own initiative, issue an order to show cause why related cases should not be transferred to a pretrial court.

(d) *Response; Reply; Who May File; When to File.* Any party in a related case may file:

(1) a response to a motion or request for transfer within twenty days after service of such motion or request;

(2) a response to an order to show cause issued under subparagraph (c) within the time provided in the order; and

(3) a reply to a response within ten days after service of such response.

(e) *Form of Motion, Response, Reply, and Other Documents.* A motion for transfer, response, reply, or other document addressed to the MDL Panel must conform to the requirements of Rule 9.4 of the Texas Rules of Appellate Procedure. Without leave of the MDL Panel, the following must not exceed 20 pages: the portions of a motion to transfer required by subparagraphs (a)(1)-(2); a response; and a reply. The MDL Panel may request additional briefing from any party.

(f) *Filing.* A motion, request, response, reply, or other document addressed to the MDL Panel must be filed with the MDL Panel Clerk. The MDL Panel Clerk may require that all documents also be transmitted to the clerk electronically. In addition, a party must send a copy of the motion, response, reply, or other document to each member of the MDL Panel.

(g) *Filing Fees.* The MDL Panel Clerk may set reasonable fees approved by the Supreme Court of Texas for filing and other services provided by the clerk.

(h) *Service.* A party must serve a motion, response, reply, or other document on all parties in related cases in which transfer is sought. The MDL Panel Clerk may designate a party or parties to serve a request for transfer on all other parties. Service is governed by Rule 9.5 of the Texas Rules of Appellate Procedure.

(i) *Notice to Trial Court.* A party must file in the trial court a notice-in the form prescribed by the MDL Panel-that a motion for transfer has been filed. The

MDL Panel Clerk must cause such notice to be filed when a request for transfer by a judge has been filed.

(j) *Evidence.* The MDL Panel will accept as true facts stated in a motion, response, or reply unless another party contradicts them. A party may file evidence with the MDL Panel Clerk only with leave of the MDL Panel. The MDL Panel may order parties to submit evidence by affidavit or deposition and to file documents, discovery, or stipulations from related cases.

(k) *Hearing.* The MDL Panel may decide any matter on written submission or after an oral hearing before one or more of its members at a time and place of its choosing. Notice of the date of submission or the time and place of oral hearing must be given to all parties in all related cases.

(l) *Decision.* The MDL Panel may order transfer if three members concur in a written order finding that related cases involve one or more common questions of fact, and that transfer to a specified district court will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of the related cases.

(m) *Orders Signed by Chair or Clerk; Members Identified.* Every order of the MDL Panel must be signed by either the chair or by the MDL Panel Clerk, and must identify the members of the MDL Panel who concurred in the ruling.

(n) *Notice of Actions by MDL Panel.* The MDL Panel Clerk must give notice to all parties in all related cases of all actions of the MDL Panel, including orders to show cause, settings of submissions and oral arguments, and decisions. The MDL Panel Clerk may direct a party or parties to give such notice. The clerk may determine the manner in which notice is to be given, including that notice should be given only by email or fax.

(o) *Retransfer.* On its own initiative, on a party's motion, or at the request of the pretrial court, the MDL Panel may order cases transferred from one pretrial court to another pretrial court when the pre-trial judge has died, resigned, been replaced at an election, requested retransfer, recused, or been disqualified, or in other circumstances when retransfer will promote the just and efficient conduct of the cases.

13.4. Effect on the Trail Court of the Filing of a Motion for Transfer.

(a) *No Automatic Stay.* The filing of a motion under this rule does not limit the jurisdiction of the trial court or suspend proceedings or orders in that court.

(b) *Stay of Proceedings.* The trial court or the MDL Panel may stay all or part of any trial court proceedings until a ruling by the MDL Panel.

13.5. Transfer to a Pretrial Court.

(a) *Transfer Effective upon Notice.* A case is deemed transferred from the trial court to the pretrial court when a notice of transfer is filed with the trial court and the pretrial court. The notice must:

(1) list all parties who have appeared and remain in the case, and the names, addresses, phone numbers, and bar numbers of their attorneys or, if a party is pro se, the party's name, address, and phone number;

(2) list those parties who have not yet appeared in the case; and

(3) attach a copy of the MDL transfer order.

(b) *No Further Action in Trial Court.* After notice of transfer is filed in the trial court, the trial court must take no further action in the case except for good cause stated in the order in which such action is taken and after conferring with the pretrial court. But service of any process already issued by the trial court may be completed and the return filed in the pretrial court.

(c) *Transfer of Files; Master File and New Files in the Pretrial Court.* If the trial court and pretrial court are in the same county, the trial court must transfer the case file to the pretrial court in accordance with local rules governing the courts of that county. If the trial court and pretrial court are not in the same county, the trial court clerk must transmit the case file to the pretrial court clerk. The pretrial court clerk, after consultation with the judge of the pretrial court, must establish a master file and open new files for each case transferred using the information provided in the notice of transfer. The pretrial court may direct the manner in which pretrial documents are filed, including electronic filing.

(d) *Filing Fees and Costs.* Unless the MDL Panel assesses costs otherwise, the party moving for transfer must pay the cost of refiling the transferred cases in the pretrial court, including filing fees and other reasonable costs.

(e) *Transfer of Tag-along Cases.* A tag-along case is deemed transferred to the pretrial court when a notice of transfer—in the form described in Rule 13.5(a)—is filed in both the trial court and the pretrial court. Within 30 days after service of the notice, a party to the case or to any of the related cases already transferred to the pretrial court may move the pretrial court to remand the case to the trial court on the ground that it is not a tag-along ease. If the motion to remand is granted, the case must be returned to the trial court, and costs including attorney fees may be assessed by the pretrial court in its remand order. The order of the pretrial court may be appealed to the MDL Panel by a motion for rehearing filed with the MDL Panel Clerk.

13.6. Proceedings in Pretrial Court.

(a) *Judges Who May Preside.* The MDL Panel may assign as judge of the pretrial court any active district judge, or any former or retired district or appellate judge who is approved by the Chief Justice of the Supreme Court of Texas. An assignment under this rule is not subject to objection under chapter 74 of the Government Code. The judge assigned as judge of the pretrial court has exclusive jurisdiction over each related case transferred pursuant to this rule unless a ease is retransferred by the MDL Panel or is finally resolved or remanded to the trial court for trial.

(b) *Authority of Pretrial Court.* The pretrial court has the authority to decide, in place of the trial court, all pretrial matters in all related cases transferred to the court. Those matters include, for example, jurisdiction, joinder, venue, discovery, trial preparation (such as motions to strike expert witnesses, preadmission of exhibits, and motions in limine), mediation, and disposition by means other than conventional trial on the merits (such as default judgment, summary judgment, and settlement). The pretrial court may set aside or modify any pretrial ruling made by the trial court before transfer over which the trial court's plenary power would not have expired had the case not been transferred.

(c) *Case Management.* The pretrial court should apply sound judicial management methods early, continuously, and actively, based on its knowledge of each individual case and the entire litigation, in order to set fair and firm time limits tailored to ensure the expeditious resolution of each case and the just and efficient conduct of the litigation as a whole. After a case is transferred, the pretrial court should, at the earliest practical date, conduct a hearing and enter a case management order. The pretrial court should consider at the hearing, and its order should address, all matters pertinent to the conduct of the litigation, including:

(1) settling the pleadings;

(2) determining whether severance, consolidation, or coordination with other actions is desirable and whether identification of separable triable portions of the case is desirable;

(3) scheduling preliminary motions;

(4) scheduling discovery proceedings and setting appropriate limitations on discovery, including the establishment and timing of discovery procedures;

(5) issuing protective orders;

(6) scheduling alternative dispute resolution conferences;

(7) appointing organizing or liaison counsel;

(8) scheduling dispositive motions;

(9) providing for an exchange of documents, including adopting a uniform numbering system for documents, establishing a document depository, and determining whether electronic service of discovery materials and pleadings is warranted;

(10) determining if the use of technology, videoconferencing, or teleconferencing is appropriate;

(11) considering such other matters the court or the parties deem appropriate for the just and efficient resolution of the cases; and

(12) scheduling further conferences as necessary.

(d) *Trial Settings.* The pretrial court, in conjunction with the trial court, may set a transferred case for trial at such a time and on such a date as will promote the convenience of the parties and witnesses and the just and efficient disposition of all related proceedings. The pretrial court must confer, or order the parties to confer, with the trial court regarding potential trial settings or other matters regarding remand. The trial court must cooperate reasonably with the pretrial court, and the pretrial court must defer appropriately to the trial court's docket. The trial court must not continue or postpone a trial setting without the concurrence of the pretrial court.

13.7. Remand to Trial Court.

(a) *No Remand If Final Disposition by Pretrial Court.* A case in which the pretrial court has rendered a final and appealable judgment will not be remanded to the trial court.

(b) *Remand.* The pretrial court may order remand of one or more cases, or separable triable portions of cases, when pretrial proceedings have been completed to such a degree that the purposes of the transfer have been fulfilled or no longer apply.

(c) *Transfer of Files.* When a case is remanded to the trial court, the clerk of the pretrial court will send the case file to the trial court without retaining a copy unless otherwise ordered. The parties may file in the remanded case copies of any pleadings or orders from the pretrial court's master file. The clerk of the trial court will reopen the trial court file under the cause number of the trial court, without a new filing fee.

13.8. Pretrial Court Orders Binding in the Trial Court After Remand.

(a) *Generally.* The trial court should recognize that to alter a pretrial court order without a compelling justification would frustrate the purpose of consolidated and coordinated pretrial proceedings. The pretrial court should recognize that its rulings should not unwisely restrict a trial court from responding to circumstances that arise following remand.

(b) *Concurrence of the Pretrial Court Required to Change Its Orders.* Without the written concurrence of the pretrial court, the trial court cannot, over objection, vacate, set aside, or modify pretrial court orders, including orders related to summary judgment, jurisdiction, venue, joinder, special exceptions, discovery, sanctions related to pretrial proceedings, privileges, the admissibility of expert testimony, and scheduling.

(c) *Exceptions.* The trial court need not obtain the written concurrence of the pretrial court to vacate, set aside, or modify pretrial court orders regarding the admissibility of evidence at trial (other than expert evidence) when necessary because of changed circumstances, to correct an error of law, or to prevent manifest injustice. But the trial court must support its action with specific findings and conclusions in a written order or stated on the record.

(d) *Unavailability of Pretrial Court.* If the pretrial court is unavailable to rule, for whatever reason, the concurrence of the MDL Panel Chair must be obtained.

13.9. Review.

(a) *MDL Panel Decision.* An order of the MDL Panel, including one granting or denying a motion for transfer, may be reviewed only by the Supreme Court in an original proceeding.

(b) *Orders by the Trial Court and Pretrial Court.* An order or judgment of the trial court or pretrial court may be reviewed by the appellate court that regularly reviews orders of the court in which the case is pending at the time review is sought, irrespective of whether that court issued the order or judgment to be reviewed. A case involving such review may not be transferred for purposes of docket equalization among appellate courts.

(c) *Review Expedited.* An appellate court must expedite review of an order or judgment in a case pending in a pretrial court.

Comment—2005: Subsection (b) is amended and subsection (c) is added to clarify the handling of appeals by appellate courts. Subsection (b) forbids transfer for docket equalization but not for other purposes that might arise. Subsection (c) does not require that an appeal from an order or judgment of a case pending in a pretrial court be treated as an accelerated appeal under the Texas Rules of Appellate Procedure if it would otherwise not be accelerated. Rather subsection (c) requires expedited consideration by the appellate court regardless of whether review is sought by an appeal that is or is not accelerated, or by mandamus.

13.10. MDL Panel Rules.

The MDL Panel will operate at the direction of its Chair in accordance with rules prescribed by the panel and approved by the Supreme Court of Texas.

13.11. Civil Actions Filed Before September 1, 2003, Involving Claims for Asbestos- and Silica-Related Injuries.

(a) *Applicability*. To the extent permitted by chapter 90 of the Texas Civil Practice and Remedies Code, Rule 13.11 applies to civil actions filed before September 1, 2003, that involve claims for asbestos- or silica-related injuries.

(b) *Statutory Reference; Definitions*. Statutory references in Rule 13.11 are to chapter 90 of the Texas Civil Practice and Remedies Code. "Claimant" has the meaning assigned in section 90.001(6). "Report" has the meaning assigned in section 90.001(24).

(c) *Notice to Transfer Under Section 90.011(b)*. A notice of transfer under section 90.010(b) must be filed in the trial court and the pretrial court and must:

(1) be titled "Notice of Transfer Under Section 90.010(b)";

(2) list all parties who have appeared and remain in the case, and the names, addresses, phone numbers, and bar numbers of their attorneys or, if a party is pro se, the party's name, address and phone number;

(3) state the name of each claimant transferred;

(4) attach to the notice filed in the pretrial court a copy of the claimant's live petition; and

(5) if filed by a defendant, contain a certificate stating that the filing party conferred, or at least made a reasonable attempt to confer, with opposing counsel about whether the notice of transfer is appropriate as to each individual claimant transferred.

(d) *Effect on Pending Motion for Severance*. If, when a notice of transfer is filed in the trial court, a motion for severance has been filed but the trial court has not ruled, the trial court must rule on the motion within 14 days of the date the notice of transfer is filed, or the motion is deemed granted by operation of law.

(e) *When Transfer Effective*. A case is deemed transferred from the trial court to the pretrial court when a notice of transfer is filed with the trial court unless a motion for severance is pending. If a motion for severance is pending when a notice of transfer is filed with the trial court, a case is deemed transferred when the trial court rules on the motion or the motion is deemed granted by operation of law.

(f) *Further Action in Trial Court Limited*. After a notice of transfer is filed, the trial court must take no further action in the case except:

(1) to rule on a motion for severance pending when the notice of transfer was filed, or

(2) for good cause stated in the order in which such action is taken and after conferring with the pretrial court.

But service of any process already issued by the trial court may be completed and the return filed in the pretrial court.

(g) *Severed Case File*. If a claim is severed from a case that includes one or more claimants covered by section 90.010(a), the file for the severed claims in the trial court should be numerically linked to the original case file and should contain only the live petition containing the severed claim. The severed case file is deemed to include all papers in the original case file. The pretrial court may require a different procedure in the interests of justice and efficiency.

(h) *Transfer of Files*. The pretrial court may order the trial court clerk to transfer a case file to the pretrial court. A case file must not be transferred to the pretrial court except as ordered by that court.

(i) *Filing Fees and Costs*. A defendant who files a notice of transfer must pay the cost of filing the case in the pretrial court, including filing fees and other reasonable costs. If the pretrial court remands the case to the trial court, the pretrial court may order that costs be allocated between the parties in a way that encourages just and efficient compliance with this rule, and may award appropriate and reasonable attorney fees.

(Adopted by Order Aug. 29, 2003, effective in all cases filed on or after Sept. 1, 2003. Rule 13.9 amended by Order Jan. 27, 2005, eff. Mar. 1, 2005, in all pending cases.)

(Adopted by Order Aug. 29, 2003, effective in all cases filed on or after Sept. 1, 2003. Rule 13.9 amended by Order Jan. 27, 2005, eff. Mar. 1, 2005, in all pending cases.)

Comments—2005

1. Rule 13.11 is added to provide procedures for cases covered by chapter 90 of the Texas Civil Practice and Remedies Code, enacted effective September 1, 2005.

2. The rule does not require a statement in the noticeof transfer that no report has been served under chapter 90, or that a report has been served but does not comply with the provisions of that statute. The omission of such a requirement in the notice of transfer is not intended to limit the pretrial court's authority under Rule 166 of the Texas Rules of Civil Procedure to employ appropriate procedures to ascertain a party's position on the issue.

3. It is anticipated that the party filing a notice of transfer will usually be a defendant, and that the party filing a motion for severance will usually be a claimant. Ordinarily, a party filing the notice of transfer is responsible for filing fees and costs in the pretrial court, although there may be exceptions. See Rule 13.5(d). Also, a party who successfully moves to sever a claim into a separate proceeding in the trial court is customarily responsible for filing fees and costs, although severance is "on such terms as are just", Tex. R. Civ. P. 41, and again, there may be exceptions. The intent of this rule is that severance and transfer procedures minimize costs and burdens on parties and the courts.

4. A pretrial court has discretion under Rule 13.11(g)-(i) to order the maintenance and transfer of physical case files and to allocate costs and fees so as to minimize costs and burdens on parties and the courts.

RULE 14. SPECIAL THREE-JUDGE DISTRICT COURT

14.1. Applicability.

This rule applies to cases filed in a district court in this state in which the state or a state officer or agency is a defendant in a claim that:

(a) challenges the finances or operations of this state's public school system; or

(b) involves the apportionment of districts for the house of representatives, the senate, the State Board of Education, or the United States Congress, or state judicial districts.

14.2. Procedure for Initiating the Creation of a Special Three-Judge District Court.

(a) The attorney general may petition the Chief Justice to convene a special three-judge district court in any case to which this rule applies. The petition must be submitted to the Supreme Court clerk for presentation to the Chief Justice. A copy must be filed in the district court in which the case is pending and served on all parties to the case.

(b) The petition must:

(1) list all parties and counsel and complete contact information for all counsel;

(2) state the cause number and style of the case, the district court in which it is pending, and the name of the judge to whom it is assigned;

(3) state concisely whether the case falls under Rule 14.1(a) or (b);

(4) summarize the dispute and all claims asserted against the state or a state officer or agency;

(5) include a certificate of service that complies with Texas Rule of Appellate Procedure 9.5; and

(6) include as appendices the live pleadings on file and a copy of the district court's docket sheet for the case.

(c) Any party may submit a response to the petition within seven days of the date that the petition is filed in the district court. The Chief Justice may shorten the time for submitting a response.

(d) The filing of a petition under this rule stays all proceedings in the district court until the Chief Justice acts on the petition.

14.3. Action on Petition; Composition of the Special Three-Judge District Court.

(a) If a petition establishes the applicability of this rule, the Chief Justice will grant the petition, order the creation of a special three-judge district court, and appoint three persons to serve on the court.

(b) The special three-judge district court will be composed of:

(1) the district judge of the judicial district to which the original case was assigned;

(2) one district judge of a judicial district other than a judicial district in the same county as the judicial district to which the original case was assigned; and

(3) one justice of a court of appeals who serves a court of appeals district:

(A) different from the district in which the original case was assigned; and

(B) different from the district in which the district judge appointed under (b)(2) sits.

(c) The Chief Justice will designate the presiding judge of the special three-judge district court.

(d) A judge or justice appointed under (b)(2) or (3) must have been elected to that office and may not be serving an appointed term of office.

14.4. Location of Special Three-Judge District Court; Governing Rules.

(a) A special three-judge district court convened under this rule must conduct the trial and all hearings in the district in which the case was filed and may use the

courtroom, other facilities, and administrative support of the original district court.

(b) Except as provided by this rule or Chapter 22A, Government Code, the Texas Rules of Civil Procedure and all other statutes and rules applicable to civil litigation in a district court in this state apply to proceedings before a special three-judge district court.

14.5. Actions by Judge or Justice Serving on a Special Three-Judge District Court.

(a) With the unanimous consent of the three judges sitting on a special three-judge district court, a judge or justice of the court may:

(1) independently conduct pretrial proceedings; and

(2) sign interlocutory orders before trial.

(b) A judge or justice of a special three-judge district court may not independently order a temporary restraining order, temporary injunction, or an order that finally disposes of a claim before the court.

(c) Any independent action taken by one judge or justice of a special three-judge district court related to a claim before the court may be reviewed by the entire court at any time before final judgment.

14.6. Transfer and Consolidation of Related Cases.

(a) "Related case" means any case in which the state or a state officer or agency is a defendant that arises from the same nucleus of operative facts as the case before a special three-judge district court, regardless of the legal claims or causes of action asserted in the related case.

(b) On the motion of any party to a case assigned to a special three-judge district court, the special three-judge district court must transfer a related case to itself and consolidate the related case with the case before the court. The special three-judge district court may transfer a related case without the consent of the parties to the related case or of the court in which the related case is pending.

(c) The motion must be in writing and include:

(1) the cause number, style, court, and name of the judge of the court in which the related case is pending;

(2) a list of parties and counsel in the related case and complete contact information for all counsel;

(3) a demonstration that the related case arises from the same nucleus of operative facts as the case before the special three-judge district court;

(4) the live pleadings on file in the related case; and

(5) a certificate of service on all parties to the case pending before the special three-judge district court and to the related case.

(d) After a motion to transfer and consolidate a related case is filed, the special three-judge district court or the court in the related case may stay the proceedings in the case before it until the special three-judge district court has ruled on the motion.

14.7. Appeals and Original Proceedings.

An appeal from an appealable interlocutory order or from a final judgment of a special three-judge district court is to the Supreme Court under Texas Rule of Appellate Procedure 57. An original appellate proceeding seeking extraordinary relief from an action taken by the special three-judge district court must be filed directly in the Supreme Court under Texas Rule of Appellate Procedure 52.

(Adopted by Order March 5, 2007, effective April 2, 2007. Amended by Tex. Sup. Ct. Misc. Docket No. 16-9037 March 2, 2015, eff. Aug. 31, 2016.)

RULE 15. APPEALS FROM TRIAL COURTS IN COUNTIES ASSIGNED TO MULTIPLE APPELLATE DISTRICTS.

15.1. Applicability.

This rule applies to appeals to a court of appeals from an order or judgment issued by a trial court in a county assigned by law to more than one court of appeals district, except where assignment of such appeals is governed by statute. This rule does not apply to appeals to the Courts of Appeals for the First or Fourteenth Districts from trial courts in counties in those districts, as assignment of such appeals is governed by statute.

15.2. When Consolidation Required.

If notices of appeal filed by two or more parties from a single judgment or order designate different courts of appeals that have jurisdiction of the appeal because the county in which the trial court sits is assigned to more than one appellate district, the appeals must be consolidated in one of the courts of appeals.

15.3. Consolidation by Agreement; Notice to Courts of Appeals.

(a) *Appealing Parties to Confer Regarding Consolidation.* When any appealing party learns that two or more parties have properly designated two different courts of appeals, that party must promptly confer with lead counsel for all other appealing parties (if represented, otherwise counsel must confer with the pro se party) and determine if all appealing parties will agree to consolidate the appeals in one of the courts of appeals.

(b) *Time to provide notice.* No later than 30 days—20 days in an accelerated appeal—after the filing date of the first-filed notice of appeal described in paragraph (a), the parties must submit to the clerks of both courts of appeals written notice either of the appealing parties' agreement to consolidate the appeals or of the appealing parties' inability to reach agreement regarding consolidation.

(c) *Contents of Notice.* The notice must identify each appealing party and the party's counsel (if represented, or state that the party is pro se), and must either identify the court of appeals designated by agreement or state that the appealing parties were unable to agree to consolidate all appeals in a particular court. The notice must also contain a certificate stating that the filing parties conferred, or made a reasonable attempt to confer, with all other appealing parties regarding consolidation of the appeals. If the notice states that all appealing parties have agreed to consolidation, it must identify every party or party's attorney who agreed to the consolidation.

(d) *Consolidation by Agreement of all Appealing Parties.* If the clerks of both courts of appeals receive notice that all appealing parties have agreed to consolidation, the Chief Justices of both courts shall request the Chief Justice of the Supreme Court to transfer all pending appeals in the case to the court of appeals designated by the parties' agreement.

15.4. Consolidation When Appealing Parties Unable to Agree.

(a) *Clerks of Courts of Appeals to Jointly Notify Trial Court Clerk.*

(1) If both courts of appeals receive notice of the appealing parties' inability to reach agreement regarding consolidation, the clerks of both appellate courts must jointly notify the clerk of the trial court in writing of that fact.

(2) If the period described in Rule l5.3(b) has passed and the clerks of the two courts of appeals have not received any notice from the appealing parties regarding consolidation, the Chief Justices of the two courts of appeals shall confer and instruct the clerks of their respective courts to jointly notify the clerk of the trial court in writing that the appealing parties failed to timely submit notice of agreement regarding consolidation, and instruct the clerk to perform the selection process in Rule 15.4(b).

(b) *Consolidation by Trial Court Clerk.* After the trial court clerk receives notice from the clerks of the courts of appeals regarding either the appealing parties' inability to reach agreement as to consolidation or their failure to timely submit notice of agreement, the clerk shall write the numbers of the two courts of appeals on identical slips of paper and place the slips in a container folded in half or otherwise arranged so that the numbers are completely hidden from view. The trial court clerk shall draw a number from the container at random, in a public place, and shall assign the case to the court of appeals for the corresponding number drawn.

15.5. All Appeals From Same Judgment or Order to be Consolidated Together.

When appeals to multiple courts of appeals have been consolidated pursuant to this rule, other parties' appeals from the same judgment or order underlying the consolidated appeals must be assigned to the same court of appeals in which the previous appeals were consolidated.

(Adopted by Order Aug. 20, 2008 eff. Sept. 1, 2008.)

Comment

Assignments to the Courts of Appeals for the First and Fourteenth Districts are governed by Tex. Gov't Code § 22.202(h).

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 teleconferencing, 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.

(Adopted by Order Dec. 12, 2011, eff. May 1, 2012; Order March 1, 2012, eff. May 1, 2012.)

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.

RULE 17. USE OF RESTRAINTS IN JUVENILE COURT.

(a) Restraints, such as handcuffs, chains, irons, and other similar items, must not be used on a child during a juvenile court proceeding unless the court determines that the use of restraints is necessary because:

(1) the child presents a substantial risk of:

(A) inflicting physical harm on the child or another person; or

(B) flight from the courtroom; or

(2) of any other factor relevant to assessing risk in the court proceeding.

(b) A party may request an opportunity to be heard on the necessity of restraints. The requesting party must provide reasonable notice to all parties. The court may hold a hearing to determine whether the use of restraints is necessary and must, when reasonable, make that determination before the child enters the courtroom and appears before the court.

(c) If the court determines that the use of restraints is necessary, the court must:

(1) order the least restrictive type of restraint necessary to prevent physical harm or flight; and

(2) make findings of fact in support of the determination on the record or in a written order.

(d) This rule does not apply to the use of restraints when transporting the child to or from the courtroom.

(Adopted by Tex. Sup. Ct. Misc. Docket No. 22-9104, Nov. 30, 2022 and Tex. Sup. Ct. Misc. Docket No. 23-9029, May 30, 2023, eff. June. 1, 2023.)

Comment

Comment to 2023 change: This rule is adopted to implement Texas Government Code section 22.0135(b).

Texas Constitution

Article 1. Bill of Rights

§ 13. Excessive Bail or Fines; Cruel or Unusual Punishment; Open Courts; Remedy by Due Course of Law.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

(Feb. 15, 1876.)

§ 19. Deprivation of Life, Liberty, Property, Etc.; Due Course of Law.

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

(Feb. 15, 1876.)

Article 2. The Powers of the Government

§ 1. Separation of Powers of Government Among Three Departments.

The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

(Feb. 15, 1876.)

Article 5. Judicial Administration

§ 1. Judicial Power; Courts in which Vested.

The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.

(Amended Aug. 11, 1891, Nov. 8, 1977, Nov. 4, 1980.)

§ 3. Jurisdiction of Supreme Court; Writs; Clerk.

(a) The Supreme Court shall exercise the judicial power of the state except as otherwise provided in this Constitution. Its jurisdiction shall be coextensive with the limits of the State and its determinations shall be final except in criminal law matters. Its appellate jurisdiction shall be final and shall extend to all cases except in criminal law matters and as otherwise provided in this Constitution or by law. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

(b) The Supreme Court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction.

(Feb. 15, 1876. Amended Aug. 11, 1891, Nov. 4, 1930, Nov. 4, 1980, and Nov. 6, 2001.)

§ 7. Judicial Districts; District Judges; Terms or Sessions; Absence, Disability, or Disqualification of District Judge.

(a) The State shall be divided into judicial districts, with each district having one or more Judges as may be provided by law or by this Constitution.

(b) Each district judge shall be elected by the qualified voters at a General Election. To be eligible for appointment or election as a district judge, a person must:

(1) be a citizen of the United States and a resident of this State;

(2) be licensed to practice law in this State;

(3) have been a practicing lawyer or a Judge of a Court in this State, or both combined, for eight years next preceding the judge's election, during which time the judge's license to practice law has not been revoked, suspended, or subject to a probated suspension;

(4) have resided in the district in which the judge was elected for two years next preceding the election; and

(5) reside in the district during the judge's term of office.

(c) A district judge shall hold the office for the term of four years and shall receive for the judge's services an annual salary to be fixed by the Legislature.

(d) A District Court shall conduct its proceedings at the county seat of the county in which the case is pending, except as otherwise provided by law. The Court shall hold the regular terms at the County Seat of each County in the Court's district in such manner as may be prescribed by law. The Legislature shall have power by General or Special Laws to make such provisions concerning the terms or sessions of each District Court as it may deem necessary.

(e) The Legislature shall also provide for the holding of District Court when the Judge thereof is absent, or is from any cause disabled or disqualified from presiding.

(Feb. 15, 1876. Amended Aug. 11, 1891, Nov. 8, 1949, and Nov. 5, 1985, and Nov. 2, 2021.)

§ 8. Jurisdiction of District Courts.

District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body. District Court judges shall have the power to issue writs necessary to enforce their jurisdiction. The District Court shall have appellate jurisdiction and general supervisory control over the County Commissioners Court, with such exceptions and under such regulations as may be prescribed by law.

(Feb. 15, 1876. Amended Aug. 11, 1891, Nov. 6, 1973, and Nov. 5, 1985.)

§ 9. Clerk of District Court.

There shall be a Clerk for the District Court of each county, who shall be elected by the qualified voters for State and county officers, and who shall hold his office for four years, subject to removal by information, or by indictment of a grand jury, and conviction of a petit jury. In case of vacancy, the Judge of the District Court shall have the power to appoint a Clerk, who shall hold until the office can be filled by election.

(Feb. 15, 1876. Amended Nov. 2, 1954, and Nov. 2, 1999.)

§ 11. Disqualification of Judges; Exchange of Districts; Holding Court for Other Judges.

No judge shall sit in any case wherein the judge may be interested, or where either of the parties may be connected with the judge, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when the judge shall have been counsel in the case. When the Supreme Court, the Court of Criminal Appeals, the Court of Appeals, or any member of any of those courts shall be thus disqualified to hear and determine any case or cases in said court, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause or causes. When a judge of the District Court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case; or upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law.

And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law. This disqualification of judges of inferior tribunals shall be remedied and vacancies in their offices filled as may be prescribed by law.

(Feb. 15, 1876. Amended Aug. 11, 1891, and Nov. 6, 2001.)

§ 15. County Court; County Judge.

There shall be established in each county in this State a County Court, which shall be a court of record; and there shall be elected in each county, by the qualified voters, a County Judge, who shall be well informed in the law of the State; shall be a conservator of the peace, and shall hold his office for four years, and until his successor shall be elected and qualified. He shall receive as compensation for his services such fees and perquisites as may be prescribed by law.

(Feb. 15, 1876. Amended Nov. 2, 1954.)

§ 16. County Courts; Jurisdiction; County Judge Powers; Disqualification of County Judge.

The County Court has jurisdiction as provided by law. The County Judge is the presiding officer of the County Court and has judicial functions as provided by law. County court judges shall have the power to issue writs necessary to enforce their jurisdiction. County Courts in existence on the effective date of this amendment are continued unless otherwise provided by law. When the judge of the County Court is disqualified in any case pending in the County Court the parties interested may, by consent, appoint a proper person to try said case, or upon their failing to do so a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law.

(Feb. 15, 1876. Amended Aug. 11, 1891, Nov. 7, 1978, Nov. 4, 1980, and Nov. 5, 1985.)

§ 18. Division of Counties Into Precincts; Justices of the Peace and Constables; County Commissioners and County Commissioners Court.

(a) Each county in the State with a population of 50,000 or more, according to the most recent federal census, from time to time, for the convenience of the people, shall be divided into not less than four and not more than eight precincts. Each county in the State with a population of 18,000 or more but less than 50,000, according to the most recent federal census, from time to time, for the convenience of the people, shall be divided into not less than two and not more than eight precincts. Each county in the State with a population of less than 18,000, according to the most recent federal census, from time to time, for the convenience of the people, shall be designated as a single precinct or, if the Commissioners Court determines that the county needs more than one precinct, shall be divided into not more than four precincts. Notwithstanding the population requirements of this subsection, Chambers County and Randall County, from time to time, for the convenience of the people, shall be divided into not less than two and not more than six precincts. A division or designation under this subsection shall be made by the Commissioners Court provided for by this Constitution. Except as provided by this section, in each such precinct there shall be elected one Justice of the Peace and one Constable, each of whom shall hold his office for

four years and until his successor shall be elected and qualified; provided that in a county with a population of less than 150,000, according to the most recent federal census, in any precinct in which there may be a city of 18,000 or more inhabitants, there shall be elected two Justices of the Peace, and in a county with a population of 150,000 or more, according to the most recent federal census, each precinct may contain more than one Justice of the Peace Court. Notwithstanding the population requirements of this subsection, any county that is divided into four or more precincts on November 2, 1999, shall continue to be divided into not less than four precincts.

(b) Each county shall, in the manner provided for justice of the peace and constable precincts, be divided into four commissioners precincts in each of which there shall be elected by the qualified voters thereof one County Commissioner, who shall hold his office for four years and until his successor shall be elected and qualified. The County Commissioners so chosen, with the County Judge as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed.

(c)-(h) [Text Not Reproduced]

(Feb. 15, 1876. Amended Nov. 2, 1954; Subsecs. (a) and (b) amended and (c) and (d) added Nov. 8, 1983; Subsec. (a) amended Nov. 5, 1985, Nov. 3, 1987, and Nov. 7, 1995; Subsecs. (e) and (f) added Nov. 7, 1995; Subsec. (g) added Nov. 4, 1997; Subsec. (a) amended Nov. 2, 1999; Subsec. (e) amended, Subsec. (f) deleted, and Subsec. (g) redesignated as Subsec. (f) Nov. 6, 2001; Subsec. (h) added Nov. 5, 2002.)

§ 19. Jurisdiction of Justice of the Peace Courts; Ex Officio Notaries Public.

Justice of the peace courts shall have original jurisdiction in criminal matters of misdemeanor cases punishable by fine only, exclusive jurisdiction in civil matters where the amount in controversy is two hundred dollars or less, and such other jurisdiction as may be provided by law. Justices of the peace shall be ex officio notaries public.

(Feb. 15, 1876. Amended Nov. 7, 1978, and Nov. 5, 1985.)

§ 20. County Clerk.

There shall be elected for each county, by the qualified voters, a County Clerk, who shall hold his office for four years, who shall be clerk of the County and Commissioners Courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the Commissioners Court, until the next general election; provided, that in counties having a population of less than 8,000 persons there may be an election of a single Clerk, who shall perform the duties of District and County Clerks.

(Feb. 15, 1876. Amended Nov. 2, 1954.)

§ 31. Court Administration and Rule-Making Authority.

(a) The Supreme Court is responsible for the efficient administration of the judicial branch and shall promulgate rules of administration not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.

(b) The Supreme Court shall promulgate rules of civil procedure for all courts not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.

(c) The legislature may delegate to the Supreme Court or Court of Criminal Appeals the power to promulgate such other rules as may be prescribed by law or this Constitution, subject to such limitations and procedures as may be provided by law.

(d) Notwithstanding Section 1, Article II, of this Constitution and any other provision of this Constitution, if the supreme court does not act on a motion for rehearing before the 180th day after the date on which the motion is filed, the motion is denied.

(Added Nov. 5, 1985; Subsec. (d) added Nov. 4, 1997.)

§ 32. Legal Challenges to Constitutionality of State Statutes.

Notwithstanding Section 1, Article II, of this constitution, the legislature may:

(1) require a court in which a party to litigation files a petition, motion, or other pleading challenging the constitutionality of a statute of this state to provide notice to the attorney general of the challenge if the party raising the challenge notifies the court that the party is challenging the constitutionality of the statute; and

(2) prescribe a reasonable period, which may not exceed 45 days, after the provision of that notice during which the court may not enter a judgment holding the statute unconstitutional.

Added by Acts 2017, 85th Leg., R.S., SJR 6, § 1, adopted by voters on Nov. 7, 2017.

Challenging the Constitutionality of a State Statute Form:

A party challenging the constitutionality of a Texas statute must file a "Challenge to the Constitutionality of a State Statute" form with the court in which the claim is pending. (Gov't Code Sec. 402.010(a-1).

If a party indicates on the form that the Office of the Attorney General is not a party to or counsel in the case, the clerk of the court must forward the completed form and a copy of the petition, motion or pleading to the Office of the Attorney General.

The OAG has created the following email account for receipt of these forms: const_claims@texasattorneygeneral.gov. A clerk may also send the information by certified or registered mail.

Texas Business Organizations Code

TITLE 1.
GENERAL PROVISIONS

CHAPTER 5.
NAMES OF ENTITIES; REGISTERED AGENTS AND REGISTERED OFFICES

SUBCHAPTER E.
REGISTERED AGENTS AND REGISTERED OFFICES

§ 5.201. Designation and Maintenance of Registered Agent and Registered Office.

(a) Each filing entity and each foreign filing entity shall designate and continuously maintain in this state:

(1) a registered agent; and

(2) a registered office.

(b) The registered agent:

(1) is an agent of the entity on whom may be served any process, notice, or demand required or permitted by law to be served on the entity;

(2) may be:

(A) an individual who:

(i) is a resident of this state; and

(ii) has consented in a written or electronic form to be developed by the office of the secretary of state to serve as the registered agent of the entity; or

(B) an organization, other than the filing entity or foreign filing entity to be represented, that:

(i) is registered or authorized to do business in this state; and

(ii) has consented in a written or electronic form to be developed by the office of the secretary of state to serve as the registered agent of the entity; and

(3) must maintain a business office at the same address as the entity's registered office.

(c) The registered office:

(1) must be located at a street address where process may be personally served on the entity's registered agent;

(2) is not required to be a place of business of the filing entity or foreign filing entity; and

(3) may not be solely a mailbox service or a telephone answering service.

(d) A registered agent that is an organization must have an employee available at the registered office during normal business hours to receive service of process, notice, or demand. Any employee of the organization may receive service at the registered office.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006. Amended by Acts 2007, 80th Leg., R.S., c. 688, § 28, eff. Sept. 1, 2007; Acts 2009, 81st Leg., R.S., c. 1123, § 2, eff. Jan. 1, 2010; Acts 2011, 82nd Leg., R.S., c. 1151, § 1, eff. Sept. 1, 2011.

SUBCHAPTER F.
SERVICE OF PROCESS ON ENTITY

§ 5.251. Failure to Designate Registered Agent.

The secretary of state is an agent of an entity for purposes of service of process, notice, or demand on the entity if:

(1) the entity is a filing entity or a foreign filing entity and:

(A) the entity fails to appoint or does not maintain a registered agent in this state; or

(B) the registered agent of the entity cannot with reasonable diligence be found at the registered office of the entity; or

(2) the entity is a foreign filing entity and:

(A) the entity's registration to do business under this code is revoked; or

(B) the entity transacts business in this state without being registered as required by Chapter 9.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006.

§ 5.252. Service on Secretary of State.

(a) Service on the secretary of state under Section 5.251 is effected by:

(1) delivering to the secretary duplicate copies of the process, notice, or demand; and

(2) accompanying the copies with any fee required by law, including this code or the Government Code, for:

(A) maintenance by the secretary of a record of the service; and

(B) forwarding by the secretary of the process, notice, or demand.

(b) Notice on the secretary of state under Subsection (a) is returnable in not less than 30 days.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006.

§ 5.253. Action by Secretary of State.

(a) After service in compliance with Section 5.252, the secretary of state shall immediately send one of the copies of the process, notice, or demand to the named entity.

(b) The notice must be:

(1) addressed to the most recent address of the entity on file with the secretary of state; and

(2) sent by certified mail, with return receipt requested.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006.

§ 5.254. Required Records of Secretary of State.

The secretary of state shall keep a record of each process, notice, or demand served on the secretary under this subchapter and shall record:

(1) the time when each service on the secretary was made; and

(2) each subsequent action of the secretary taken in relation to that service.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006.

§ 5.255. Agent for Service of Process, Notice, or Demand as Matter of Law.

For the purpose of service of process, notice, or demand:

(1) the president and each vice president of a domestic or foreign corporation is an agent of that corporation;

(2) each general partner of a domestic or foreign limited partnership and each partner of a domestic or foreign general partnership is an agent of that partnership;

(3) each manager of a manager-managed domestic or foreign limited liability company and each member of a member-managed domestic or foreign limited liability company is an agent of that limited liability company;

(4) each person who is a governing person of a domestic or foreign entity, other than an entity listed in Subdivisions (1)-(3), is an agent of that entity; and

(5) each member of a committee of a nonprofit corporation authorized to perform the chief executive function of the corporation is an agent of that corporation.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006.

§ 5.256. Other Means of Service Not Precluded.

This chapter does not preclude other means of service of process, notice, or demand on a domestic or foreign entity as provided by other law.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006.

§ 5.257. Service of Process by Political Subdivision.

(a) A process, notice, or demand required or permitted by law to be served by a political subdivision of this state or by a person, including another political subdivision or an attorney, acting on behalf of a political subdivision in connection with the collection of a delinquent ad valorem tax may be served on a domestic or foreign corporation whose corporate privileges are forfeited under Section 171.251, Tax Code, a domestic or foreign limited liability company whose right to transact business in this state is forfeited under Section 171.2515, Tax Code, or a corporation or limited liability company that is involuntarily terminated under Chapter 11 or whose registration is revoked under Chapter 9 by delivery of the process, notice, or demand to any officer or director of the corporation or manager or member of the limited liability company, as listed in the most recent records of the secretary of state.

(b) If the officers or directors of a corporation or the managers or members of the limited liability company are unknown or cannot be found, service on the corporation or limited liability company may be made in the same manner as service is made on unknown shareholders under law.

(c) Notwithstanding any disability or reinstatement of a corporation or limited liability company, service of process under this section is sufficient for a judgment against the corporation or limited liability company or a judgment in rem against any property to which the corporation or limited liability company holds title.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006. Amended by Acts 2011, 82nd Leg., R.S., c. 7, § 1, eff. Sept. 1, 2011.

SUBCHAPTER F-1.
SERVICE OF PROCESS ON SERIES OF LIMITED LIABILITY COMPANY OR FOREIGN ENTITY

§ 5.301. Applicability of Subchapter.

(a) This subchapter applies to service of process, notice, or demand on a series of a domestic limited liability company or a series of a foreign entity.

(b) For purposes of this subchapter, a reference to a "series" is intended to be a reference to a protected series or registered series of a domestic limited liability company or to a series of a foreign entity that has the power to sue or be sued as a separate series under the laws of the jurisdiction of formation of the foreign entity.

Added by Acts 2017, 85th Leg., R.S., c. 926, § 4, eff. Sept. 1, 2017. Amended by Acts 2021, 87th Leg., R.S., c. 43, § 21, eff. June 1, 2022

§ 5.302. Agent for Series.

(a) The registered agent designated and maintained by a domestic limited liability company or foreign entity under Subchapter E is an agent of each series of the company or entity for the purpose of service of process, notice, or demand required or permitted by law to be served on a particular series of the company or entity.

(b) A process, notice, or demand required or permitted by law to be served on a series of a domestic limited liability company or foreign entity that is served on the company's or entity's registered agent must include:

(1) the name of the company or entity; and

(2) the name of the series on which the process, notice, or demand is required or permitted to be served.

Added by Acts 2017, 85th Leg., R.S., c. 926, § 4, eff. Sept. 1, 2017.

§ 5.303. Duties of Registered Agent.

(a) For purposes of Section 5.206, on service or receipt of process, notice, or demand that complies with the requirements of Section 5.302(b), the only duties of the registered agent are to:

(1) receive or accept, and forward to the represented domestic limited liability company or foreign entity at the address most recently provided to the registered agent by the represented company or entity, the process, notice, or demand that is served on or received by the registered agent under Section 5.302(b); or

(2) otherwise notify the represented company or entity at the address described by Subdivision (1) regarding the process, notice, or demand that is served on or received by the registered agent under Section 5.302(b).

(b) The registered agent is not required to send a copy of the process, notice, or demand directly to the series of the represented domestic limited liability company or foreign entity.

Added by Acts 2017, 85th Leg., R.S., c. 926, § 4, eff. Sept. 1, 2017.

§ 5.304. Service on Secretary of State.

(a) The secretary of state is an agent of a series of a domestic limited liability company or foreign entity for purposes of service of process, notice, or demand on the series of the company or entity if the secretary of state is the agent of the company or entity pursuant to Section 5.251.

(b) The duplicate copies of a process, notice, or demand that are delivered to the secretary of state pursuant to Section 5.252(a) as agent for a series of a domestic limited liability company or foreign entity must include:

(1) the name of the company or entity; and

(2) the name of the series of the company or entity on which the process, notice, or demand is to be served.

(c) For purposes of Section 5.253, after service on the secretary of state in compliance with the requirements of Subsection (b), the secretary of state shall send to the domestic limited liability company or foreign entity named in the process, notice, or demand one of the copies of the process, notice, or demand as provided in Section 5.253.

(d) The secretary of state is not required to send a copy of the process, notice, or demand directly to the series of the named domestic limited liability company or foreign entity.

Added by Acts 2017, 85th Leg., R.S., c. 926, § 4, eff. Sept. 1, 2017.

§ 5.305. Service on Governing Persons.

(a) Each governing person of a series of a domestic limited liability company as described by Section 101.608 is an agent of the series for the purpose of service of process, notice, or demand required or permitted by law to be served on the series.

(b) Each governing person of a series of a foreign entity is an agent of the series for the purpose of service of process, notice, or demand required or permitted by law to be served on the series.

Added by Acts 2017, 85th Leg., R.S., c. 926, § 4, eff. Sept. 1, 2017.

§ 5.306. Service of Process by Political Subdivision.

(a) For purposes of Section 5.257, a process, notice, or demand may be served on a series of a domestic limited liability company by delivery of the process, notice, or demand to any governing person of the series as described by Section 101.608.

(b) For purposes of Section 5.257, a process, notice, or demand may be served on a series of a foreign entity by delivery of the process, notice, or demand to any governing person of the series.

(c) If the governing persons of a series of a domestic limited liability company or foreign entity are unknown or cannot be found, service on the series of the company or entity may be made in the same manner as service is made on unknown shareholders under law.

(d) Notwithstanding any disability or reinstatement of a domestic limited liability company or foreign entity, service of process under this section is sufficient for a judgment against a series of the company or entity or a judgment in rem against any property to which a series of the company or entity holds title.

Added by Acts 2017, 85th Leg., R.S., c. 926, § 4, eff. Sept. 1, 2017.

CHAPTER 9.
FOREIGN ENTITIES

SUBCHAPTER A.
REGISTRATION

§ 9.001. Foreign Entities Required to Register.

(a) To transact business in this state, a foreign entity must register under this chapter if the entity:

(1) is a foreign corporation, foreign limited partnership, foreign limited liability company, foreign business trust, foreign real estate investment trust, foreign cooperative, foreign public or private limited company, or another foreign entity, the formation of which, if formed in this state, would require the filing under Chapter 3 of a certificate of formation; or

(2) affords limited liability under the law of its jurisdiction of formation for any owner or member.

(b) A foreign entity described by Subsection (a) must maintain the entity's registration while transacting business in this state.

Added by Acts 2003, 78th Leg., c. 182, §. 1, eff. Jan. 1, 2006.

§ 9.002. Foreign Entities Not Required to Register.

(a) A foreign entity not described by Section 9.001(a) may transact business in this state without registering under this chapter.

(b) Subsection (a) does not relieve a foreign entity from the duty to comply with applicable requirements under other law to file or register.

(c) A foreign entity is not required to register under this chapter if other state law authorizes the entity to transact business in this state.

(d) A foreign unincorporated nonprofit association is not required to register under this chapter.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006.

§ 9.003. Permissive Registration.

A foreign entity that is eligible under other law of this state to register to transact business in this state, but that is not registered under that law, may register under this chapter unless that registration is prohibited by the other law. The registration under this chapter confers only the authority provided by this chapter.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006.

§ 9.004. Registration Procedure.

(a) A foreign filing entity registers by filing an application for registration as provided by Chapter 4.

(b) The application must state:

(1) the entity's name and, if that name would not comply with Chapter 5, a name that complies with Chapter 5 under which the entity will transact business in this state;

(2) the entity's type;

(3) the entity's jurisdiction of formation;

(4) the date of the entity's formation;

(5) that the entity exists as a valid foreign filing entity of the stated type under the laws of the entity's jurisdiction of formation;

(6) for a foreign entity other than a foreign limited partnership:

(A) each business or activity that the entity proposes to pursue in this state, which may be stated to be any lawful business or activity under the law of this state; and

(B) that the entity is authorized to pursue the same business or activity under the laws of the entity's jurisdiction of formation;

(7) the date the foreign entity began or will begin to transact business in this state;

(8) the address of the principal office of the foreign filing entity;

(9) the address of the initial registered office and the name and the address of the initial registered agent for service of process that Chapter 5 requires to be maintained;

(10) the name and address of each of the entity's governing persons; and

(11) that the secretary of state is appointed the agent of the foreign filing entity for service of process under the circumstances provided by Section 5.251.

(c) A foreign filing entity may register regardless of any differences between the law of the entity's jurisdiction of formation and of this state applicable to the governing of the internal affairs or to the liability of an owner, member, or managerial official.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006.

SUBCHAPTER E.
BUSINESS, RIGHTS, AND OBLIGATIONS

§ 9.201. Business of Foreign Entity.

(a) Except as provided by Subsection (b), a foreign entity may not conduct in this state a business or activity that is not permitted by this code to be transacted by the domestic entity to which it most closely corresponds, unless other law of this state authorizes the entity to conduct the business or activity.

(b) A foreign business trust may engage in a business or activity permitted by this code to be transacted by a limited liability company.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006. Amended by Acts 2007, 80th Leg., R.S., c. 688, § 48, eff. Sept. 1, 2007.

§ 9.202. Rights and Privileges.

A foreign nonfiling entity or a foreign filing entity registered under this chapter enjoys the same but no greater rights and privileges as the domestic entity to which it most closely corresponds.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006.

§ 9.203. Obligations and Liabilities.

Subject to this code and other laws of this state and except as provided by Subchapter C, Chapter 1, in any matter that affects the transaction of intrastate business in this state, a foreign entity and each member, owner, or managerial official of the entity is subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic entity to which it most closely corresponds or on a member, owner, or managerial official of that domestic entity.

Added by Acts 2003, 78th Leg., c 182, §. 1, eff. Jan. 1, 2006.

§ 9.204. Right of Foreign Entity to Participate in Business of Certain Domestic Entities.

A vote cast or consent provided by a foreign entity with respect to its ownership or membership interest in a domestic entity of which the foreign entity is a lawful owner or member, and the foreign entity's participation in the management and control of the business and affairs of the domestic entity to the extent of the participation of other owners or members, are not invalidated if the foreign entity does not register to transact business in this state in accordance with this chapter, subject to all law governing a domestic entity, including the antitrust law of this state.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006. Amended by Acts 2005, 79th Leg., c. 64, § 32, eff. Jan. 1, 2006.

SUBCHAPTER F.
DETERMINATION OF TRANSACTING BUSINESS IN THIS STATE

§ 9.251. Activities Not Constituting Transacting Business in this State.

For purposes of this chapter, activities that do not constitute transaction of business in this state include:

(1) maintaining or defending an action or suit or an administrative or arbitration proceeding, or effecting the settlement of:

(A) such an action, suit, or proceeding; or

(B) a claim or dispute to which the entity is a party;

(2) holding a meeting of the entity's managerial officials, owners, or members or carrying on another activity concerning the entity's internal affairs;

(3) maintaining a bank account;

(4) maintaining an office or agency for:

(A) transferring, exchanging, or registering securities the entity issues; or

(B) appointing or maintaining a trustee or depositary related to the entity's securities;

(5) voting the interest of an entity the foreign entity has acquired;

(6) effecting a sale through an independent contractor;

(7) creating, as borrower or lender, or acquiring indebtedness or a mortgage or other security interest in real or personal property;

(8) securing or collecting a debt due the entity or enforcing a right in property that secures a debt due the entity;

(9) transacting business in interstate commerce;

(10) conducting an isolated transaction that:

(A) is completed within a period of 30 days; and

(B) is not in the course of a number of repeated, similar transactions;

(11) in a case that does not involve an activity that would constitute the transaction of business in this state if the activity were one of a foreign entity acting in its own right:

(A) exercising a power of executor or administrator of the estate of a nonresident decedent under ancillary letters issued by a court of this state; or

(B) exercising a power of a trustee under the will of a nonresident decedent, or under a trust created by one or more nonresidents of this state, or by one or more foreign entities;

(12) regarding a debt secured by a mortgage or lien on real or personal property in this state:
(A) acquiring the debt in a transaction outside this state or in interstate commerce;
(B) collecting or adjusting a principal or interest payment on the debt;
(C) enforcing or adjusting a right or property securing the debt;
(D) taking an action necessary to preserve and protect the interest of the mortgagee in the security; or
(E) engaging in any combination of transactions described by this subdivision;
(13) investing in or acquiring, in a transaction outside of this state, a royalty or other nonoperating mineral interest;
(14) executing a division order, contract of sale, or other instrument incidental to ownership of a nonoperating mineral interest; or
(15) owning, without more, real or personal property in this state; or
(16) acting as a governing person of a domestic or foreign entity that is registered to transact business in this state.

Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006. Amended by Acts 2009, 81st Leg., R.S., c. 84, § 14, eff. Sept. 1, 2009; Acts 2021, 87th Leg., R.S., c. 39. § 16, eff. Sept. 1, 2021.

§ 9.252. Other Activities.

The list provided by Section 9.251 is not exclusive of activities that do not constitute transacting business in this state for the purposes of this code.
Added by Acts 2003, 78th Leg., c. 182, § 1, eff. Jan. 1, 2006.

Texas Civil Practice and Remedies Code

TITLE 2.
TRIAL, JUDGMENT, AND APPEAL

SUBTITLE A.
GENERAL PROVISIONS

CHAPTER 10.
SANCTIONS FOR FRIVOLOUS PLEADINGS AND MOTIONS

§ 10.001. Signing of Pleadings and Motions.

The signing of a pleading or motion as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry:

(1) the pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

Added by Acts 1995, 74th Leg., c. 137, § 1, eff. Sept. 1, 1995.

§ 10.002. Motion for Sanctions.

(a) A party may make a motion for sanctions, describing the specific conduct violating Section 10.001.

(b) The court on its own initiative may enter an order describing the specific conduct that appears to violate Section 10.001 and direct the alleged violator to show cause why the conduct has not violated that section.

(c) The court may award to a party prevailing on a motion under this section the reasonable expenses and attorney's fees incurred in presenting or opposing the motion, and if no due diligence is shown the court may award to the prevailing party all costs for inconvenience, harassment, and out-of-pocket expenses incurred or caused by the subject litigation.

Added by Acts 1995, 74th Leg., c. 137, § 1, eff. Sept. 1, 1995.

§ 10.003. Notice and Opportunity to Respond.

The court shall provide a party who is the subject of a motion for sanctions under Section 10.002 notice of the allegations and a reasonable opportunity to respond to the allegations.

Added by Acts 1995, 74th Leg., c. 137, § 1, eff. Sept. 1, 1995.

§ 10.004. Violation; Sanction.

(a) A court that determines that a person has signed a pleading or motion in violation of Section 10.001 may impose a sanction on the person, a party represented by the person, or both.

(b) The sanction must be limited to what is sufficient to deter repetition of the conduct or comparable conduct by others similarly situated.

(c) A sanction may include any of the following:

(1) a directive to the violator to perform, or refrain from performing, an act;

(2) an order to pay a penalty into court; and

(3) an order to pay to the other party the amount of the reasonable expenses incurred by the other party because of the filing of the pleading or motion, including reasonable attorney's feels.

(d) The court may not award monetary sanctions against a represented party for a violation of Section 10.001(2).

(e) The court may not award monetary sanctions on its own initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party or the party's attorney who is to be sanctioned.

(f) The filing of a general denial under Rule 92, Texas Rules of Civil Procedure, shall not be deemed a violation of this chapter.

Added by Acts 1995, 74th Leg., c. 137, § 1, eff. Sept. 1, 1995.

§ 10.005. Order.

A court shall describe in an order imposing a sanction under this chapter the conduct the court has determined violated Section 10.001 and explain the basis for the sanction imposed.

Added by Acts 1995, 74th Leg., c. 137, § 1, eff. Sept. 1, 1995.

§ 10.006. Conflict.

Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this chapter.

Added by Acts 1995, 74th Leg., c. 137, § 1, eff. Sept. 1, 1995.

SUBTITLE B.
TRIAL MATTERS

CHAPTER 15.
VENUE

SUBCHAPTER A.
GENERAL RULES

§ 15.001. Definitions.

In this chapter:

(a) "Principal office" means a principal office of the corporation, unincorporated association or partnership in this state in which the decision makers for the organization within this state conduct the daily affairs of the organization. The mere presence of an agency or representative does not establish a "principal office."

(b) "Proper venue" means:

(1) the venue required by the mandatory provisions of Subchapter B or another statute prescribing mandatory venue; or

(2) if subdivision (1) does not apply, the venue provided by this subchapter or Subchapter C.

Added by Acts 1995, 74th Leg., c. 138, § 1, eff. Aug. 28, 1995.

§ 15.002. Venue: General Rule.

(a) Except as otherwise provided by this subchapter or Subchapter B or C, all lawsuits shall be brought:

(1) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) in the county of defendant's residence at the time the cause of action accrued if defendant is a natural person;

(3) in the county of the defendant's principal office in this state, if the defendant is not a natural person; or

(4) if Subdivisions (1), (2), and (3) do not apply, in the county in which the plaintiff resided at the time of the accrual of the cause of action.

(b) For the convenience of the parties and witnesses and in the interest of justice, a court may transfer an action from a county of proper venue under this Subchapter or Subchapter C to any other county of proper venue on motion of a defendant filed and served concurrently with or before the filing of the answer, where the court finds:

(1) maintenance of the action in the county of suit would work an injustice to the movant considering the movant's economic and personal hardship;

(2) the balance of interests of all the parties predominates in favor of the action being brought in the other county; and

(3) the transfer of the action would not work an injustice to any other party.

(c) A court's ruling or decision to grant or deny a transfer under Subsection (b) is not grounds for appeal or mandamus and is not reversible error.

Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 15.001 and amended by Acts 1995, 74th Leg., c. 138, § 1, eff. Aug. 28, 1995.

§ 15.003. Multiple Plaintiffs And Intervening Plaintiffs.

(a) In a suit in which there is more than one plaintiff, whether the plaintiffs are included by joinder, by intervention, because the lawsuit was begun by more than one plaintiff, or otherwise, each plaintiff must, independently of every other plaintiff, establish proper venue. If a plaintiff cannot independently establish proper venue, that plaintiff's part of the suit, including all of that plaintiff's claims and causes of action, must be transferred to a county of proper venue or dismissed, as is appropriate, unless that plaintiff, independently of every other plaintiff, establishes that:

(1) joinder of that plaintiff or intervention in the suit by that plaintiff is proper under the Texas Rules of Civil Procedure;

(2) maintaining venue as to that plaintiff in the county of suit does not unfairly prejudice another party to the suit;

(3) there is an essential need to have that plaintiff's claim tried in the county in which the suit is pending; and

(4) the county in which the suit is pending is a fair and convenient venue for that plaintiff and all persons against whom the suit is brought.

(b) An interlocutory appeal may be taken of a trial court's determination under Subsection (a) that:

(1) a plaintiff did or did not independently establish proper venue; or

(2) a plaintiff that did not independently establish proper venue did or did not establish the items prescribed by Subsections (a) (1) - (4).

(c) An interlocutory appeal permitted by Subsection (b) must be taken to the court of appeals district in which the trial court is located under the procedures established for interlocutory appeals. The appeal may be taken by a party that is affected by the trial court's determination under Subsection (a). The court of appeals shall:

(1) determine whether the trial court's order is proper based on an independent determination from the record and not under either an abuse of discretion or substantial evidence standard; and

(2) render judgment not later than the 120th day after the date the appeal is perfected.

Added by Acts 1995, 74th Leg., c. 138, § 1, eff. Aug. 28, 1995. Amended by Acts 2003, 78th Leg., c. 204, § 3.03, eff. Sept. 1, 2003.

§ 15.004. Mandatory Venue Provision Governs Multiple Claims.

In a suit in which a plaintiff properly joins two or more claims or causes of action arising from the same transaction, occurrence or series of transactions or occurrences, and one of the claims or causes of action is governed by the mandatory venue provisions of Subchapter B, the suit shall be brought in the county required by the mandatory venue provision.

Added by Acts 1995, 74th Leg., c. 138, § 1, eff. Aug. 28, 1995.

§ 15.005. Multiple Defendants.

In a suit in which the plaintiff has established proper venue against a defendant, the court also has venue of all the defendants in all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences.

Added by Acts 1995, 74th Leg., c. 138, § 1, eff. Aug. 28, 1995.

§ 15.006. Venue Determined By Facts Existing At The Time Of Accrual.

A court shall determine the venue of a suit based on the facts existing at the time of the cause of action that is the basis of the suit accrued.

Added by Acts 1995, 74th Leg., c. 138, § 1, eff. Aug. 28, 1995.

§ 15.007. Conflict With Certain Provisions.

Notwithstanding Sections 15.004, 15.005, and 15.031, to the extent that venue under this chapter for a suit by or against an executor, administrator or guardian as such, for personal injury, death or property damage conflicts with venue provisions under the Estates Code, this chapter controls.

Added by Acts 1995, 74th Leg., c. 138, § 1, eff. Aug. 28, 1995. Amended by Acts 2015, 84th Leg., c. 1236, § 20.001, eff. Sept. 1, 2015.

[Sections 15.008 to 15.010 reserved for expansion]

SUBCHAPTER B.
MANDATORY VENUE

§ 15.011. Land.

Actions for recovery of real property or an estate or interest in real property, for partition of real property, to remove encumbrances from the title to real property, for recovery of damages to real property, or to quiet title to real property shall be brought in the county in which all or a part of the property be located.

Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., c. 138, § 2, eff. Aug. 28, 1995.

§ 15.0115. Landlord-Tenant.

(a) Except as provided by another statute prescribing mandatory venue, a suit between a landlord and a tenant arising under a lease shall be brought in the county in which all or a part of the real property is located.

(b) In this section "lease" means any written or oral agreement between a landlord and a tenant that establishes or modifies the terms, conditions, or other provisions relating to the use and occupancy of the real property that is the subject of the agreement.

Added by Acts 1995, 74th Leg., c. 138, § 2, eff. Aug. 28, 1995.

§ 15.012. Injunction Against Suit.

Actions to stay proceedings in a suit shall be brought in the county in which the suit is pending.

Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.013. Injunction Against Execution of Judgment.

Actions to restrain execution of a judgment based on invalidity of the judgment or of the writ shall be brought in the county in which the judgment was rendered.

Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.014. Head of State Department.

An action for mandamus against the head of a department of the state government shall be brought in Travis County.

Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.015. Counties.

An action against a county shall be brought in that county.

Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.0151. Certain Political Subdivisions.

(a) Except as provided by a law not contained in this chapter, an action against a political subdivision that is located in a county with a population of 100,000 or less shall be brought in the county in which the political subdivision is located. If the political subdivision is located in more than one county and the population of each county is 100,000 or less, the action shall be brought in any county in which the political subdivision is located.

(b) In this section, "political subdivision" means a governmental entity in this state, other than a county, that is not a state agency. The term includes a municipality, school or junior college district, hospital district, or any other special purpose district or authority.

Added by Acts 1997, 75th Leg., c. 733, § 1, eff. Sept. 1, 1997.

§ 15.016. Other Mandatory Venue.

An action governed by any other statute prescribing mandatory venue shall be brought in the county required by that statute.

Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.017. Libel, Slander, or Invasion of Privacy.

A suit for damages for libel, slander, or invasion of privacy shall be brought and can only be maintained in the county in which the plaintiff resided at the time of the accrual of the cause of action, or in the county in which the defendant resided at the time of filing suit, or in the county of the residence of defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff.

Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.018. Federal Employers Liability Act.

(a) This section only applies to suits brought under the federal Employers' Liability Act (45 U.S.C. Section 51 et seq.).

(b) All suits brought under the federal Employers' Liability Act shall be brought:

(1) In the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) in the county where the defendant's principal office in this state is located; or

(3) in the county where the plaintiff resided at the time the cause of action accrued.

Added by Acts 1995, 74th Leg., c. 138, § 2, eff. Aug. 28, 1995. Amended by Acts 2007, 80th Leg., c. 203 1602, § 1, eff. May 14, 2007.

Section 3 of Acts 2007, 80th Leg., c. 203, provides:

The change in law made by this Act applies only to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 15.0181. Jones Act.

(a) In this section:

(1) "Coastal county" means:

(A) a county in a coastal area, as defined by Section 33.004, Natural Resources Code; or

(B) a county having a United States Customs port through which waterborne freight is transported.

(2) "Coastal erosion" means the loss of land, marshes, wetlands, beaches, or other coastal features because of the actions of wind, waves, tides, storm surges, subsidence, or other forces.

(3) "Erosion response project" means an action intended to address or mitigate coastal erosion, including beach nourishment, sediment management, beneficial use of dredged material, creation or enhancement of a dune, wetland, or marsh, and construction of a breakwater, bulkhead, groin, jetty, or other structure.

(4) "Gulf Coast state" means Louisiana, Mississippi, Alabama, or Florida.

(5) "Inland waters" means the navigable waters shoreward of the navigational demarcation lines dividing the high seas from harbors, rivers, the Gulf Intracoastal Waterway, and other inland waters of Texas, Louisiana, Mississippi, Alabama, Arkansas, Tennessee, Missouri, Illinois, Kentucky, or Indiana or of Florida along the Gulf of Mexico shoreline of Florida from the Florida-Alabama border down to and including the shoreline of Key West, Florida. The term does not include the Great Lakes.

(b) This section applies only to suits brought under the Jones Act (46 U.S.C. Section 30104).

(c) Except as provided by this section, a suit brought under the Jones Act shall be brought:

(1) in the county where the defendant's principal office in this state is located;

(2) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred; or

(3) in the county where the plaintiff resided at the time the cause of action accrued.

(d) If all or a substantial part of the events or omissions giving rise to the claim occurred on the inland waters of this state, ashore in this state, or during the course of an erosion response project in this state, the suit shall be brought:

(1) in the county in which all or a substantial part of the events giving rise to the claim occurred; or

(2) in the county where the defendant's principal office in this state is located.

(e) If all or a substantial part of the events or omissions giving rise to the claim occurred on inland waters outside this state, ashore in a Gulf Coast state, or during the course of an erosion response project in a Gulf Coast state, the suit shall be brought:

(1) in the county where the defendant's principal office in this state is located if the defendant's principal office in this state is located in a coastal county;

(2) in Harris County unless the plaintiff resided in Galveston County at the time the cause of action accrued;

(3) in Galveston County unless the plaintiff resided in Harris County at the time the cause of action accrued; or

(4) if the defendant does not have a principal office in this state located in a coastal county, in the county where the plaintiff resided at the time the cause of action accrued.

Added by Acts 2007, 80th Leg., c. 203, § 2, eff. May 14, 2007. Amended by Acts 2009, 81st Leg., R.S., c. 87, § 5.001, eff. Sept. 1, 2009.

Section 3 of Acts 2007, 80th Leg., c. 203, provides:

The change in law made by this Act applies only to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 15.019. Inmate Litigation.

(a) Except as provided by Section 15.014, an action that accrued while the plaintiff was housed in a facility operated by or under contract with the Texas Department of Criminal Justice shall be brought in the county in which the facility is located.

(b) An action brought by two or more plaintiffs that accrued while the plaintiffs were housed in a facility operated by or under contract with the Texas Department of Criminal Justice shall be brought in a county in which a facility that housed one of the plaintiffs is located.

(c) This section does not apply to an action brought under the Family Code.

Added by Acts 1995, 74th Leg., c. 378, § 1, eff. June 8, 1995. Renumbered from V.T.C.A., Civil Practice and Remedies Code § 15.018 by Acts 1997, 75th Leg., c. 165, § 31.01(3), eff. Sept. 1, 1997.

§ 15.020. Major Transactions: Specification of Venue by Agreement.

(a) In this section, "major transaction" means a transaction evidenced by a written agreement under which a person pays or receives, or is obligated to pay or entitled to receive, consideration with an aggregate stated value equal to or greater than $1 million. The term does not include a transaction entered into primarily for personal, family, or household purposes, or to settle a personal injury or wrongful death claim, without regard to the aggregate value.

(b) An action arising from a major transaction shall be brought in a county if the party against whom the action is brought has agreed in writing that a suit arising from the transaction may be brought in that county.

(c) Notwithstanding any other provision of this title, an action arising from a major transaction may not be brought in a county if:

(1) the party bringing the action has agreed in writing that an action arising from the transaction may not be brought in that county, and the action may be brought in another county of this state or in another jurisdiction; or

(2) the party bringing the action has agreed in writing that an action arising from the transaction must be brought in another county of this state or in another jurisdiction, and the action may be brought in that other county, under this section or otherwise, or in that other jurisdiction.

(d) This section does not apply to an action if:

(1) the agreement described by this section was unconscionable at the time that it was made;

(2) the agreement regarding venue is voidable under Chapter 272, Business & Commerce Code; or

(3) venue is established under a statute of this state other than this title.

(e) This section does not affect venue and jurisdiction in an action arising from a transaction that is not a major transaction.

Added by Acts 1999, 76th Leg., c. 84, § 1, eff. Aug. 30, 1999. Amended by Acts 2007, 80th Leg., R.S., c. 885, § 2.10, eff. April 1, 2009.

[Sections 15.022 to 15.030 reserved for expansion]

SUBCHAPTER C.
PERMISSIVE VENUE

§ 15.031. Executor; Administrator; Guardian.

If the suit is against an executor, administrator, or guardian, as such, to establish a money demand against the estate which he represents, the suit may be brought in the county in which the estate is administered, or if the suit is against an executor, administrator, or guardian growing out of a negligent act or omission of the person whose estate the executor, administrator, or guardian represents, the suit may be brought in the county in which the negligent act or omission of the person whose estate the executor, administrator, or guardian represents occurred.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.032. Insurance.

Suit against fire, marine, or inland insurance companies may also be commenced in any county in which the insured property was situated. A suit on a policy may be brought against any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health, and accident insurance company in the county in which the company's principal office in this state is located or in the county in which the loss has occurred or in which the policyholder or beneficiary instituting the suit resided at the time the cause of action accrued.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., c. 138, § 3, eff. Aug. 28, 1995.

§ 15.033. Breach Of Warranty By Manufacturer.

A suit for breach of warranty by a manufacturer of consumer goods may be brought in any county in which all or a substantial part of the events or omissions giving rise to the claim occurred, in the county in which the manufacturer has its principal office in this state, or in the county in which the plaintiff resided at the time the cause of action accrued.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., c. 138, § 3, eff. Aug. 28, 1995.

§ 15.035. Contract in Writing.

(a) Except as provided by Subsection (b), if a person has contracted in writing to perform an obligation in a particular county, expressly naming the county or a definite place in that county by that writing, suit on or by reason of the obligation may be brought against him either in that county or in the county in which the defendant has his domicile.

(b) In an action founded on a contractual obligation of the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use, suit by a creditor on or by reason of the obligation may be brought against the defendant either in the county in which the defendant in fact signed the contract or in the county in which the defendant resides when the action is commenced. No term or statement contained in an obligation described in this section shall constitute a waiver of these provisions.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.038. Other Permissive Venue.

An action governed by any other statute prescribing permissive venue may be brought in the county allowed by that statute.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.039. Transient Person.

A transient person may be sued in any county in which he may be found.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

[Sections 15.041 to 15.060 reserved for expansion]

SUBCHAPTER D.
GENERAL PROVISIONS

§ 15.062. Counterclaims, Cross Claims, and Third-Party Claims.

(a) Venue of the main action shall establish venue of a counterclaim, cross claim or third-party claim properly joined under the Texas Rules of Civil Procedure or any applicable statute.

(b) If an original defendant properly joins a third-party defendant, venue shall be proper for a claim arising out of the same transaction, occurrence, or series of transactions or occurrences by the plaintiff against the third-party defendant if the claim arises out of the subject matter of the plaintiff's claim against the original defendant.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., c. 138, § 4, eff. Aug. 28, 1995.

§ 15.063. Transfer.

The court, on motion filed and served concurrently with or before the filing of the answer, shall transfer an action to another county of proper venue if:

(1) the county in which the action is pending is not a proper county as provided by this chapter;

(2) an impartial trial cannot be had in the county in which the action is pending; or

(3) written consent of the parties to transfer to any other county is filed at any time.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.064. Hearings.

(a) In all venue hearings, no factual proof concerning the merits of the case shall be required to establish venue. The court shall determine venue questions from the pleadings and affidavits. No interlocutory appeal shall lie from the determination.

(b) On appeal from the trial on the merits, if venue was improper it shall in no event be harmless error and shall be reversible error. In determining whether venue was or was not proper, the appellate court shall consider the entire record, including the trial on the merits.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.0641. Venue Rights of Multiple Defendants.

In a suit in which two or more defendants are joined, any action or omission by one defendant in relation to venue, including a waiver of venue by one defendant, does not operate to impair or diminish the right of any other defendant to properly challenge venue.

Added by Added by Acts 1995, 74th Leg., c. 138, § 5, eff. Aug. 28, 1995.

§ 15.0642. Mandamus.

A party may apply for a writ of mandamus with an appellate court to enforce the mandatory venue provisions of this chapter. An application for the writ of mandamus must be filed before the later of:

(1) the 90th day before the date the trial starts; or

(2) the 10th day after the date the party receives notice of the trial setting.

Added by Acts 1995, 74th Leg., c. 138, § 5, eff. Aug. 28, 1995.

§ 15.065. Watercourse or Roadway Forming County Boundary.

If a river, watercourse, highway, road, or street forms the boundary line between two counties, the courts of each county have concurrent jurisdiction over the parts of the watercourse or roadway that form the boundary of the county in the same manner as if the watercourse or roadway were in that county.

Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.066. Conflict with Rules of Civil Procedure.

Subject to Section 22.004, Government Code, to the extent that this chapter conflicts with the Texas Rules of Civil Procedure, this chapter controls.

Added by Acts 1995, 74th Leg., c. 138, § 6, eff. Aug. 28, 1995.

[Sections 15.067 to 15.080 reserved for expansion]

SUBCHAPTER E.
SUITS BROUGHT IN JUSTICE COURT

§ 15.081. Application.

This subchapter applies only to suits brought in a justice court.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.082. Venue: General Rule.

Except as otherwise provided by this subchapter or by any other law, a suit in justice court shall be brought in the county and precinct in which one or more defendants reside.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.0821. Administrative Rules for Transfer.

The justices of the peace in each county shall, by majority vote, adopt local rules of administration regarding the transfer of a pending case from one precinct to a different precinct.

Added by Acts 2011, 82nd Leg., 1st C.S., H.B. 79, § 5.05, eff. Jan. 1, 2012.

§ 15.083. Residence of a Single Man.

A single man's residence is where he boards.

Added by Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

§ 15.084. Forcible Entry and Detainer.

A suit for forcible entry and detainer shall be brought in the precinct in which all or part of the premises is located.

Added by Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

§ 15.085. Executor; Administrator; Guardian.

A suit against an executor, an administrator, or a guardian shall be brought in the county in which the administration or guardianship is pending and in the precinct in which the county seat is located.

Added by Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

§ 15.086. Counties.

A suit against a county shall be brought in the precinct in which the county seat of that county is located.

Added by Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

§ 15.087. Option: Suite in Defendant's County of Residence.

A suit to which a permissive venue section of this subchapter applies may be brought and maintained either in the county provided for by that section or in the county in which the defendant resides.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.088. Nonresident; Residence Unknown.

A suit against a nonresident of this state or against a person whose residence is unknown may be brought in the county and precinct in which the plaintiff resides.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.089. Transient Person.

A suit against a transient person may be brought in any county and precinct in which the transient person is found.

Added by Acts 1985, 69th Leg., c. 959, Sec. 1, eff. Sept. 1, 1985.

§ 15.090. Personal Property.

A suit to recover personal property may be brought in the county and precinct in which the property is located.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.091. Rents.

A suit to recover rents may be brought in the county and precinct in which all or part of the rented premises is located.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.092. Contract.

(a) Except as otherwise provided by this section, a suit on a written contract that promises performance at a particular place may be brought in the county and precinct in which the contract was to be performed.

(b) A suit on an oral or written contract for labor actually performed may be brought in the county and precinct in which the labor was performed.

(c) A suit by a creditor on a contract for goods, services, or loans intended primarily for personal, family, household, or agricultural use may be brought only in the county and precinct in which the contract was signed or in which the defendant resides.

(d) A contract described by Subsection (c) may not waive the venue provided by that subsection.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.093. Torts.

A tort suit for damages may be brought in the county and precinct in which the injury was inflicted.

Added by Acts 1985, 69th Leg., c. 959§ 1, eff. Sept. 1, 1985.

§ 15.094. Corporation; Association; Joint-Stock Company.

A suit against a private corporation, association, or joint-stock company may be brought in the county and precinct in which:

(1) all or part of the cause of action arose;

(2) the corporation, association, or company has an agency or representative; or

(3) the principal office of the corporation, association, or company is located.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.095. Railroad Companies; Carriers.

A suit against a railroad company, a canal company, or the owners of a line of transportation vehicles for injury to a person or property on the railroad, canal, or line of vehicles or for liability as a carrier may be brought in a precinct through which that railroad, canal, or line of vehicles passes or in a precinct in which the route of that railroad, canal, or vehicle begins or ends.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.096. Steamboat or Other Vessel.

A suit against the owner of a steamboat or other vessel may be brought in the county or precinct in which:

(1) the steamboat or vessel may be found;

(2) the cause of action arose; or

(3) the liability accrued or was contracted.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.097. Insurance Companies.

(a) A suit against a fire, marine, or inland marine insurance company may be brought in the county and precinct in which all or part of the insured property was located.

(b) A suit against an accident and life insurance company or association may be brought in the county and precinct in which one or more of the insured persons resided when the injury or death occurred.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.098. Pleading Requirements.

If a suit is brought in a county or precinct in which the defendant does not reside, the citation or pleading must affirmatively show that the suit comes within an exception provided for by this subchapter.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.099. More Than One Justice.

If there is more than one justice of the peace in a precinct or in an incorporated city or town, suit may be brought before any justice of the peace in that precinct or incorporated city or town.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 15.100. Disqualified Justice.

If the justice in the proper precinct is not qualified to try the suit, suit may be brought before the nearest qualified justice in the county.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

CHAPTER 16.
LIMITATIONS

SUBCHAPTER A.
LIMITATIONS OF PERSONAL ACTIONS

§ 16.001. Effect of Disability.

(a) For the purposes of this subchapter, a person is under a legal disability if the person is:

(1) younger than 18 years of age, regardless of whether the person is married; or

(2) of unsound mind.

(b) If a person entitled to bring a personal action is under a legal disability when the cause of action accrues, the time of the disability is not included in a limitations period.

(c) A person may not tack one legal disability to another to extend a limitations period.

(d) A disability that arises after a limitations period starts does not suspend the running of the period.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 1049, § 56, eff. Sept. 1, 1987.

§ 16.002. One-Year Limitations Period.

(a) A person must bring suit for malicious prosecution, libel, slander, or breach of promise of marriage not later than one year after the day the cause of action accrues.

(b) A person must bring suit to set aside a sale of property seized under Subchapter E, Chapter 33, Tax Code, not later than one year after the date the property is sold.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., c. 1017, § 3, eff. Aug. 28, 1995.

§ 16.003. Two-Year Limitations Period.

(a) Except as provided by Sections 16.010, 16.0031, and 16.0045, a person must bring suit for trespass for injury to the estate or to the property of another, conversion of personal property, taking or detaining the personal property of another, personal injury, forcible entry and detainer, and forcible detainer not later than two years after the day the cause of action accrues.

(b) A person must bring suit not later than two years after the day the cause of action accrues in an action for injury resulting in death. The cause of action accrues on the death of the injured person.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., c. 739, § 2, eff. June 15, 1995; Acts 1997, 75th Leg., c. 26, § 2, eff. May 1, 1997; Acts 2005, 79th Leg., c 97, § 3, eff. Sept. 1, 2005.

§ 16.0031. Asbestos-Related or Silica-Related Injuries.

(a) In an action for personal injury or death resulting from an asbestos-related injury, as defined by Section 90.001, the cause of action accrues for purposes of Section 16.003 on the earlier of the following dates:

(1) the date of the exposed person's death; or

(2) the date that the claimant serves on a defendant a report complying with Section 90.003 or 90.010(f).

(b) In an action for personal injury or death resulting from a silica-related injury, as defined by Section 90.001, the cause of action accrues for purposes of Section 16.003 on the earlier of the following dates:

(1) the date of the exposed person's death; or

(2) the date that the claimant serves on a defendant a report complying with Section 90.004 or 90.010(f).

Added by Acts 2005, 79th Leg., c. 97, § 4, eff. Sept. 1, 2005.

§ 16.004. Four-Year Limitations Period.

(a) A person must bring suit on the following actions not later than four years after the day the cause of action accrues:

(1) specific performance of a contract for the conveyance of real property;

(2) penalty or damages on the penal clause of a bond to convey real property;

(3) debt;

(4) fraud; or

(5) breach of fiduciary duty.

(b) A person must bring suit on the bond of an executor, administrator, or guardian not later than four years after the day of the death, resignation, removal, or discharge of the executor, administrator, or guardian.

(c) A person must bring suit against his partner for a settlement of partnership accounts, and must bring an action on an open or stated account, or on a mutual and current account concerning the trade of merchandise between merchants or their agents or factors, not later than four years after the day that the cause of action accrues. For purposes of this subsection, the cause of action accrues on the day that the dealings in which the parties were interested together cease.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., c. 950, § 1, eff. Aug. 30, 1999.

§ 16.0045. Five-Year Limitations Period.

(a) A person must bring suit for personal injury not later than five years after the day the cause of action accrues if the injury arises as a result of conduct that violates:

(1) Section 22.011, Penal Code (sexual assault);

(2) Section 22.021, Penal Code (aggravated sexual assault);

(3) Section 21.02, Penal Code (continuous sexual abuse of young child or children);

(4) Section 20A.02, Penal Code (trafficking of persons); or

(5) Section 43.05, Penal Code (compelling prostitution).

(b) In an action for injury resulting in death arising as a result of conduct described by Subsection (a), the cause of action accrues on the death of the injured person.

(c) The limitations period under this section is tolled for a suit on the filing of a petition by any person in an appropriate court alleging that the identity of the defendant in the suit is unknown and designating the unknown defendant as "John or Jane Doe." The person filing the petition shall proceed with due diligence to discover the identity of the defendant and amend the petition by substituting the real name of the defendant for "John or Jane Doe" not later than the 30th day after the date that the defendant is identified to the plaintiff. The limitations period begins running again on the date that the petition is amended.

Added by Acts 1995, 74th Leg., c. 739, § 1, eff. June 15, 1995. Amended by Acts 2007, 80th Leg., R.S., c. 593, § 3.01, eff. Sept. 1, 2007; Acts 2011, 82nd Leg., R.S., c. 1, § 3.01, eff. Sept. 1, 2011.

§ 16.012. Products Liability.

(a) In this section:

(1) "Claimant," "seller," and "manufacturer" have the meanings assigned by Section 82.001.

(2) "Products liability action" means any action against a manufacturer or seller for recovery of damages or other relief for harm allegedly caused by a defective product, whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories, and whether the relief sought is recovery of damages or any other legal or equitable relief, including a suit for:

(A) injury or damage to or loss of real or personal property;

(B) personal injury;

(C) wrongful death;

(D) economic loss; or

(E) declaratory, injunctive, or other equitable relief.

(b) Except as provided by Subsections (c), (d), and (d-1), a claimant must commence a products liability action against a manufacturer or seller of a product before the end of 15 years after the date of the sale of the product by the defendant.

(c) If a manufacturer or seller expressly warrants in writing that the product has a useful safe life of longer than 15 years, a claimant must commence a products liability action against that manufacturer or seller of the product before the end of the number of years warranted after the date of the sale of the product by that seller.

(d) This section does not apply to a products liability action seeking damages for personal injury or wrongful death in which the claimant alleges:

(1) the claimant was exposed to the product that is the subject of the action before the end of 15 years after the date the product was first sold;

(2) the claimant's exposure to the product caused the claimant's disease that is the basis of the action; and

(3) the symptoms of the claimant's disease did not, before the end of 15 years after the date of the first sale of the product by the defendant, manifest themselves to a degree and for a duration that would put a reasonable person on notice that the person suffered some injury.

(d-1) This section does not reduce a limitations period for a cause of action described by Subsection (d) that accrues before the end of the limitations period under this section.

(e) This section does not extend the limitations period within which a products liability action involving the product may be commenced under any other law.

(f) This section applies only to the sale and not to the lease of a product.

(g) This section does not apply to any claim to which the General Aviation Revitalization Act of 1994 (Pub. L. No. 103-298, 108 Stat. 1552 (1994), reprinted in note, 49 U.S.C. Section 40101) or its exceptions are applicable.

Added by Acts 1993, 73rd Leg., c. 5, § 2, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., c. 204, § 5.01, eff. Sept. 1, 2003.

SUBCHAPTER D.
MISCELLANEOUS PROVISIONS

§ 16.068. Amended and Supplemental Pleadings.

If a filed pleading relates to a cause of action, cross action, counterclaim, or defense that is not subject to a plea of limitation when the pleading is filed, a subsequent amendment or supplement to the pleading that changes the facts or grounds of liability or defense is not subject to a plea of limitation unless the amendment or supplement is wholly based on a new, distinct, or different transaction or occurrence.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.069. Counterclaim or Cross Claim.

(a) If a counterclaim or cross claim arises out of the same transaction or occurrence that is the basis of an action, a party to the action may file the counterclaim or cross claim even though as a separate action it would be barred by limitation on the date the party's answer is required.

(b) The counterclaim or cross claim must be filed not later than the 30th day after the date on which the party's answer is required.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

CHAPTER 17.
PARTIES; CITATION; LONG-ARM JURISDICTION

SUBCHAPTER C.
LONG-ARM JURISDICTION IN SUIT ON BUSINESS TRANSACTION OR TORT

§ 17.041. Definition.

In this subchapter, "nonresident" includes:

(1) an individual who is not a resident of this state; and

(2) a foreign corporation, joint-stock company, association, or partnership.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 17.042. Acts Constituting Business in This State.

In addition to other acts that may constitute doing business, a nonresident does business in this state if the nonresident:

(1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;

(2) commits a tort in whole or in part in this state; or

(3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 17.043. Service on Person in Charge of Business.

In an action arising from a nonresident's business in this state, process may be served on the person in charge, at the time of service, of any business in which the nonresident is engaged in this state if the nonresident is not required by statute to designate or maintain a resident agent for service of process.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 17.044. Substituted Service on Secretary of State.

(a) The secretary of state is an agent for service of process or complaint on a nonresident who:

(1) is required by statute to designate or maintain a resident agent or engages in business in this state, but has not designated or maintained a resident agent for service of process;

(2) has one or more resident agents for service of process, but two unsuccessful attempts have been made on different business days to serve each agent; or

(3) is not required to designate an agent for service in this state, but becomes a nonresident after a cause of action arises in this state but before the cause is matured by suit in a court of competent jurisdiction.

(b) The secretary of state is an agent for service of process on a nonresident who engages in business in this state, but does not maintain a regular place of business in this state or a designated agent for service of process, in any proceeding that arises out of the business done in this state and to which the nonresident is a party.

(c) After the death of a nonresident for whom the secretary of state is an agent for service of process under this section, the secretary of state is an agent for service of process on a nonresident administrator, executor, or personal representative of the nonresident. Of an administrator, executor, or personal representative for the estate of the deceased nonresident is not appointed, the secretary of state is an agent for service of process on an heir, as determined by the law of the foreign jurisdiction, of the deceased nonresident.

(d) If a nonresident for whom the secretary of state is an agent for service of process under this section is judged incompetent by a court of competent jurisdiction, the secretary of state is an agent for service of process on a guardian or personal representative of the nonresident.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 158, § 1, eff. May 25, 1987.

§ 17.045. Notice to Nonresident.

(a) If the secretary of state is served with duplicate copies of process for a nonresident, the documents shall contain a statement of the name and address of the nonresident's home or home office and the secretary of state shall immediately mail a copy of the process to the nonresident at the address provided.

(b) If the secretary of state is served with process under Section 17.044(a)(3), he shall immediately mail a copy of the process to the nonresident (if an individual), to the person in charge of the nonresident's business, or to a corporate officer (if the nonresident is a corporation).

(c) If the person in charge of a nonresident's business is served with process under Section 17.043, a copy of the process and notice of the service must be immediately mailed to the nonresident or the nonresident's principal place of business.

(d) The process or notice must be sent by registered mail or by certified mail, return receipt requested.

(e) If the secretary of state is served with duplicate copies of process as an agent for a person who is a nonresident administrator, executor, heir, guardian, or personal representative of a nonresident, the secretary shall require a statement of the person's name and address and shall immediately mail a copy of the process to the person.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 158, § 2, eff. May 25, 1987; Acts 2001, 77th Leg., c. 275, § 1, eff. Sept. 1, 2001.

Chapter 20.
Depositions

§ 20.001. Persons Who May Take a Deposition on Written Questions.

(a) A deposition on written questions of a witness who is alleged to reside or to be in this state may be taken by:

(1) a clerk of a district court;

(2) a judge or clerk of a county court; or

(3) a notary public of this state.

(b) A deposition of a witness who is alleged to reside or to be outside this state, but inside the United States, may be taken in another state by:

(1) a clerk of a court of record having a seal;

(2) a commissioner of deeds appointed under the laws of this state; or

(3) any notary public

(c) A deposition on written questions of a witness who is alleged to reside or to be outside the United States may be taken by:

(1) a minister, commissioner, or charge d'affaires of the United States who is a resident of and is accredited in the country where the deposition is taken;

(2) a consul general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who is a resident of the country where the deposition is taken; or

(3) any notary public.

(d) A deposition on written questions of a witness who is alleged to be a member of the United States Armed Forces or of a United States Armed Forces Auxiliary or who is alleged to be a civilian employed by or accompanying the armed forces or an auxiliary outside the United States may be taken by a commissioned officer in the United States Armed Forces or United States Armed Forces Auxiliary or by a commissioned officer in the United States Armed Forces Reserve or an auxiliary of it. If a deposition on written questions appears on its face to have been taken as provided by

this subsection and the deposition or any part of it is offered in evidence, it is presumed, absent pleading and proof to the contrary, that the person taking the deposition as a commissioned officer was a commissioned officer on the date that the deposition was taken, and that the deponent was a member of the authorized group of military personnel or civilians.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., c. 1037, § 4, eff. Sept. 1, 1993; Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 10.001, eff. Sept 1, 2023.

§ 20.002. Testimony Required by Foreign Jurisdiction. [Repealed by Acts 2023, 88th Leg., R.S., c. 616 (HB 3929), § 2(a), eff. Sept. 1, 2025.]

If a court of record in any other state or foreign jurisdiction issues a mandate, writ, or commission that requires a witness's testimony in this state, either to written questions or by oral deposition, the witness may be compelled to appear and testify in the same manner and by the same process used for taking testimony in a proceeding pending in this state.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

Section 1 of Acts 2023, 88th Leg., R.S., c. 616 (HB 3929), provides:

Before September 1, 2025, the Supreme Court of Texas may adopt the Uniform Interstate Depositions and Discovery Act as rules of civil procedure.

Section 2(b) of Acts 2023, 88th Leg., R.S., c. 616 (HB 3929), provides:

If the Supreme Court of Texas adopts the rules described by Section 1 of this Act with an effective date before September 1, 2025, those rules supersede Section 20.002, Civil Practice and Remedies Code, to the extent of any conflict.

Section 2(c) of Acts 2023, 88th Leg., R.S., c. 616 (HB 3929), provides:

Notwithstanding the repeal by this Act of Section 20.002, Civil Practice and Remedies Code, if the Supreme Court of Texas does not adopt the rules described by Section 1 of this Act before September 1, 2025, the substance of Section 20.002, Civil Practice and Remedies Code, as that section existed immediately before the effective date of this Act, is continued in effect.

CHAPTER 22.
WITNESSES

SUBCHAPTER A.
WITNESSES

§ 22.001. Witness Fees.

(a) Except as provided by Section 22.003, a witness is entitled to 10 dollars for each day the witness attends court. This fee includes the entitlement for travel and the witness is not entitled to any reimbursement for mileage traveled.

(b) The party who summons the witness shall pay that witness's fee for one day, as provided by this section, at the time the subpoena is served on the witness.

(c) The witness fee must be taxed in the bill of costs as other costs.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., c. 103, § 1, eff. Jan. 1, 1994; Acts 1993, 73rd Leg., c. 449, § 16, eff. Sept. 1, 1993; Acts 2023, 88th Leg., R.S., c. 768 (HB 4595), § 4.001, eff. Sept. 1, 2023.

§ 22.002. Distance for Subpoenas.

A witness who is represented to reside 150 miles or less from a county in which a suit is pending or who may be found within that distance at the time of trial on the suit may be subpoenaed in the suit.

Added by Acts 1993, 73rd Leg., c. 103, § 1, eff. Jan. 1, 1994.

CHAPTER 30.
MISCELLANEOUS PROVISIONS

§ 30.001. Instrument to Waive Service or Confess Judgment.

In an instrument executed before suit is brought, a person may not accept service and waive process, enter an appearance in open court, or confess a judgment.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 30.006. Certain Law Enforcement Agency Records Not Subject to Discovery.

(a) In this section, "law enforcement agency" means a governmental agency that employs a peace officer as defined under Article 2.12, Code of Criminal Procedure.

[Subsection (a) as amended by Acts 2023, 88th Leg., R.S., c. 765 (HB 4504), § 2.009, eff. Jan. 1, 2025.]

(a) In this section, "law enforcement agency" means a governmental agency that employs a peace officer as defined by Article 2A.001, Code of Criminal Procedure.

(b) This section does not apply to an action in which a law enforcement agency is a party.

(c) Except as provided by Subsection (d), a court in a civil action may not order discovery from a nonparty law enforcement agency of information, records, documents, evidentiary materials, and tangible things if:

(1) the information, records, documents, evidentiary materials, or tangible things deal with:

(A) the detection, investigation, or prosecution of crime; or

(B) an investigation by the nonparty law enforcement agency that does not result in conviction or deferred adjudication; and

(2) the release of the information, records, documents, evidentiary materials, or tangible things would interfere with the detection, investigation, or prosecution of criminal acts.

(d) On motion of a party, the court may order discovery from a nonparty law enforcement agency of information, records, documents, evidentiary materials, and tangible things described by Subsection (c) if the court determines, after in camera inspection, that:

(1) the discovery sought is relevant; and

(2) there is a specific need for the discovery.

(e) This section does not apply to:

(1) a report of a collision under Chapter 550, Transportation Code; and

(2) photographs, field measurements, scene drawings, and collision reconstruction done in conjunction with the investigation of the underlying collision.

Added by Acts 2007, 80th Leg., c. 679, § 1, eff. Sept. 1, 2007. Amended by Acts 2023, 88th Leg., R.S., c. 765 (HB 4504), § 2.009, eff. Jan. 1, 2025; Acts 2023, 88th Leg., R.S., c. 709 (HB 2190), § 113, eff. Sept. 1, 2023.

Section 2 Acts 2007, 80th Leg., c. 679, provides:

(a) This Act applies to an action:

(1) commenced on or after the effective date of this Act; or

(2) pending on that effective date and in which the trial, on any new trial or retrial following motion, appeal, or otherwise, begins on or after that effective date.

(b) In an action commenced before the effective date of this Act, a trial, new trial, or retrial that is in progress on the effective date is governed by the law applicable to the trial, new trial, or retrial immediately before the effective date, and that law is continued in effect for that purpose.

§ 30.016. Recusal or Disqualification of Certain Judges.

(a) In this section, "tertiary recusal motion" means a third or subsequent motion for recusal or disqualification filed against a district court or statutory county court judge by the same party in a case.

(b) A judge who declines recusal after a tertiary recusal motion is filed shall comply with applicable rules of procedure for recusal and disqualification except that the judge shall continue to:

(1) preside over the case;

(2) sign orders in the case; and

(3) move the case to final disposition as though a tertiary recusal motion had not been filed.

(c) A judge hearing a tertiary recusal motion against another judge who denies the motion shall award reasonable and necessary attorney's fees and costs to the party opposing the motion. The party making the motion and the attorney for the party are jointly and severally liable for the award of fees and costs. The fees and costs must be paid before the 31st day after the date the order denying the tertiary recusal motion is rendered, unless the order is properly superseded.

(d) The denial of a tertiary recusal motion is only reviewable on appeal from final judgment.

(e) If a tertiary recusal motion is finally sustained, the new judge for the case shall vacate all orders signed by the sitting judge during the pendency of the tertiary recusal motion.

Added by Acts 1999, 76th Leg., c. 608, § 1, eff. Sept. 1, 1999. Amended by Acts 2007, 80th Leg., c. 1297, § 3, eff. Sept. 1, 2007.

Section 4 of Acts 2007, 80th Leg., c. 1297, provides:

The changes in law made by this Act apply only to a motion for recusal or disqualification of a judge that is filed on or after the effective date of this Act. A motion for recusal or disqualification of a judge filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and the former law is continued in effect for that purpose.

SUBTITLE C.
JUDGMENTS

CHAPTER 31.
JUDGMENTS

§ 31.004. Effect of Adjudication in Lower Trial Court.

(a) A judgment or a determination of fact or law in a proceeding in a lower trial court is not res judicata and is not a basis for estoppel by judgment in a proceeding in a district court, except that a judgment rendered in a lower trial court is binding on the parties thereto as to recovery or denial of recovery.

(b) This section does not apply to a judgment in probate, guardianship, mental health, or other matter in which a lower trial court has exclusive subject matter jurisdiction on a basis other than the amount in controversy.

(c) For the purposes of this section, a "lower trial court" is a small claims court, a justice of the peace court, a county court, or a statutory county court.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 167, § 3.07(a), eff. Sept. 1, 1987.

§ 31.005. Effect of Adjudication in Small Claims or Justice of the Peace Court.

A judgment or a determination of fact or law in a proceeding in small claims court or justice of the peace court is not res judicata and does not constitute a basis for estoppel by judgment in a proceeding in a county court or statutory county court, except that the judgment rendered is binding on the parties thereto as to recovery or denial of recovery.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

CHAPTER 32.
CONTRIBUTION

§ 32.001. Application.

(a) This chapter applies only to tort actions.

(b) This chapter does not apply if a right of contribution, indemnity, or recovery between defendants is provided by other statute or by common law.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 32.002. Right of Action.

A person against whom a judgment is rendered has, on payment of the judgment, a right of action to recover payment from each codefendant against whom judgment is also rendered.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 32.003. Recovery.

(a) The person may recover from each codefendant against whom judgment is rendered an amount determined by dividing the number of all liable defendants into the total amount of the judgment.

(b) If a codefendant is insolvent, the person may recover from each solvent codefendant an amount determined by dividing the number of solvent defendants into the total amount of the judgment.

(c) Each defendant in the judgment has a right to recover from the insolvent defendant the amount the defendant has had to pay because of the insolvency.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

CHAPTER 33.
PROPORTIONATE RESPONSIBILITY

SUBCHAPTER A.
PROPORTIONATE RESPONSIBILITY

§ 33.001. Proportionate Responsibility.

In an action to which this chapter applies, a claimant may not recover damages if his percentage of responsibility is greater than 50 percent.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.04, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.002. Applicability.

(a) This chapter applies to:

(1) any cause of action based on tort in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought; or

(2) any action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) in which a defendant, settling person, or responsible third party is found responsible for a percentage of the hard for which relief is sought.

(b) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

(c) This chapter does not apply to:

(1) an action to collect workers' compensation benefits under the workers' compensation laws of this state (Subtitle A, Title 5, Labor Code) or actions against an employer for exemplary damages arising out of the death of an employee;

(2) a claim for exemplary damages included in an action to which this chapter otherwise applies; or

(3) a cause of action for damages arising from the manufacture of methamphetamine as described by Chapter 99.

(d) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

(e) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

(f) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

(g) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

(h) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.05, eff. Sept. 2, 1987. Amended by Acts 1989, 71st Leg., c. 380, § 4, eff. Sept. 1, 1989; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., c. 414, § 17, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., c. 643, § 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., c. 204, § 4.01, eff. Sept. 1, 2003.

§ 33.003. Determination of Percentage of Responsibility.

(a) The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons with respect to each person's causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these:

(1) each claimant;

(2) each defendant;

(3) each settling person; and

(4) each responsible third party who has been designated under Section 33.004.

(b) This section does not allow a submission to the jury of a question regarding conduct by any person without sufficient evidence to support the submission.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.06, eff. Sept. 2, 1987. Amended by Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., c. 204, § 4.02, eff. Sept. 1, 2003.

§ 33.004. Designation of Responsible Third Party.

(a) A defendant may seek to designate a person as a responsible third party by filing a motion for leave to designate that person as a responsible third party. The motion must be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.

(b) Nothing in this section affects the third-party practice as previously recognized in the rules and statutes of this state with regard to the assertion by a defendant of rights to contribution or indemnity. Nothing in this section affects the filing of cross-claims or counterclaims.

(c) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10(2).

(d) A defendant may not designate a person as a responsible third party with respect to a claimant's cause of action after the applicable limitations period on the cause of action has expired with respect to the responsible third party if the defendant has failed to comply with its obligations, if any, to timely disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure.

(e) Repealed by Acts 2011, 82nd Leg., R.S., c. 203, § 5.02, eff. Sept. 1, 2011.

(f) A court shall grant leave to designate the named person as a responsible third party unless another party files an objection to the motion for leave on or before the 15th day after the date the motion is served.

(g) If an objection to the motion for leave is timely filed, the court shall grant leave to designate the person as a responsible third party unless the objecting party establishes:

(1) the defendant did not plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirement of the Texas Rules of Civil Procedure; and

(2) after having been granted leave to replead, the defendant failed to plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirements of the Texas Rules of Civil Procedure.

(h) By granting a motion for leave to designate a person as a responsible third party, the person named in the motion is designated as a responsible third party for purposes of this chapter without further action by the court or any party.

(i) The filing or granting of a motion for leave to designate a person as a responsible third party or a finding of fault against the person:

(1) does not by itself impose liability on the person; and

(2) may not be used in any other proceeding, on the basis of res judicata, collateral estoppel, or any other legal theory, to impose liability on the person.

(j) Notwithstanding any other provision of this section, if, not later than 60 days after the filing of the defendant's original answer, the defendant alleges in an answer filed with the court that an unknown person committed a criminal act that was a cause of the loss or injury that is the subject of the lawsuit, the court shall grant a motion for leave to designate the unknown person as a responsible third party if:

(1) the court determines that the defendant has pleaded facts sufficient for the court to determine that there is a reasonable probability that the act of the unknown person was criminal;

(2) the defendant has stated in the answer all identifying characteristics of the unknown person, known at the time of the answer; and

(3) the allegation satisfies the pleading requirements of the Texas Rules of Civil Procedure.

(k) An unknown person designated as a responsible third party under Subsection (j) is denominated as "Jane Doe" or "John Doe" until the person's identity is known.

(l) After adequate time for discovery, a party may move to strike the designation of a responsible third party on the ground that there is no evidence that the designated person is responsible for any portion of the claimant's alleged injury or damage. The court shall grant the motion to strike unless a defendant produces sufficient evidence to raise a genuine issue of fact regarding the designated person's responsibility for the claimant's injury or damage.

Added by Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., c. 204, § 4.03, 4.04, 4.10(2) 4.04, eff. Sept. 1, 2003; Acts 2011, 82nd Leg., R.S., H.B. 274, §§ 5.01, 5.02, eff. Sept. 1, 2011.

Section 6.01 of Acts 2011, 82nd Leg., R.S., H.B. 274, provides:

The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose.

SUBCHAPTER B.
CONTRIBUTION

§ 33.011. Definitions.

In this chapter:

(1) "Claimant" means a person seeking recovery of damages, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff. In an action in which a party seeks recovery of damages for injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes:

(A) the person who was injured, was harmed, or dies or whose property was damaged; and

(B) any person who is seeking, has sought, or could seek recovery of damages for the injury, harm, or death of that person or for the damage to the property of that person.

(2) "Defendant" includes any person from whom, at the time of the submission of the case to the trier of the fact, a claimant seeks recovery of damages.

(3) "Liable defendant" means a defendant against whom a judgment can be entered for at least a portion of the damages awarded to the claimant.

(4) "Percentage of responsibility" means that percentage, stated in whole numbers, attributed by the trier of fact to each claimant, each defendant, each settling person, or each responsible third party with respect to causing or contributing to cause in any way, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity violative of the applicable legal standard, or by any combination of the foregoing, the personal injury, property damage, death, or other harm for which recovery of damages is sought.

(5) "Settling person" means a person who has, at any time, paid or promised to pay money or anything of monetary value to a claimant in consideration of potential liability with respect to the personal injury, property damage, death, or other harm for which recovery of damages is sought.

(6) "Responsible third party" means any person who is alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these. The term "responsible third party" does not include a seller eligible for indemnity under Section 82.002.

(7) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.07, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., c. 204, § 4.05, eff. Sept. 1, 2003.

§ 33.012. Amount of Recovery.

(a) If the claimant is not barred from recovery under Section 33.001, the court shall reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to the claimant's percentage of responsibility.

(b) If the claimant has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by the sum of the dollar amounts of all settlements.

(c) Notwithstanding Subsection (b), if the claimant in a health care liability claim filed under Chapter 74 has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by an amount equal to one of the following, as elected by the defendant:

(1) the sum of the dollar amounts of all settlements; or

(2) a percentage equal to each settling person's percentage of responsibility as found by the trier of fact.

(d) An election made under Subsection (c) shall be made by any defendant filing a written election before the issues of the action are submitted to the trier of fact and when made, shall be binding on all defendants. If no defendant makes this election or if conflicting elections are made, all defendants are considered to have elected Subsection (c)(1).

(e) This section shall not apply to benefits paid by or on behalf of an employer to an employee pursuant to workers' compensation insurance coverage, as defined in Section 401.011(44), Labor Code, in effect at the time of the act, event, or occurrence made the basis of claimant's suit.

Added by Acts 1985, 69th Leg., c. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, Sec. 2.08, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., c. 204, Sec. 4.06, 4.10(4), eff. Sept. 1, 2003; Acts 2005, 79th Leg., c. 277, § 1, eff. June 9, 2005; Acts 2005, 79th Leg., c. 728, § 23.001(6), eff. Sept. 1, 2005.

§ 33.013. Amount of Liability.

(a) Except as provided in Subsection (b), a liable defendant is liable to a claimant only for the percentage of the damages found by the trier of fact equal to that defendant's percentage of responsibility with respect to the personal injury, property damage, death, or other harm for which the damages are allowed.

[Subsection (b) as amended by Acts 2021, 87th Leg., R.S., c. 221, § 2.02, eff. Sept. 1, 2021.]

(b) Notwithstanding Subsection (a), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if:

(1) the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than 50 percent; or

(2) the defendant, with specific intent to do harm to others, acted in concert with another person to engage in the conduct described in the following provisions of the Penal Code and in so doing proximately caused the damages legally recoverable by the claimant:

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);

(C) Section 20.04 (aggravated kidnapping);

(D) Section 22.02 (aggravated assault);

(E) Section 22.011 (sexual assault);

(F) Section 22.021 (aggravated sexual assault);

(G) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(H) Section 32.21 (forgery);

(I) Section 32.43 (commercial bribery);

(J) Section 32.45 (misapplication of fiduciary property or property of financial institution;

(K) Section 32.46 (securing execution of document by deception);

(L) Section 32.47 (fraudulent destruction, removal, or concealment of writing; or

(M) conduct described in Chapter 31 the punishment level for which a felony of the third degree or higher; or

(N) Section 21.02 (continuous sexual abuse of young child or disabled individual).

[Subsection (b) as amended by Acts 2021, 87th Leg., R.S., c. 837, § 4, eff. Sept. 1, 2021.]

(b) Notwithstanding Subsection (a), each liable defendant is, in addition to the defendant's liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if:

(1) the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than 50 percent; or

(2) the defendant, with the specific intent to do harm to others, acted in concert with another person to engage in the conduct described in the following provisions of the Penal Code and in so doing proximately caused the damages legally recoverable by the claimant:

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);

(C) Section 20.04 (aggravated kidnapping);

(D) Section 22.02 (aggravated assault);

(E) Section 22.011 (sexual assault);

(F) Section 22.021 (aggravated sexual assault);

(G) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(H) Section 32.21 (forgery);

(I) Section 32.43 (commercial bribery);

(J) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(K) Section 32.46 (fraudulent securing of document execution);

(L) Section 32.47 (fraudulent destruction, removal, or concealment of writing);

(M) conduct described in Chapter 31 the punishment level for which is a felony of the third degree or higher; or

(N) Section 21.02 (continuous sexual abuse of young child or children).

(c) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

(d) This section does not create a cause of action.

(e) Notwithstanding anything to the contrary stated in the provisions of the Penal Code listed in Subsection (b)(2), that subsection applies only if the claimant proves the defendant acted or failed to act with specific intent to do harm. A defendant acts with specific intent to harm with respect to the nature of the defendant's conduct and the result of the person's conduct when it is the person's conscious effort or desire to engage in the conduct for the purpose of doing substantial harm to others.

(f) The jury may not be made aware through voir dire, introduction into evidence, instruction, or any other means that the conduct to which Subsection (b)(2) refers is defined by the Penal Code.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.09, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., c. 204, § 4.06, eff. Sept. 1, 2003; Acts 2007, 80th Leg., c. 593, § 3.02, eff. Sept. 1, 2007; Acts 2021, 87th Leg., R.S., c. 221, § 2.02, eff. Sept. 1, 2021; Acts 2021, 87th Leg., R.S., c. 837, § 4, eff. Sept. 1, 2021.

Section 4.01(a) of Acts 2007, 80th Leg., c. 593, provides:

(a) Except as provided by Subsections (b) and (c) of this section, the change in law made by this Act applies only to an offense committed on or after September 1, 2007. An offense committed before September 1, 2007, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For the purposes of this section, an offense was committed before September 1, 2007, if any element of the offense occurred before that date.

Section 2.02 of Acts 2021, 87th Leg., R.S., c. 221 provides:

The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Section 8 of Acts 2021, 87th Leg., R.S., c. 837 provides:

The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

§ 33.014. Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

§ 33.015. Contribution.

(a) If a defendant who is jointly and severally liable under Section 33.013 pays a percentage of the damages for which the defendant is jointly and severally liable greater than his percentage of responsibility, that defendant has a right of contribution for the overpayment against each other liable defendant to the extent that the other liable defendant has not paid the percentage of the damages found by the trier of fact equal to that other defendant's percentage of responsibility.

(b) As among themselves, each of the defendants who is jointly and severally liable under Section 33.013 is liable for the damages recoverable by the claimant under Section 33.012 in proportion to his respective percentage of responsibility. If a defendant who is jointly and severally liable pays a larger proportion of those damages than is required by his percentage of responsibility, that defendant has a right of contribution for the overpayment against each other defendant with whom he is jointly and severally liable under Section 33.013 to the extent that the other defendant has not paid the proportion of those damages required by that other defendant's percentage of responsibility.

(c) If for any reason a liable defendant does not pay or contribute the portion of the damages required by his percentage of responsibility, the amount of the damages not paid or contributed by that defendant shall be paid or contributed by the remaining defendants who are jointly and severally liable for those damages. The additional amount to be paid or contributed by each of the defendants who is jointly and severally liable for those damages shall be in proportion to his respective percentage of responsibility.

(d) No defendant has a right of contribution against any settling person.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.11, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.016. Claim Against Contribution Defendant.

(a) In this section, "contribution defendant" means any defendant, counterdefendant, or third-party defendant from whom any party seeks contribution with respect to any portion of damages for which that party may be liable, but from whom the claimant seeks no relief at the time of submission.

(b) Each liable defendant is entitled to contribution from each person who is not a settling person and who is liable to the claimant for a percentage of responsibility but from whom the claimant seeks no relief at the time of submission. A party may assert this contribution right against any such person as a contribution defendant in the claimant's action.

(c) The trier of fact shall determine as a separate issue or finding of fact the percentage of responsibility with respect to each contribution defendant and these findings shall be solely for purposes of this section and Section 33.015 and not as a part of the percentages of responsibility determined under Section 33.003. Only the percentage of responsibility of each defendant and contribution defendant shall be included in this determination.

(d) As among liable defendants, including each defendant who is jointly and severally liable under Section 33.013, each contribution defendant's percentage of responsibility is to be included for all purposes of Section 33.015. The amount to be contributed by each contribution defendant pursuant to Section 33.015 shall be in proportion to his respective percentage of responsibility relative to the sum of percentages of responsibility of all liable defendants and liable contribution defendants.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.11A, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.017. Preservation of Existing Rights of Indemnity.

Nothing in this chapter shall be construed to affect any rights of indemnity granted any statute, by contract, or by common law. To the extent of any conflict between this chapter and any right to indemnification granted by statute, contract, or common law, those rights of indemnification shall prevail over the provisions of this chapter.

Added by Added by Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., c. 204, § 4.08, eff. Sept. 1, 2003.

CHAPTER 35.
ENFORCEMENT OF JUDGMENTS OF OTHER STATES

§ 35.001. Definition.

In this chapter, "foreign judgment" means a judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this state.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 35.002. Short Title.

This chapter may be cited as the Uniform Enforcement of Foreign Judgments Act.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 35.003. Filing and Status of Foreign Judgments.

(a) A copy of a foreign judgment authenticated in accordance with an act of congress or a statute of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state.

(b) The clerk shall treat the foreign judgment in the same manner as a judgment of the court in which the foreign judgment is filed.

(c) A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 35.004. Affidavit; Notice of Filing.

(a) At the time a foreign judgment is filed, the judgment creditor or the judgment creditor's attorney shall file with the clerk of the court an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor.

(b) The judgment creditor or the judgment creditor's attorney shall:

(1) promptly mail notice of the filing of the foreign judgment to the judgment debtor at the address provided for the judgment debtor under Subsection (a); and

(2) file proof of mailing of the notice with the clerk of the court. The clerk shall promptly mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall note the mailing in the docket.

(c) The notice must include the name and post office address of the judgment creditor and if the judgment creditor has an attorney in this state, the attorney's name and address.

(d) On receipt of proof of mailing under Subsection (b), the clerk of the court shall note the mailing in the docket.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 2011, 82nd Leg., R.S., 65, § 1, eff. May 17, 2011.

Section 3 of Acts 2011, 82nd Leg., R.S., c. 65, provides:

The change in law made by this Act applies only to the filing of a foreign judgment on or after the effective date of this Act. The filing of a foreign judgment before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 35.005. Repealed by Acts 2011, 82nd Leg., R.S., S.B. 428, § 2, eff. May 17, 2011.

§ 35.006. Stay.

(a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, that the time for taking an appeal has not expired, or that a stay of execution has been granted, has been requested, or will be requested, and proves that the judgment debtor has furnished or will furnish the security for the satisfaction of the judgment required by the state in which it was rendered, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

(b) If the judgment debtor shows the court a ground on which enforcement of a judgment of the court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period and require the same security for suspending enforcement of the judgment that is required in this state in accordance with Section 52.006.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 2003, 78th Leg., c. 204, § 7.01, eff. Sept. 1, 2003.

§ 35.007. Fees.

(a) A person filing a foreign judgment shall pay to the clerk of the court the amount as otherwise provided by law for filing suit in the courts of this state.

(b) Filing fees are due and payable at the time of filing.

(c) Fees for other enforcement proceedings are as provided by law for judgments of the courts of this state.

Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 35.008. Optional Procedure.

A judgment creditor retains the right to bring an action to enforce a judgment instead of proceeding under this chapter.

Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985

CHAPTER 36A.
ENFORCEMENT OF JUDGMENTS OF OTHER COUNTRIES

§ 36A.001. Short Title.

This chapter may be cited as the Uniform Foreign-Country Money Judgments Recognition Act.

Added by Acts 2017, 85th Leg., R.S., c. 390, § 1, eff. June 1, 2017.

Section 3 of by Acts 2017, 85th Leg., R.S., c. 390, provides:

This Act applies to a pending suit in which the issue of recognition of a foreign-country money judgment is or has been raised without regard to whether the suit was commenced before, on, or after the effective date of this Act.

§ 36A.002. Defintions.

In this chapter:

(1) ”Foreign country” means a government other than:

(A) the United States;

(B) a state, district, commonwealth, territory, or insular possession of the United States; or

(C) any other government with respect to which the decision in this state as to whether to recognize a judgment of that government’s court is initially subject to determination under Section 1, Article IV, United States Constitution (the full faith and credit clause).

(2) ”Foreign-country judgment” means a judgment of a court of a foreign country.

Added by Acts 2017, 85th Leg., R.S., c. 390, § 1, eff. June 1, 2017.

Section 3 of by Acts 2017, 85th Leg., R.S., c. 390, provides:

This Act applies to a pending suit in which the issue of recognition of a foreign-country money judgment is or has been raised without regard to whether the suit was commenced before, on, or after the effective date of this Act.

§ 36A.003. Applicability.

(a) Except as otherwise provided in Subsection (b), this chapter applies to a foreign-country judgment to the extent that the judgment:

(1) grants or denies recovery of a sum of money; and

(2) under the law of the foreign country in which the judgment is rendered, is final, conclusive, and enforceable.

(b) This chapter does not apply to a foreign-country judgment that grants or denies recovery of a sum of money to the extent that the judgment is:

(1) a judgment for taxes;

(2) a fine or other penalty; or

(3) a judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this chapter applies to the foreign-country judgment.

Added by Acts 2017, 85th Leg., R.S., c. 390, § 1, eff. June 1, 2017.

Section 3 of by Acts 2017, 85th Leg., R.S., c. 390, provides:

This Act applies to a pending suit in which the issue of recognition of a foreign-country money judgment is or has been raised without regard to whether the suit was commenced before, on, or after the effective date of this Act.

§ 36A.004. Standards for Recognition of Foreign-Country Judgment.

(a) Except as otherwise provided in Subsections (b) and (c), a court of this state shall recognize a foreign-country judgment to which this chapter applies.

(b) A court of this state may not recognize a foreign-country judgment if:

(1) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

(c) A court of this state is not required to recognize a foreign-country judgment if:

(1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(2) the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present the party's case;

(3) the judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or the United States;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in the foreign court;

(6) jurisdiction was based only on personal service and the foreign court was a seriously inconvenient forum for the trial of the action;

(7) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment;

(8) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law; or

(9) it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in this state, would constitute foreign-country judgments to which this chapter would apply under Section 36A.003.

(d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in Subsection (b) or (c) exists.

Added by Acts 2017, 85th Leg., R.S., c. 390, § 1, eff. June 1, 2017.

Section 3 of by Acts 2017, 85th Leg., R.S., c. 390, provides:

This Act applies to a pending suit in which the issue of recognition of a foreign-country money judgment is or has been raised without regard to whether the suit was commenced before, on, or after the effective date of this Act.

§ 36A.005. Personal Jurisdiction.

(a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

(1) the defendant was served with process personally in the foreign country;

(2) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(3) the defendant, before commencement of the proceeding, agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization whose principal place of business was in, or that was organized under the laws of, the foreign country;

(5) the defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

(b) The list of bases for personal jurisdiction in Subsection (a) is not exclusive. A court of this state may recognize bases of personal jurisdiction other than those listed in Subsection (a) as sufficient to support a foreign-country judgment.

Added by Acts 2017, 85th Leg., R.S., c. 390, § 1, eff. June 1, 2017.

Section 3 of by Acts 2017, 85th Leg., R.S., c. 390, provides:

This Act applies to a pending suit in which the issue of recognition of a foreign-country money judgment is or has been raised without regard to whether the suit was commenced before, on, or after the effective date of this Act.

§ 36A.006. Procedure for Recognition of Foreign-Country Judgment.

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition may be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

Added by Acts 2017, 85th Leg., R.S., c. 390, § 1, eff. June 1, 2017.

Section 3 of by Acts 2017, 85th Leg., R.S., c. 390, provides:

This Act applies to a pending suit in which the issue of recognition of a foreign-country money judgment is or has been raised without regard to whether the suit was commenced before, on, or after the effective date of this Act.

§ 36A.007. Effect of Recognition of Foreign-Country Judgment.

If the court in a proceeding under Section 36A.006 finds that the foreign-country judgment is entitled to recognition under this chapter, then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

(2) enforceable in the same manner and to the same extent as a judgment rendered in this state.

Added by Acts 2017, 85th Leg., R.S., c. 390, § 1, eff. June 1, 2017.

Section 3 of by Acts 2017, 85th Leg., R.S., c. 390, provides:

This Act applies to a pending suit in which the issue of recognition of a foreign-country money judgment is or has been raised without regard to whether the suit was commenced before, on, or after the effective date of this Act.

§ 36A.008. Stay of Proceedings Pending Appeal of Foreign-Country Judgment.

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until:

(1) the appeal is concluded;

(2) the time for appeal expires; or

(3) the appellant has had sufficient time to prosecute the appeal and has failed to do so.

Added by Acts 2017, 85th Leg., R.S., c. 390, § 1, eff. June 1, 2017.

Section 3 of by Acts 2017, 85th Leg., R.S., c. 390, provides:

This Act applies to a pending suit in which the issue of recognition of a foreign-country money judgment is or has been raised without regard to whether the suit was commenced before, on, or after the effective date of this Act.

§ 36A.009. Statute of Limitations.

An action to recognize a foreign-country judgment must be brought within the earlier of:

(1) the time during which the foreign-country judgment is effective in the foreign country; or

(2) 15 years from the date that the foreign-country judgment became effective in the foreign country.

Added by Acts 2017, 85th Leg., R.S., c. 390, § 1, eff. June 1, 2017.

Section 3 of by Acts 2017, 85th Leg., R.S., c. 390, provides:

This Act applies to a pending suit in which the issue of recognition of a foreign-country money judgment is or has been raised without regard to whether the suit was commenced before, on, or after the effective date of this Act.

§ 36A.010. Uniformity of Interpretation.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law based on the uniform act on which this chapter is based.

Added by Acts 2017, 85th Leg., R.S., c. 390, § 1, eff. June 1, 2017.

Section 3 of by Acts 2017, 85th Leg., R.S., c. 390, provides:

This Act applies to a pending suit in which the issue of recognition of a foreign-country money judgment is or has been raised without regard to whether the suit was commenced before, on, or after the effective date of this Act.

§ 36A.011. Saving Clause.

This chapter does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this chapter.

Added by Acts 2017, 85th Leg., R.S., c. 390, § 1, eff. June 1, 2017.

Section 3 of by Acts 2017, 85th Leg., R.S., c. 390, provides:

This Act applies to a pending suit in which the issue of recognition of a foreign-country money judgment is or has been raised without regard to whether the suit was commenced before, on, or after the effective date of this Act.

CHAPTER 38.
ATTORNEY'S FEES

§ 38.001. Recovery of Attorney's Fees.

(a) In this section, "organization" has the meaning assigned by Section 1.002, Business Organizations Code.

(b) A person may recover reasonable attorney's fees from an individual or organization other than a quasi-governmental entity authorized to perform a function by state law, a religious organization, a charitable organization, or a charitable trust, in addition to the amount of a valid claim and costs, if the claim is for:

(1) rendered services;

(2) performed labor;

(3) furnished material;

(4) freight or express overcharges;

(5) lost or damaged freight or express;

(6) killed or injured stock;

(7) a sworn account; or

(8) an oral or written contract.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 2021, 87 Leg., R.S., c. 665, § 1, eff. Sept. 1, 2021.

§ 38.0015. RECOVERY OF ATTORNEY'S FEES AS COMPENSATORY DAMAGES.

(a) A person may recover reasonable attorney's fees from an individual, corporation, or other entity from which recovery is permitted under Section 38.001 as compensatory damages for breach of a construction contract as defined by Section 130.001.

(b) This section may not be construed to create or imply a private cause of action or independent basis to recover attorney's fees.

Added by Acts 2021, 87th Leg., R.S., c. 1015, § 1, eff. Sept. 1, 2021.

Section 2 of by Acts 2021, 87th Leg., R.S., c. 1015, provides:

The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act.

§ 38.002. Procedure for Recovery of Attorney's Fees.

To recover attorney's fees under this chapter:

(1) the claimant must be represented by an attorney;

(2) the claimant must present the claim to the opposing party or to a duly authorized agent of the opposing party; and

(3) payment for the just amount owed must not have been tendered before the expiration of the 30th day after the claim is presented.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 38.003. Presumption.

It is presumed that the usual and customary attorney's fees for a claim of the type described in Section 38.001 are reasonable. The presumption may be rebutted.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 38.004. Judicial Notice.

The court may take judicial notice of the usual and customary attorney's fees and of the contents of the case file without receiving further evidence in:

(1) a proceeding before the court; or

(2) a jury case in which the amount of attorney's fees is submitted to the court by agreement.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 38.005. Liberal Construction.

This chapter shall be liberally construed to promote its underlying purposes.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 38.006. Exceptions.

This chapter does not apply to a contract issued by an insurer that is subject to the provisions of:

(1) Title 11, Insurance Code;

(2) Chapter 541, Insurance Code;

(3) the Unfair Claim Settlement Practices Act (Subchapter A, Chapter 542, Insurance Code); or

(4) Subchapter B, Chapter 542, Insurance Code.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 2005, 79th Leg., c. 728, § 11.105, eff. Sept. 1, 2005.

SUBTITLE D.
APPEALS

CHAPTER 51.
APPEALS

SUBCHAPTER B.
APPEALS FROM COUNTY OR DISTRICT COURT

§ 51.012. Appeal or Writ of Error to Court of Appeals.

In a civil case in which the judgment or amount in controversy exceeds $250, exclusive of interest and costs, a person may take an appeal or writ of error to the court of appeals from a final judgment of the district or county court.

Added by Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 2009, 81st Leg., R.S., c. 1351, § 1, eff. Sept. 1, 2009.

Section 14 of Acts 2009, 81st Leg., R.S., c. 1351, provides:

Except as otherwise provided by this Act, the changes in law made by this Act apply only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

§ 51.014. Appeal From Interlocutory Order.

(a) A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that:

(1) appoints a receiver or trustee;

(2) overrules a motion to vacate an order that appoints a receiver or trustee;

(3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;

(4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;

(5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;

(6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section 8, of the Texas Constitution, or Chapter 73;

(7) grants or denies the special appearance of a defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code;

(8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;

(9) denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351; or

(10) grants relief sought by a motion under Section 74.351(1);

(11) denies a motion to dismiss filed under Section 90.007;

(12) denies a motion to dismiss filed under Section 27.003;

(13) denies a motion for summary judgment filed by an electric utility regarding liability in a suit subject to Section 75.0022;

(14) denies a motion filed by a municipality with a population of 500,000 or more in an action filed under Section 54.012(6) or 214.0012, Local Government Code; or

(15) makes a preliminary determination on a claim under Section 74.353;

(16) overrules an objection filed under Section 148.003(d) or denies all or part of the relief sought by a motion under Section 148.003(f); or

(17) grants or denies a motion for summary judgment filed by a contractor based on Section 97.002.

(b) An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4) or in a suit brought under the Family Code, stays the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory appeal under Subsection (a)(3), (5), (8), or (12) also stays all other proceedings in the trial court pending resolution of that appeal.

(c) A denial of a motion for summary judgment, special appearance, or plea to the jurisdiction described by Subsection (a)(5), (7), or (8) is not subject to the automatic stay under Subsection (b) unless the motion, special appearance, or plea to the jurisdiction is filed and requested for submission or hearing before the trial court not later than the later of:

(1) a date set by the trial court in a scheduling order entered under the Texas Rules of Civil Procedure; or

(2) the 180th day after the date the defendant files:

(A) the original answer;

(B) the first other responsive pleading to the plaintiff's petition; or

(C) if the plaintiff files an amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise a defense to the new cause of action under Subsection (a)(5), (7), or (8), the responsive pleading that raises that defense.

(d) On a party's motion or on its own initiative, a trial court in a civil action may, by written order, permit an appeal from an order that is not otherwise appealable if:

(1) the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and

(2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

(d-1) Subsection (d) does not apply to an action brought under the Family Code.

(e) An appeal under Subsection (d) does not stay proceedings in the trial court unless:

(1) the parties agree to a stay; or

(2) the trial or appellate court orders a stay of the proceedings pending appeal.

(f) An appellate court may accept an appeal permitted by Subsection (d) if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why an appeal is warranted under Subsection (d). If the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. The date the court of appeals enters the order accepting the appeal starts the time applicable to filing the notice of appeal.

(g) If a court of appeals does not accept an appeal under Subsection (f), the court shall state in its decision the specific reason for finding that the appeal is not warranted under Subsection (d).

(h) The supreme court may review a decision by a court of appeals not to accept an appeal under Subsection (f) de novo. If the supreme court concludes that the requirements to permit an appeal under Subsection (d) are satisfied, the court may direct the court of appeals to accept the appeal.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 167, § 3.10, eff. Sept. 1, 1987; Acts 1989, 71st Leg., c. 915, § 1, eff. June 14, 1989; Acts 1993, 73rd Leg., c. 855, § 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., c. 1296, § 1, eff. June 20, 1997; Acts 2001, 77th Leg., c. 1389, § 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., c. 204, § 1.03, eff. Sept. 1, 2003; Acts 2005, 79th Leg., c. 1051, §§ 1, 2 eff. June 18, 2005; Acts 2005, 79th Leg., c. 97, § 5, eff. Sept. 1, 2005; Acts 2011, 82nd. Leg., R.S., c. 203, § 3.01, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., R.S., c. 1042, § 1, eff. June 14, 2013; Acts 2013, 83rd Leg., R.S., c. 961, § 1, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., R.S., c. 604, § 1, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., R.S., c. 44, § 1, eff. May 16, 2013 ; Acts 2013, 83rd Leg., R.S., c. 916, § 1, eff. Sept. 1, 2013; Acts 2015, 84th Leg., c. 1236, §§ 3.001, 3.002, eff. Sept. 1, 2015; Acts 2019, 86th Leg., c. 1273, § 1, eff. June 14, 2019; Acts 2021, 87th Leg., R.S., c. 813, § 1, eff. ????, ?, 2021; Acts 2021, 87th Leg., R.S., c. 528, § 1, eff. June 14, 2021; Acts 2021, 87th Leg., R.S., c. 167, § 1, eff. Sept. 1, 2021; Acts 2023, 88th Leg., R.S., c. 768 (HB 4595), § 4.002, eff. Sept. 1, 2023; Acts 2023, 88th Leg., R.S., c. 209 (SB 1603), § 1, eff. Sept. 1, 2023.

Section 6.01 of Acts 2011, 82nd Leg., c. 203, provides:

The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose.

Section 2 of Acts 2013, 83rd Leg., R.S., c. 961, provides:

The change in law made by this Act to Section 51.014(a), Civil Practice and Remedies Code, applies only to an appeal of an interlocutory order rendered on or after the effective date of this Act. An appeal of an interlocutory order rendered before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

Section 2 of Acts 2013, 83rd Leg., R.S., c. 604, provides:

The change in law made by this Act to Subsection (a), Section 51.014, Civil Practice and Remedies Code, applies only to an appeal of an interlocutory order rendered on or after the effective date of this Act. An appeal of an interlocutory order rendered before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

Section 5 of Acts 2013, 83rd Leg., R.S., c. 44, provides:

The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

Section 8 of Acts 2013, 83rd Leg., R.S., c. 916, provides:

The change in law made by this Act to Section 51.014(b), Civil Practice and Remedies Code, applies only to an appeal of an interlocutory order rendered on or after the effective date of this Act. An appeal of an interlocutory order rendered before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

Section 2 of Acts 2023, 88th Leg., R.S., c. 209 (SB 1603), provides:

The change in law made by this Act applies only to an application for interlocutory appeal filed on or after the effective date of this Act.

TITLE 4.
LIABILITY IN TORT

CHAPTER 71.
WRONGFUL DEATH; SURVIVAL; INJURIES OCCURRING OUT OF STATE

SUBCHAPTER C.
DEATH OR INJURY CAUSED BY ACT OR OMISSION OUT OF STATE

§ 71.031. Act or Omission out of State.

(a) An action for damages for the death or personal injury of a citizen of this state, of the United States, or of a foreign country may be enforced in the courts of this state, although the wrongful act, neglect, or default causing the death or injury takes place in a foreign state or country, if:

(1) a law of the foreign state or county or of this state gives a right to maintain an action for damages for the death or injury;

(2) the action is begun in this state within the time provided by the laws of this state for beginning the action;

(3) for a resident of a foreign state or country, the action is begun in this state within the time provided by the laws of the foreign state or country in which the wrongful act, neglect, or default took place; and

(4) in the case of a citizen of a foreign country, the country has equal treaty rights with the United States on behalf of its citizens.

(b) Except as provided by Subsection (a), all matters pertaining to procedure in the prosecution or maintenance of the action in the courts of this state are governed by the law of this state.

(c) The court shall apply the rules of substantive law that are appropriate under the facts of the case.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., c. 424, § 3, eff. May 29, 1997.

SUBCHAPTER D.
FORUM NON CONVENIENS

§ 71.051. Forum Non Conveniens.

(a) Repealed by Acts 2003, 78th Leg., c. 204, § 3.09, eff. Sept. 1, 2003.

(b) If a court of this state, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this section applies would be more properly heard in a forum outside this state, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action. In determining whether to grant a motion to stay or dismiss an action under the doctrine of forum non conveniens, the court shall consider whether:

(1) an alternate forum exists in which the claim or action may be tried;

(2) the alternate forum provides an adequate remedy;

(3) maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;

(4) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff's claim;

(5) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum, which shall include consideration of the extent to which an injury or death resulted from acts or omissions that occurred in this state; and

(6) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(c) The court may set terms and conditions for staying or dismissing a claim or action under this section as the interests of justice may require, giving due regard to the rights of the parties to the claim or action. If a moving party violates a term or condition of a stay or dismissal, the court shall withdraw the order staying or dismissing the claim or action and proceed as if the order had never been issued. Notwithstanding any other law, the court shall have continuing jurisdiction for purposes of this subsection.

(d) A request for stay or dismissal under this section is timely if it is filed not later than 180 days after the time required for filing a motion to transfer venue of the claim or action. The court may rule on a motion filed under this section only after a hearing with notice to all parties not less than 21 days before the date specified for the hearing. The court shall afford all of the parties ample opportunity to obtain discovery of information relevant to the motion prior to a hearing on a motion under this section. The moving party shall have the responsibility to request and obtain a hearing on such motion at a reasonable time prior to commencement of the trial, and in no case shall the hearing be held less than 30 days prior to trial.

(e) The court may not stay or dismiss a plaintiff's claim under Subsection (b) if the plaintiff is a legal resident of this state or a derivative claimant of a legal resident of this state. The determination of whether a claim may be stayed or dismissed under Subsection (b) shall be made with respect to each plaintiff without regard to whether the claim of any other plaintiff may be stayed or dismissed under Subsection (b) and without regard to a plaintiff's country of citizenship or national origin. If an action involves both plaintiffs who are legal residents of this state and plaintiffs who are not, the court shall consider the factors provided by Subsection (b) and determine whether to deny the motion or to stay or dismiss the claim of any plaintiff who is not a legal resident of this state.

(f) A court that grants a motion to stay or dismiss an action under the doctrine of forum non conveniens shall set forth specific findings of fact and conclusions of law.

(g) Any time limit established by this section may be extended by the court at the request of any party for good cause shown.

(h) For purposes of Subsection (e):

(1) "Derivative claimant" means a person whose damages were caused by personal injury to or the wrongful death of another.

(2) "Plaintiff" means a party seeking recovery of damages for personal injury or wrongful death. The term does not include:

(A) a counterclaimant, cross-claimant, or third-party plaintiff or a person who is assigned a cause of action for personal injury; or

(B) a representative, administrator, guardian, or next friend who is not otherwise a derivative claimant of a legal resident of this state.

(i) This section applies to actions for personal injury or wrongful death. This section shall govern the courts of this state in determining issues under the doctrine of forum non conveniens in the actions to which it applies, notwithstanding Section 71.031(a) or any other law.

Added by Acts 1993, 73rd Leg., c. 4, § 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., c. 567, § 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., c. 424, § 1, eff. May 29, 1997; Acts 2003, 78th Leg., c. 204, § 3.04, eff. Sept. 1, 2003. Repealed section (a) by Acts 2003, 78th Leg., c. 204, § 3.09, eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., c. 248, § 1, Sept. 1, 2005; Acts 2015, 84th Leg., c. 537, § 1, eff. June 16, 2015.

Section 2 of Acts 2015, 84th Leg., c. 537, provides:

The change in law made by this Act applies only to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

TITLE 7.
ALTERNATE METHODS OF DISPUTE RESOLUTION

CHAPTER 151.
TRIAL BY SPECIAL JUDGE

§ 151.001. Referral by Agreement.

On agreement of the parties, in civil or family law matters pending in a district court, statutory probate court, or statutory county court, the judge in whose court the case is pending may order referral of the case as provided by this chapter and shall stay proceedings in the judge's court pending the outcome of the trial. Any or all of the issues in the cases, whether an issue of fact or law, may be referred.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 2, § 4.06(a), eff. Aug. 28, 1989; Acts 2005, 79th Leg., c. 49, § 1, eff. Sept. 1, 2005.

§ 151.002. Motion for Referral.

Each party to the action must file in the court in which the case is filed a motion that:

(1) requests the referral;

(2) waives the party's right to trial by jury;

(3) states the issues to be referred;

(4) states the time and place agreed on by the parties for the trial; and

(5) states the name of the special judge, the fact that the special judge has agreed to hear the case, and the fee the judge is to receive as agreed on by the parties.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987.

§ 151.003. Qualifications of Judge.

The special judge must be a retired or former district court, statutory county court, statutory probate court, or appellate court judge who:

(1) has served as a judge for at least four years in a district court, statutory county court, statutory probate court, or appellate court;

(2) has developed substantial experience in the judge's area of specialty;

(3) has not been removed from office or resigned while under investigation for discipline or removal; and

(4) annually demonstrates completion in the past calendar year of at least five days of continuing legal education in courses approved by the state bar or the supreme court.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 2, § 4.06(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., c. 179, § 2(a), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., c. 33, § 1, eff. April 19, 1991; Acts 2015, 84th Leg., c. 1049, § 1, eff. Sept. 1, 2015.

Section 2 of Acts 2015, 84th Leg., c. 1049, provides:

This Act applies only to a referral of a case to a special judge under Chapter 151, Civil Practice and Remedies Code, made on or after the effective date of this Act. A referral made before the effective date of this Act is governed by the law applicable to the referral immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 151.004. Referral Order Entered.

An order of referral must specify the issue referred and the name of the special judge. An order of referral may designate the time and place for trial and the time for filing of the special judge's report. The clerk of the court shall send a copy of the order to the special judge.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 2, § 4.06(a), eff. Aug. 28, 1989.

§ 151.005. Procedure.

Rules and statutes relating to procedure and evidence in the referring judge's court apply to a trial under this chapter.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987; Acts 2005, 79th Leg., c. 49, § 2, eff. Sept. 1, 2005.

§ 151.006. Powers of Special Judge.

(a) A special judge shall conduct the trial in the same manner as a court trying an issue without a jury.

(b) While serving as a special judge, the special judge has the powers of the referring judge except that the special judge may not hold a person in contempt of court unless the person is a witness before the special judge.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 2, § 4.06(a), eff. Aug. 28, 1989; Acts 2005, 79th Leg., c. 49, § 3, eff. Sept. 1, 2005.

§ 151.007. Representation by Attorney.

A party has the right to be represented by an attorney at the trial held as provided by this chapter.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987.

§ 151.008. Court Reporter Required.

To maintain a record of the proceedings at the hearing, the special judge shall provide a court reporter who meets the qualifications prescribed by law for court reporters in the referring judge's court.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 2, § 4.06(a), eff. Aug. 28, 1989; Acts 2005, 79th Leg., c. 49, § 4, eff. Sept. 1, 2005.

§ 151.009. Fees and Costs.

(a) The parties, in equal shares, shall pay:

(1) the special judge's fee; and

(2) all administrative costs, including the court reporter's fee, related to the trial.

(b) A cost for a witness called by a party or any other cost related only to a single party's case shall be paid by the party who incurred the cost.

(c) The state or a unit of local government may not pay any costs related to a trial under this chapter.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987.

§ 151.010. Restrictions.

Unless otherwise ordered by the referring judge, a trial under this chapter may not be held in a public courtroom, and a public employee may not be involved in the trial during regular working hours.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987. Amended by Acts 2009, 81st Leg., R.S., c. 675, § 1, eff. Sept. 1, 2009.

Section 2 of Acts 2009, 81st Leg., R.S., c. 675, provides:

The change in law made by this Act applies only to a trial commenced on or after the effective date of this Act. A trial commenced before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

§ 151.011. Special Judge's Verdict.

The special judge's verdict must comply with the requirements for a verdict by the court. The verdict stands as a verdict of the referring judge's court. Unless otherwise specified in an order of referral, the special judge shall submit the verdict not later than the 60th day after the day the trial adjourns.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987; Acts 2005, 79th Leg., c. 49, § 5, eff. Sept. 1, 2005.

Section 7 of Acts 2005, 79th Leg., c. 49, provides:

This Act applies only to a referral of a case to a special judge under Chapter 151, Civil Practice and Remedies Code, made on or after the effective date of this Act. A referral made before the effective date of this Act is governed by the law in effect at the time the referral was made, and that law is continued in effect for that purpose.

§ 151.012. New Trial.

If the special judge does not submit the verdict within the time period provided by Section 151.011, the court may grant a new trial if:

(1) a party files a motion requesting the new trial;

(2) notice is given to all parties stating the time and place that a hearing will be held on the motion; and

(3) the hearing is held.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987.

§ 151.013. Right to Appeal.

The right to appeal is preserved. An appeal is from the order of the referring judge's court as provided by the Texas Rules of Civil Procedure and the Texas Rules of Appellate Procedure.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987; Acts 2005, 79th Leg., c. 49, § 6, eff. Sept. 1, 2005.

CHAPTER 152.
ALTERNATIVE DISPUTE RESOLUTION SYSTEM ESTABLISHED BY COUNTIES

§ 152.001. DEFINITION.

In this chapter, "alternative dispute resolution system" means an informal forum in which mediation, conciliation, or arbitration is used to resolve disputes among individuals, entities, and units of government, including those having an ongoing relationship such as relatives, neighbors, landlords and tenants, employees and employers, and merchants and consumers.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987. Amended by Acts 2011, 82nd. Leg., R.S., c. 1090, § 1, eff. June 17, 2011.

Section 3 of Acts 2011, 82nd Leg., R.S., c. 1090, provides:

The changes in law made by this Act apply only to a case referred to a county alternative dispute resolution system on or after the effective date of this Act. A case referred before the effective date of this Act is governed by the law in effect when the case is referred, and the former law is continued in effect for that purpose.

§ 152.002. Establishment.

(a) The commissioners court of a county by order may establish an alternative dispute resolution system for the peaceable and expeditious resolution of disputes.

(b) The commissioners court may do all necessary acts to make the alternative dispute resolution system effective, including:

(1) contracting with a private nonprofit corporation, a political subdivision, a public corporation, or a combination of these entities for the purpose of administering the system;

(2) making reasonable rules relating to the system, including rules specifying whether criminal cases may be referred to the system; and

(3) vesting management of the system in a committee selected by the county bar association.

(c) The actions of a committee authorized by Subsection (b)(3) are subject to the approval of the commissioners court.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987. Amended by Acts 2011, 82nd. Leg., R.S., c. 1090, § 2, eff. June 17, 2011; Acts 2013, 83rd Leg., R.S., c. 781, § 1, eff. Sept. 1, 2013.

Section 3 of Acts 2011, 82nd Leg., R.S., c. 1090, provides:

The changes in law made by this Act apply only to a case referred to a county alternative dispute resolution system on or after the effective date of this Act. A case referred before the effective date of this Act is governed by the law in effect when the case is referred, and the former law is continued in effect for that purpose.

Section 5(b) of Acts 2013, 83rd Leg., R.S., c. 781, provides:

(b) The changes in law made by this Act with respect to civil cases apply only to a civil case referred to a county alternative dispute resolution system on or after the effective date of this Act. A civil case referred before the effective date of this Act is governed by the law applicable to the case immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

§ 152.003. Referral of Cases.

(a) A judge of a district court, county court, statutory county court, probate court, or justice of the peace court in a county in which an alternative dispute resolution system has been established may, on motion of a party or on the judge's or justice's own motion, refer a civil or, if the system accepts criminal cases and on the request of an attorney representing the state, a criminal case to the system regardless of whether the defendant in the criminal case has been formally charged. Referral under this section does not prejudice the case.

(b) Before requesting a referral of a criminal case under this section, an attorney representing the state must obtain the consent of the victim and the defendant to the referral.

(c) A criminal case may not be referred to the system if the defendant is charged with or convicted of an offense listed in Article 42A.054(a), Code of Criminal Procedure, or convicted of an offense, the judgment for which contains an affirmative finding under Article 42A.054(c) or (d), Code of Criminal Procedure.

Added by Acts 1987, 70th Leg., c. 167, § 3.16(a), eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., c. 509, § 1, eff. Sept. 1, 1999; Acts 2013, 83rd Leg., R.S., c. 781, § 2, eff. Sept. 1, 2013; Acts 2015, 84th Leg., c. 770, § 2.03, eff. Jan. 1, 2017.

Section 5(b) of Acts 2013, 83rd Leg., R.S., c. 781, provides:

(b) The changes in law made by this Act with respect to civil cases apply only to a civil case referred to a county alternative dispute resolution system on or after the effective date of this Act. A civil case referred before the effective date of this Act is governed by the law applicable to the case immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

§ 152.004. Repealed by Acts 2021, 87th Leg., S.B. 41, § 5.01(a)(3), eff. Jan. 1, 2022.

§ 152.005. Repealed by Acts 2021, 87th Leg., S.B. 41, § 5.01(a)(3), eff. Jan. 1, 2022.

§ 152.006. Fee for Alternative Dispute Resolution Centers.

An entity described by Section 152.002(a) or (b)(1) that provides services for the resolution of may collect a reasonable fee set by the commissioners court.

Added by Acts 2005, 79th Leg., c. 1192, § 3, eff. Sept. 1, 2005. Amended by Acts 2011, 82nd Leg., R.S., c. 1163, § 4, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., R.S., c. 781, § 3, eff. Sept. 1, 2013.

Section 5(b) of Acts 2013, 83rd Leg., R.S., c. 781, provides:

(b) The changes in law made by this Act with respect to civil cases apply only to a civil case referred to a county alternative dispute resolution system on or after the effective date of this Act. A civil case referred before the effective date of this Act is governed by the law applicable to the case immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

§ 152.007. Participant Fee for Criminal Dispute Resolution.

(a) An entity that provides services for the resolution of criminal disputes under this chapter may collect a reasonable fee set by the commissioners court from a person who receives the services, not to exceed $350, except that a fee may not be collected from an alleged victim of the crime.

(b) Fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the pretrial victim-offender mediation program. The fees must be based on the defendant's ability to pay.

Added Acts 2013, 83rd Leg., R.S., c. 781, § 1, eff. Sept. 1, 2013.

Section 5(a) of Acts 2013, 83rd Leg., R.S., c. 781, provides:

(a) The changes in law made by this Act with respect to criminal cases apply only to a criminal case in which the defendant is arrested for or charged with an offense that occurs on or after the effective date of this Act. A criminal case in which the defendant is arrested for or charged with an offense that occurs before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

[Chapter 153 reserved for expansion]

CHAPTER 154.
ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

SUBCHAPTER A.
GENERAL PROVISIONS

§ 154.001. Definitions.

In this chapter:

(1) "Court" includes an appellate court, district court, constitutional county court, statutory county court, family law court, probate court, municipal court, or justice of the peace court.

(2) "Dispute resolution organization" means a private profit or nonprofit corporation, political subdivision, or public corporation, or a combination of these, that offers alternative dispute resolution services to the public.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987.

§ 154.002. Policy.

It is the policy of this state to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent-child relationship, including the mediation of issues involving conservatorship, possession, and support of children, and the early settlement of pending litigation through voluntary settlement procedures.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987.

§ 154.003. Responsibility of Courts and Court Administrators.

It is the responsibility of all trial and appellate courts and their court administrators to carry out the policy under Section 154.002.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987.

[Sections 154.004 to 154.020 reserved for expansion]

SUBCHAPTER B.
ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

§ 154.021. Referral of Pending Disputes for Alternative Dispute Resolution Procedure.

(a) A court may, on its own motion or the motion of a party, refer a pending dispute for resolution by an alternative dispute resolution procedure including:

(1) an alternative dispute resolution system established under Chapter 26, Acts of the 68th Legislature, Regular Session, 1983 (Article 2372a, Vernon's Texas Civil Statutes);

(2) a dispute resolution organization; or

(3) a nonjudicial and informally conducted forum for the voluntary settlement of citizens' disputes through the intervention of an impartial third party, including those alternative dispute resolution procedures described under this subchapter.

(b) The court shall confer with the parties in the determination of the most appropriate alternative dispute resolution procedure.

(c) Except as provided by agreement of the parties, a court may not order mediation in an action that is subject to the Federal Arbitration Act (9 U.S.C. Sections 1-16).

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987. Amended by Acts 2009, 81st Leg., R.S., c. 621, § 1, eff. June 19, 2009.

Section 2 of Acts 2009, 81st Leg., R.S., c. 621, provides:

The change in law made by this Act applies only to an action that is commenced on or after the effective date of this Act. An action that is commenced before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

§ 154.022. Notification and Objection.

(a) If a court determines that a pending dispute is appropriate for referral under Section 154.021, the court shall notify the parties of its determination.

(b) Any party may, within 10 days after receiving the notice under Subsection (a), file a written objection to the referral.

(c) If the court finds that there is a reasonable basis for an objection filed under Subsection (b), the court may not refer the dispute under Section 154.021.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987.

§ 154.023. Mediation.

(a) Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them.

(b) A mediator may not impose his own judgment on the issues for that of the parties.

(c) Mediation includes victim-offender mediation by the Texas Department of Criminal Justice described in Article 56.13, Code of Criminal Procedure.

[Text of subsection (c) as amended by Acts 2019, c. 469, § 2.03, eff. Jan. 1, 2021.]

(c) Mediation includes victim-offender mediation by the Texas Department of Criminal Justice described in Article 56A.602, Code of Criminal Procedure.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987. Amended by Acts 2001, 77th Leg., c. 1034, § 12, eff. Sept. 1, 2001; Acts 2019, 86th Leg., c. 469, § 2.03, eff. Jan. 1, 2021.

§ 154.024. Mini-Trial.

(a) A mini-trial is conducted under an agreement of the parties.

(b) Each party and counsel for the party present the position of the party, either before selected representatives for each party or before an impartial third party, to define the issues and develop a basis for realistic settlement negotiations.

(c) The impartial third party may issue an advisory opinion regarding the merits of the case.

(d) The advisory opinion is not binding on the parties unless the parties agree that it is binding and enter into a written settlement agreement.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987.

§ 154.025. Moderated Settlement Conference.

(a) A moderated settlement conference is a forum for case evaluation and realistic settlement negotiations.

(b) Each party and counsel for the party present the position of the party before a panel of impartial third parties.

(c) The panel may issue an advisory opinion regarding the liability or damages of the parties or both.

(d) The advisory opinion is not binding on the parties.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987.

§ 154.026. Summary Jury Trial.

(a) A summary jury trial is a forum for early case evaluation and development of realistic settlement negotiations.

(b) Each party and counsel for the party present the position of the party before a panel of jurors.

(c) The number of jurors on the panel is six unless the parties agree otherwise.

(d) The panel may issue an advisory opinion regarding the liability or damages of the parties or both.

(e) The advisory opinion is not binding on the parties.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987.

§ 154.027. Arbitration.

(a) Nonbinding arbitration is a forum in which each party and counsel for the party present the position of the party before an impartial third party, who renders a specific award.

(b) If the parties stipulate in advance, the award is binding and is enforceable in the same manner as any contract obligation. If the parties do not stipulate in advance that the award is binding, the award is not binding and serves only as a basis for the parties' further settlement negotiations.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987.

§ 154.028. Mediation Following Application for Expedited Foreclosure.

(a) A citation for expedited foreclosure may be served in the manner provided by Rule 106 or 736, Texas Rules of Civil Procedure. Following the filing of a response to an application for an expedited foreclosure proceeding under Rule 736.5, Texas Rules of Civil Procedure, a court may, in the court's discretion, conduct a hearing to determine whether to order mediation. A court may not order mediation without conducting a hearing. The petitioner or respondent may request a hearing to determine whether mediation is necessary or whether an application is defective.

(b) A hearing under Subsection (a) may not be conducted before the expiration of the respondent's deadline to file a response.

(c) Subject to Subsection (d), a hearing under Subsection (a) may be conducted by telephone.

(d) Not later than the 10th day before the date of a hearing under Subsection (a), the court shall send notice of the hearing to the parties concerning whether the hearing will be conducted by telephone and, if applicable, instructions for contacting the court and attending the hearing by telephone.

(e) At a hearing under Subsection (a), the court must consider any objections to the referral of the case to mediation.

(f) If the court orders the case to mediation, the mediation must be conducted before the expiration of any deadline imposed by Rule 736, Texas Rules of Civil Procedure.

(g) If the parties to a case that has been ordered to mediation are unable to agree on the appointment of a mediator, the court may appoint a mediator. If a mediator is appointed by the court, the court shall provide all parties with the name of the chosen mediator at the mediation hearing if the parties are unable to agree to a mediator at that hearing.

(h) A mediator's fee shall be divided equally between the parties.

(i) The parties may agree to waive the mediation process.

(j) The court may not conduct a hearing under this section if the applicant has served the citation in compliance with Rule 106, Texas Rules of Civil Procedure, and a response to the application has not been filed before the deadline provided by Rule 736, Texas Rules of Civil Procedure.

(k) If a respondent fails to attend a mediation hearing after notice in accordance with Subsection (d), the court:

(1) may not order mediation; and

(2) shall grant or deny the petitioner's motion for default order under Rule 736.7, Texas Rules of Civil Procedure.

(l) If a respondent attends a hearing and mediation is ordered, any mediation must take place not later than the 29th day after the date the petitioner filed a motion for default order.

(m) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this section.

Added by Acts 2013, 83rd Leg., R.S., c. 1044, § 1, eff. June 14, 2013.

[Subchapter 154.028 to 154.050 reserved for expansion]

SUBCHAPTER C.
IMPARTIAL THIRD PARTIES

§ 154.051. Appointment of Impartial Third Parties.

(a) If a court refers a pending dispute for resolution by an alternative dispute resolution procedure under Section 154.021, the court may appoint an impartial third party to facilitate the procedure.

(b) The court may appoint a third party who is agreed on by the parties if the person qualifies for appointment under this subchapter.

(c) The court may appoint more than one third party under this section.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987.

§ 154.052. Qualifications of Impartial Third Party.

(a) Except as provided by Subsections (b) and (c), to qualify for an appointment as an impartial third party under this subchapter a person must have completed a minimum of 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court making the appointment.

(b) To qualify for an appointment as an impartial third party under this subchapter in a dispute relating to the parent-child relationship, a person must complete the training required by Subsection (a) and an additional 24 hours of training in the fields of family dynamics, child development, and family law, including a minimum of four hours of family violence dynamics training developed in consultation with a statewide family violence advocacy organization.

(c) In appropriate circumstances, a court may in its discretion appoint a person as an impartial third party who does not qualify under Subsection (a) or (b) if the court bases its appointment on legal or other professional training or experience in particular dispute resolution processes.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987. Amended by Acts 2017, 85th Leg., R.S., c. 195, § 1, eff. Sept. 1, 2017.

Section 2 of by Acts 2017, 85th Leg., R.S., c. 195, provides:

Notwithstanding Section 154.052, Civil Practice and Remedies Code, as amended by this Act, a person who satisfies the qualifications to be an impartial third party in effect immediately before the effective date of this Act is not required to comply with the requirements imposed by that section, as amended by this Act, until January 1, 2018, to be qualified to serve as an impartial third party under Subchapter C, Chapter 154, Civil Practice and Remedies Code, and the former law is continued in effect for that purpose.

§ 154.053. Standards and Duties of Impartial Third Parties.

(a) A person appointed to facilitate an alternative dispute resolution procedure under this subchapter shall encourage and assist the parties in reaching a settlement of their dispute but may not compel or coerce the parties to enter into a settlement agreement.

(b) Unless expressly authorized by the disclosing party, the impartial third party may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute.

(c) Unless the parties agree otherwise, all matters, including the conduct and demeanor of the parties and their counsel during the settlement process, are confidential and may never be disclosed to anyone, including the appointing court.

(d) Each participant, including the impartial third party, to an alternative dispute resolution procedure is subject to the requirements of Subchapter B, Chapter 261, Family Code, and Subchapter C, Chapter 48, Human Resources Code.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987. Amended by Acts 1999, 76th Leg., c. 1150, § 29, eff. Sept. 1, 1999.

§ 154.054. Compensation of Impartial Third Parties.

(a) The court may set a reasonable fee for the services of an impartial third party appointed under this subchapter.

(b) Unless the parties agree to a method of payment, the court shall tax the fee for the services of an impartial third party as other costs of suit.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987.

§ 154.055. Qualified Immunity of Impartial Third Parties.

(a) A person appointed to facilitate an alternative dispute resolution procedure under this subchapter or under Chapter 152 relating to an alternative dispute resolution system established by counties, or appointed by the parties whether before or after the institution of formal judicial proceedings, who is a volunteer and who does not act with wanton and willful disregard of the rights, safety, or property of another, is immune from civil liability for any act or omission within the course and scope of his or her duties or functions as an impartial third party. For purposes of this section, a volunteer impartial third party is a person who does not receive compensation in excess of reimbursement for expenses incurred or a stipend intended as reimbursement for expenses incurred.

(b) This section neither applies to nor is it intended to enlarge or diminish any rights or immunities enjoyed by an arbitrator participating in a binding arbitration pursuant to any applicable statute or treaty.

Added by Acts 1993, 73rd Leg., c. 875, § 1, eff. Sept. 1, 1993.

[Sections 154.056 to 154.070 reserved for expansion]

SUBCHAPTER D.
MISCELLANEOUS PROVISIONS

§ 154.071. Effect of Written Settlement Agreement.

(a) If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract.

(b) The court in its discretion may incorporate the terms of the agreement in the court's final decree disposing of the case.

(c) A settlement agreement does not affect an outstanding court order unless the terms of the agreement are incorporated into a subsequent decree.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987.

§ 154.072. Statistical Information on Disputes Referred.

The Texas Supreme Court shall determine the need and method for statistical reporting of disputes referred by the courts to alternative dispute resolution procedures.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987.

§ 154.073. Confidentiality of Communications in Dispute Resolution Procedures.

(a) Except as provided by Subsections (c), (d), (e), and (f), a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(b) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(c) An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable if it is admissible or discoverable independent of the procedure.

(d) A final written agreement to which a governmental body, as defined by Section 552.003, Government Code, is a signatory that is reached as a result of a dispute resolution procedure conducted under this chapter is subject to or excepted from required disclosure in accordance with Chapter 552, Government Code.

(e) If this section conflicts with other legal requirements for disclosure of communications, records, or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure.

(f) This section does not affect the duty to report abuse or neglect under Subchapter B, Chapter 261, Family Code, and abuse, exploitation, or neglect under Subchapter C, Chapter 48, Human Resources Code.

(g) This section applies to a victim-offender mediation by the Texas Department of Criminal Justice as described in Article 56.13, Code of Criminal Procedure.

[Text of subsection (g) as amended by Acts 2019, c. 469, § 2.04, eff. Jan. 1, 2021.]

(g) This section applies to a victim-offender mediation by the Texas Department of Criminal Justice as described in Article 56A.602, Code of Criminal Procedure.

Added by Acts 1987, 70th Leg., c. 1121, § 1, eff. June 20, 1987. Amended by Acts 1999, 76th Leg., c. 1150, § 30, eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 1352, § 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., c. 1034, § 13, eff. Sept. 1, 2001; Acts 2001, 77th Leg., c. 1420, §§ 21.001(6), 21.002(3), eff. Sept. 1, 2001; Acts 2019, 86th Leg., c. 469, § 2.04, eff. Jan. 1, 2021.

CHAPTER 155.
SETTLEMENT WEEKS

§ 155.001. Settlement Weeks Required.

In every county with a population of 150,000 or greater there shall be a settlement week during law week and judicial conference week each year or during any other two weeks as the administrative judge of each judicial district may designate. During these weeks the district courts, constitutional and statutory county courts, and the family law courts will facilitate the voluntary settlement of civil and family law cases.

Added by Acts 1989, 71st Leg., c. 1211, § 1, eff. Aug. 28, 1989. Amended by Acts 2009, 81st Leg., R.S., c. 87, § 5.005, eff. Sept. 1, 2009.

§ 155.002. Settlement Week Committee.

The administrative judge of each judicial district shall appoint a committee of attorneys and lay persons to effectuate each settlement week. The committee may include the director of any established mediation or alternative dispute resolution center in the county and the chairperson of the local bar association's committee on alternative dispute resolution.

Added by Acts 1989, 71st Leg., c. 1211, § 1, eff. Aug. 28, 1989. Amended by Acts 2009, 81st Leg., R.S., c. 87, § 5.006, eff. Sept. 1, 2009.

§ 155.003. Attorney to Serve as Mediator.

Any attorney currently licensed in the state may serve as mediator during the settlement weeks under such terms and conditions and with such training as may be determined by the administrative judge of the judicial district. Any such attorney so appointed by the court must meet the qualifications and will be governed by the rules of conduct set forth in Sections 154.052 and 154.053 of this code. Any attorney so requested by the administrative judge of the judicial district shall serve as a mediator during the settlement weeks.

Added by Acts 1989, 71st Leg., c. 1211, § 1, eff. Aug. 28, 1989. Amended by Acts 2009, 81st Leg., R.S., c. 87, § 5.007, eff. Sept. 1, 2009.

§ 155.004. Application of Certain Alternate Dispute Resolution Procedures.

The provisions of Sections 154.021 through 154.023, 154.053, 154.054, and 154.071 through 154.073 shall apply to parties and mediators participating in settlement weeks held under this chapter.

Added by Acts 1989, 71st Leg., c. 1211, § 1, eff. Aug. 28, 1989. Amended by Acts 2009, 81st Leg., R.S., c. 87, § 5.008, eff. Sept. 1, 2009.

§ 155.005. Authority of Court.

Each court participating in settlement weeks under this chapter shall have the authority to make orders needed, consistent with existing law, to implement settlement weeks and ensure any party's good faith participation.

Added by Acts 1989, 71st Leg., c. 1211, § 1, eff. Aug. 28, 1989. Amended by Acts 2009, 81st Leg., R.S., c. 87, § 5.009, eff. Sept. 1, 2009.

§ 155.006. Funding; Cooperation With Other Organizations.

The administrative judge may use any available funding from funds regularly used for court administration to carry out the purpose and intent of this chapter. The administrative judge shall cooperate with the director of any established mediation or alternative dispute resolution center, the local bar, and other organizations to encourage participation and to develop public awareness of settlement weeks.

Added by Acts 1989, 71st Leg., c. 1211, § 1, eff. Aug. 28, 1989. Amended by Acts 2009, 81st Leg., R.S., c. 87, § 5.010, eff. Sept. 1, 2009.

Texas Government Code

TITLE 2.
JUDICIAL BRANCH

SUBTITLE A.
COURTS

CHAPTER 21.
GENERAL PROVISIONS

§ 21.001. Inherent Power and Duty of Courts.

(a) A court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction.

(b) A court shall require that proceedings be conducted with dignity and in an orderly and expeditious manner and control the proceedings so that justice is done.

(c) During a court proceeding a judge may not request that a person remove an item of religious apparel unless:

(1) a party in the proceeding objects to the wearing of the apparel; and

(2) the judge concludes that the wearing of the apparel will interfere with:

(A) the objecting party's right to a fair hearing; or

(B) the proper administration of justice; and

(3) no reasonable alternative exists under which the judge may:

(A) assure a fair hearing; and

(B) protect the fair administration of justice.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., c. 54, § 1, eff. Sept. 1, 1997.

§ 21.005. Disqualification.

A judge or a justice of the peace may not sit in a case if either of the parties is related to him by affinity or consanguinity within the third degree, as determined under Chapter 573.

Added by Acts 1987, 70th Leg., c. 148, § 2.01(a), eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., c. 561, § 21, eff. Aug. 26, 1991; Acts 1995, 74th Leg., c. 76, § 5.95(28), eff. Sept. 1, 1995.

§ 21.009. Definitions.

In this title:

(1) "County court" means the court created in each county by Article V, Section 15, of the Texas Constitution.

(2) "Statutory county court" means a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, county criminal courts, county criminal courts of appeals, and county civil courts at law, but does not include statutory probate courts as defined by Chapter 22, Estates Code.

(3) "County judge" means the judge of the county court.

(4) "Statutory probate court" has the meaning assigned by Chapter 22, Estates Code.

Added by Acts 1987, 70th Leg., c. 148, § 2.02, eff. Sept. 1, 1987. Renumbered from § 21.008 by Acts 1989, 71st Leg., c. 2, § 16.01(18), eff. Aug. 28,1989. Amended by Acts 1991, 72nd Leg., c. 394, § 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., c. 746, § 1, eff. Oct. 1, 1991; Acts 1999, 76th Leg., c. 431, § 1, eff. Sept. 1, 1999; Acts 2017, 85th Leg., R.S., c. 324, § 22.021, eff. Sept. 1, 2017.

CHAPTER 22.
APPELLATE COURTS

SUBCHAPTER A.
SUPREME COURT

§ 22.001. Jurisdiction.

(a) The supreme court has appellate jurisdiction, except in criminal law matters, coextensive with the limits of the state and extending to all questions of law arising in the following cases when they have been brought to the courts of appeals from appealable judgment of the trial courts:

(1) a case in which the justices of a court of appeals disagree on a question of law material to the decision;

(2) a case in which one of the courts of appeals holds differently from a prior decision of another court of appeals or of the supreme court on a question of law material to a decision of the case;

(3) a case involving the construction or validity of a statute necessary to a determination of the case;

(4) a case involving state revenue;

(5) a case in which the railroad commission is a party; and

(6) any other case in which it appears that an error of law has been committed by the court of appeals, and that error is of such importance to the jurisprudence of the state that, in the opinion of the supreme court, it requires correction, but excluding those cases in which the jurisdiction of the court of appeals is made final by statute.

(b) A case over which the court has jurisdiction under Subsection (a) may be carried to the supreme court either by writ of error or by certificate from the court of appeals, but the court of appeals may certify a question of law arising in any of those cases at any time it chooses, either before or after the decision of the case in that court.

(c) An appeal may be taken directly to the supreme court from an order of a trial court granting or denying an interlocutory or permanent injunction on the ground of the constitutionality of a statute of this state. It is the duty of the supreme court to prescribe the necessary rules of procedure to be followed in perfecting the appeal.

(d) The supreme court has the power, on affidavit or otherwise, as the court may determine, to ascertain the matters of fact that are necessary to the proper exercise of its jurisdiction.

(e) Repealed by Acts 2017, 85th Leg., R.S., c. 150, § 4(1), eff. Sept. 1, 2017.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 1106, § 1, eff. June 20, 1987; Acts 2003, 78th Leg., c. 204, § 1.04, eff. Sept. 1, 2003; Acts 2017, 85th Leg., R.S., c. 150, § 4(1), eff. Sept. 1, 2017.

§ 22.002. Writ Power.

(a) The supreme court or a justice of the supreme court may issue writs of procedendo and certiorari and all writs of quo warranto and mandamus agreeable to the principles of law regulating those writs, against a statutory county court judge, a statutory probate court judge, a district judge, a court of appeals or a justice of a court of appeals, or any officer of state government except the governor, the court of criminal appeals, or a judge of the court of criminal appeals.

(b) The supreme court or, in vacation, a justice of the supreme court may issue a writ of mandamus to compel a statutory county court judge, a statutory probate court judge, or a district judge to proceed to trial and judgment in a case.

(c) Only the supreme court has the authority to issue a writ of mandamus or injunction, or any other mandatory or compulsory writ or process, against any of the officers of the executive departments of the government of this state to order or compel the performance of a judicial, ministerial, or discretionary act or duty that, by state law, the officer or officers are authorized to perform.

(d) Repealed by Acts 1987, 70th Leg., c. 148, § 2.03, eff. Sept. 1, 1987.

(e) The supreme court or a justice of the supreme court, either in termtime or vacation, may issue a writ of habeas corpus when a person is restrained in his liberty by virtue of an order, process, or commitment issued by a court or judge on account of the violation of an order, judgment, or decree previously made, rendered, or entered by the court or judge in a civil case. Pending the hearing of an application for a writ of habeas corpus, the supreme court or a justice of the supreme court may admit to bail a person to whom the writ of habeas corpus may be so granted.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 148, § 2.03, eff. Sept. 1, 1987; Acts 1995, 74th Leg., c. 355, § 1, eff. Sept. 1, 1995; Acts 2011, 82nd Leg. 1st C.S., c. 3, § 2.01, eff. Jan. 1, 2012.

§ 22.004. Rules of Civil Procedure.

(a) The supreme court has the full rulemaking power in the practice and procedure in civil actions, except that its rules may not abridge, enlarge, or modify the substantive rights of a litigant.

(b) The supreme court from time to time may promulgate a specific rule or rules of civil procedure, or an amendment or amendments to a specific rule or rules, to be effective at the time the supreme court deems expedient in the interest of a proper administration of justice. The rules and amendments to rules remain in effect unless and until disapproved by the legislature. The clerk of the supreme court shall file with the secretary of state the rules or amendments to rules promulgated by the supreme court under this subsection and shall mail a copy of those rules or amendments to rules to each registered member of the State Bar of Texas not later than the 60th day before the date on which they become effective. On receiving a written request from a member of the legislature, the secretary of state shall provide the member with electronic notifications when the supreme court has promulgated rules or amendments to rules under this section.

(c) So that the supreme court has full rulemaking power in civil actions, a rule adopted by the supreme court repeals all conflicting laws and parts of laws governing practice and procedure in civil actions, but substantive law is not repealed. At the time the supreme court files a rule, the court shall file with the secretary of state a list of each article or section of general law or each part of an article or section of general law that is repealed or modified in any way. The list has the same weight and effect as a decision of the court.

(d) The rules of practice and procedure in civil actions shall be published in the official reports of the supreme court. The supreme court may adopt the method it deems expedient for the printing and distribution of the rules.

(e) This section does not affect the repeal of statutes repealed by Chapter 25, page 201, General Laws, Acts of the 46th Legislature, Regular Session, 1939, on September 1, 1941.

(f) The supreme court shall adopt rules governing the electronic filing of documents in civil cases in justice of the peace courts.

(g) The supreme court shall adopt rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence. The rules shall provide that the motion to dismiss shall be granted or denied within 45 days of the filing of the motion to dismiss. The rules shall not apply to actions under the Family Code.

(h) The supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions. The rules shall apply to civil actions in district courts, county courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed $100,000. The rules shall address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system. The supreme court may not adopt rules under this subsection that conflict with a provision of:

(1) Chapter 74, Civil Practice and Remedies Code;

(2) the Family Code;

(3) the Property Code; or

(4) the Tax Code.

[Text of subsection (h) as amended and subsection (h-1) as added by Acts 2019, 86th Leg., c. 696, § 1, eff. Sept. 1, 2020.]

(h) The supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions. The rules shall apply to civil actions in district courts, county courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed $100,000. The rules shall address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system. The supreme court may not adopt rules under this subsection that conflict with other statutory law.

(h-1) In addition to the rules adopted under Subsection (h), the supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed $250,000. The rules shall balance the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions. The supreme court may not adopt rules under this subsection that conflict with other statutory law.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., c. 297, § 1, eff. Aug. 28, 1989; Acts 2001, 77th Leg., c. 644, § 1, eff. June 13, 2001; Acts 2007, 80th Leg., c. 63, § 1, eff. May 11, 2007; Acts 2011, 82nd Leg., R.S., 203, §§ 1.01, 2.01, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., R.S., 906, § 1, eff. Sept. 1, 2011; Acts 2019, 86th Leg., c. 696, § 1, eff. Sept. 1, 2020.

Section 2 of Acts 2007, 80th Leg., c. 63, provides:

Not later than January 1, 2008, the Supreme Court of Texas shall adopt the rules required by Subsection (f), Section 22.004, Government Code, as added by this Act.

Section 6.01 of Acts 2011, , 82nd Leg., R.S., c. 203, provides:

The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose.

Section 35 of Acts 2019, 86th Leg., c. 696, provides:

Not later than January 1, 2021, the Supreme Court of Texas shall adopt rules as necessary to implement Section 22.004(h-1), Government Code, as added by this Act.

§ 22.0041. Rules Regarding Foreign Law and Foreign Judgments in Certain Family Law Actions.

(a) In this section:

(1) "Comity" means the recognition by a court of one jurisdiction of the laws and judicial decisions of a court of another jurisdiction.

(2) "Foreign judgment" means a judgment of a court, tribunal, or administrative adjudicator of a jurisdiction outside of the states and territories of the United States.

(3) "Foreign law" means a law, rule, or code of a jurisdiction outside of the states and territories of the United States.

(b) The supreme court shall adopt rules of evidence and procedure to implement the limitations on the granting of comity to a foreign judgment or an arbitration award involving a marriage relationship or a parent-child relationship under the Family Code to protect against violations of constitutional rights and public policy.

(c) The rules adopted under Subsection (b) must:

(1) require that any party who intends to seek enforcement of a judgment or an arbitration award based on foreign law that involves a marriage relationship or a parent-child relationship shall provide timely notice to the court and to each other party, including by providing information required by Rule 203, Texas Rules of Evidence, and by describing the court's authority to enforce or decide to enforce the judgment or award;

(2) require that any party who intends to oppose the enforcement of a judgment or an arbitration award based on foreign law that involves a marriage relationship or a parent-child relationship shall provide timely notice to the court and to each other party and include with the notice an explanation of the party's basis for opposition, including by stating whether the party asserts that the judgment or award violates constitutional rights or public policy;

(3) require a hearing on the record, after notice to the parties, to determine whether the proposed enforcement of a judgment or an arbitration award based on foreign law that involves a marriage relationship or a parent-child relationship violates constitutional rights or public policy;

(4) to facilitate appellate review, require that a court state its findings of fact and conclusions of law in a written order determining whether to enforce a foreign judgment or an arbitration award based on foreign law that involves a marriage relationship or a parent-child relationship;

(5) require that a court's determination under Subdivision (3) or (4) be made promptly so that the action may proceed expeditiously; and

(6) provide that a court may issue any orders the court considers necessary to preserve principles of comity or the freedom to contract for arbitration while protecting against violations of constitutional rights and public policy in the application of foreign law and the recognition and enforcement of foreign judgments and arbitration awards.

(d) In addition to the rules required under Subsection (b), the supreme court shall adopt any other rules the supreme court considers necessary or advisable to accomplish the purposes of this section.

(e) A rule adopted under this section does not apply to an action brought under the International Child Abduction Remedies Act (22 U.S.C. Section 9001 et seq.).

(f) In the event of a conflict between a rule adopted under this section and a federal or state law, the federal or state law prevails.

Added by Acts 2017, 85th Leg., R.S., c. 771, § 2, eff. Sept. 1, 2017.

Section 3 of Acts 2017, 85th Leg., R.S., c. 771, provides:

The Texas Supreme Court shall adopt rules as required by this Act as soon as practicable following the effective date of this Act, but not later than January 1, 2018.

§ 22.022. Judicial Instruction Related to Foreign Law and Foreign Judgments.

(a) The supreme court shall provide for a course of instruction that relates to issues regarding foreign law, foreign judgments, and arbitration awards in relation to foreign law that arise in actions under the Family Code involving the marriage relationship and the parent-child relationship for judges involved in those actions.

(b) The course of instruction must include information about:

(1) the limits on comity and the freedom to contract for arbitration that protect against violations of constitutional rights and public policy in the application of foreign law and the recognition and enforcement of foreign judgments and arbitration awards in actions brought under the Family Code; and

(2) the rules of evidence and procedure adopted under Section 22.0041.

(c) The supreme court shall adopt rules necessary to accomplish the purposes of this section.

Added by Acts 2017, 85th Leg., R.S., c. 771, § 2, eff. Sept. 1, 2017.

Section 3 of Acts 2017, 85th Leg., R.S., c. 771, provides:

The Texas Supreme Court shall adopt rules as required by this Act as soon as practicable following the effective date of this Act, but not later than January 1, 2018.

SUBCHAPTER C.
COURTS OF APPEALS

§ 22.2101. Repealed by Acts 2021, 87th Leg., S.B. 41, § 5.01(c)(1), eff. Jan. 1, 2022.

§ 22.220. Civil Jurisdiction.

(a) Except as provided by Subsection (d), each court of appeals has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds $250, exclusive of interest and costs.

(b) If a court of appeals having jurisdiction in a case, matter, or controversy that requires immediate action is unable to take immediate action because the illness, absence, or unavailability of the justices causes fewer than three members of the court to be present, the nearest available court of appeals, under rules prescribed by the supreme court, may take the action required in the case, matter, or controversy.

(c) Each court of appeals may, on affidavit or otherwise, as the court may determine, ascertain the matters of fact that are necessary to the proper exercise of its jurisdiction.

(d) The Court of Appeals for the Fifteenth Court of Appeals District has exclusive intermediate appellate jurisdiction over the following matters arising out of or related to a civil case:

(1) matters brought by or against the state or a board, commission, department, office, or other agency in the executive branch of the state government, including a university system or institution of higher education as defined by Section 61.003, Education Code, or by or against an officer or employee of the state or a board, commission, department, office, or other agency in the executive branch of the state government arising out of that officer's or employee's official conduct, other than:

(A) a proceeding brought under the Family Code and any related motion or proceeding;

(B) a proceeding brought under Chapter 7B or Article 17.292, Code of Criminal Procedure;

(C) a proceeding brought against a district attorney, a criminal district attorney, or a county attorney with criminal jurisdiction;

(D) a proceeding relating to a mental health commitment;

(E) a proceeding relating to civil asset forfeiture;

(F) a condemnation proceeding for the acquisition of land or a proceeding related to eminent domain;

(G) a proceeding brought under Chapter 101, Civil Practice and Remedies Code;

(H) a claim of personal injury or wrongful death;

(I) a proceeding brought under Chapter 125, Civil Practice and Remedies Code, to enjoin a common nuisance;

(J) a proceeding brought under Chapter 55, Code of Criminal Procedure;

(K) a proceeding under Chapter 22A, Government Code;

(L) a proceeding brought under Subchapter E-1, Chapter 411, Government Code;

(M) a proceeding brought under Chapter 21, Labor Code;

(N) a removal action under Chapter 87, Local Government Code; or

(O) a proceeding brought under Chapter 841, Health and Safety Code;

(2) matters in which a party to the proceeding files a petition, motion, or other pleading challenging the constitutionality or validity of a state statute or rule and the attorney general is a party to the case; and

(3) any other matter as provided by law.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 2009, 81st Leg., R.S., c. 1351, § 3, eff. Sept. 1, 2009; Acts 2023, 88th Leg., R.S., c. 459 (SB 1045), § 1.05, eff. Sept. 1, 2023.

Section 14 of Acts 2009, 81st Leg., R.S., c. 1351, provides:

Except as otherwise provided by this Act, the changes in law made by this Act apply only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

§ 22.221. Writ Power.

(a) Each court of appeals or a justice of a court of appeals may issue a writ of mandamus and all other writs necessary to enforce the jurisdiction of the court.

(b) Subject to Subsection (c-1), each court of appeals for a court of appeals district may issue all writs of mandamus, agreeable to the principles of law regulating those writs, against a judge of a district, statutory county, statutory probate county, or county court in the court of appeals district.

(c) Each court of appeals for a court of appeals district, other than the Court of Appeals for the Fifteenth Court of Appeals District, may issue all writs of mandamus, agreeable to the principles of law regulating those writs, against:

(1) a judge of a district court who is acting as a magistrate at a court of inquiry under Chapter 52, Code of Criminal Procedure, in the court of appeals district; or

(2) an associate judge of a district or county court appointed by a judge under Chapter 201, Family Code, in the court of appeals district for the judge who appointed the associate judge.

(c-1) The original jurisdiction of the Court of Appeals for the Fifteenth Court of Appeals District to issue writs is limited to writs arising out of matters over which the court has exclusive intermediate appellate jurisdiction under Section 22.220(d).

(d) Concurrently with the supreme court, the court of appeals of a court of appeals district in which a person is restrained in his liberty, or a justice of the court of appeals, may issue a writ of habeas corpus when it appears that the restraint of liberty is by virtue of an order, process, or commitment issued by a court or judge because of the violation of an order, judgment, or decree previously made, rendered, or entered by the court or judge in a civil case. Pending the hearing of an application for a writ of habeas corpus, the court of appeals or a justice of the court of appeals may admit to bail a person to whom the writ of habeas corpus may be granted.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 69, § 1, eff. May 6, 1987; Acts 1987, 70th Leg., c. 148, §§ 1.35, 2.03, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., c. 58, § 1, eff. May 2, 1991; Acts 1995, 74th Leg., c. 839, § 1, eff. Sept. 1, 1995; Acts 2017, 85th Leg., R.S., c. 740, § 1, eff. Sept. 1, 2017; Acts 2017, 85th Leg., R.S., c. 1013, § 1, eff. Sept. 1, 2017; Acts 2023, 88th Leg., R.S., c. 459 (SB 1045), § 1.06, eff. Sept. 1, 2023.

Sections 2 of Acts 2017, 85th Leg., R.S., c. 740, provides:

(a) Section 22.221(b)(1), Government Code, as amended by this Act, applies only to a proceeding seeking a writ of mandamus filed in a court of appeals under Section 22.221, Government Code, on or after the effective date of this Act. A proceeding seeking a writ of mandamus filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

(b) Section 22.221(b)(3), Government Code, as amended by this Act, applies only to a suit filed under Chapter 45, Title 1, Title 4, or Title 5, Family Code, on or after the effective date of this Act. A suit filed under Chapter 45, Title 1, Title 4, or Title 5, Family Code, before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

Section 2 of Acts 2017, 85th Leg., R.S., c. 1013, provides:

Section 22.221(b), Government Code, as amended by this Act, applies only to a suit filed under Chapter 45, Title 1, Title 4, or Title 5, Family Code, on or after the effective date of this Act. A suit filed under Chapter 45, Title 1, Title 4, or Title 5, Family Code, before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

§ 22.222. Court Sitting in Panels.

(a) Each court of appeals may sit in panels of not fewer than three justices for the purpose of hearing cases.

(b) If more than one panel is used, the court of appeals shall establish rules to periodically rotate the justices among the panels. Permanent civil panels and criminal panels without rotation may not be established.

(c) A majority of a panel constitutes a quorum for the transaction of business, and the concurrence of a majority of a panel is necessary for a decision.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

§ 22.223. Court Sitting En Banc.

(a) The chief justice of each court of appeals, under rules established by the court, shall convene the court en banc for the transaction of all business other than the hearing of cases and may convene the court en banc for the purpose of hearing cases.

(b) When convened en banc, a majority of the membership of the court constitutes a quorum and the concurrence of a majority of the court sitting en banc is necessary for a decision.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

§ 22.225. Effect of Judgment in Civil Cases.

(a) A judgment of a court of appeals is conclusive on the facts of the case in all civil cases.

(b) Repealed by Acts 2017, 85th Leg., R.S., c. 150, § 4(3), eff. Sept. 1, 2017.

(c) Repealed by Acts 2017, 85th Leg., R.S., c. 150, § 4(3), eff. Sept. 1, 2017.

(d) Repealed by Acts 2017, 85th Leg., R.S., c. 150, § 4(3), eff. Sept. 1, 2017.

(e) Repealed by Acts 2017, 85th Leg., R.S., c. 150, § 4(3), eff. Sept. 1, 2017.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 1106, § 2, eff. June 20, 1987; Acts 1993, 73rd Leg., c. 855, § 2, eff. Sept. 1, 1993; Acts 2003, 78th Leg., c. 204, § 1.02, eff. Sept. 1, 2003; Acts 2005, 79th Leg., c. 97, § 6, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., R.S., c. 203, § 3.02, eff. Sept. 1, 2011; Acts 2017, 85th Leg., R.S., c. 150, § 4(3), eff. Sept. 1, 2017.

Section 6.01 of Acts 2011, , 82nd Leg., R.S., c. 203, provides:

The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose.

Section 5 of Acts 2017, 85th Leg., R.S., c. 150, provides:

The repeal of Section 22.225(d), Government Code, applies only to an interlocutory order signed on or after the effective date of this Act. An interlocutory order signed before the effective date of this Act is governed by the law applicable to the order immediately before the effective date of this Act, and that law is continued in effect for that purpose.

CHAPTER 22A.
SPECIAL THREE-JUDGE DISTRICT COURT

§ 22A.001. Eligible Proceedings.

(a) The attorney general may petition the chief justice of the supreme court to convene a special three-judge district court in any suit filed in a district court in this state in which this state or a state officer or agency is a defendant in a claim that:

(1) challenges the finances or operations of this state's public school system; or

(2) involves the apportionment of districts for the house of representatives, the senate, the State Board of Education, or the United States Congress, or state judicial districts.

(b) A petition filed by the attorney general under this section stays all proceedings in the district court in which the original case was filed until the chief justice of the supreme court acts on the petition.

(c) Within a reasonable time after receipt of a petition from the attorney general under Subsection (a), the chief justice of the supreme court shall grant the petition and issue an order transferring the case to a special three-judge district court convened as provided by Section 22A.002.

Added by Acts 2015, 84th Leg., c. 186, § 1, eff. Sept. 1, 2015.

§ 22A.002. Special Three-Judge District Court.

(a) On receipt of a petition under Section 22A.001, the chief justice shall order a special three-judge district court to convene and shall appoint three persons to serve on the court as follows:

(1) the district judge of the judicial district to which the original case was assigned;

(2) one district judge of a judicial district other than a judicial district in the same county as the judicial district to which the original case was assigned; and

(3) one justice of a court of appeals other than:

(A) the court of appeals in the court of appeals district in which the original case was assigned; or

(B) a court of appeals district in which the district judge appointed under Subdivision (2) sits.

(b) A judge or justice appointed under Subsection (a)(2) or (3) must have been elected to that office and may not be serving an appointed term of office.

(c) A special three-judge district court convened under this section shall conduct all hearings in the district court to which the original case was assigned and may use the courtroom, other facilities, and administrative support of the district court.

(d) The comptroller shall pay from funds appropriated to the comptroller's judiciary section the travel expenses and other incidental costs related to convening a special three-judge district court under this chapter.

Added by Acts 2015, 84th Leg., c. 186, § 1, eff. Sept. 1, 2015. Added by Acts 2019, 86th Leg., c. 606, § 9.01(a), eff. Sept. 1, 2019.

Section 9.01(b) of Acts 2019, 86th Leg., c. 606, provides:

The change in law made by this section applies only to a travel expense or other incidental cost incurred on or after the effective date of this Act. A travel expense or other incidental cost incurred before the effective date of this Act is governed by the law in effect on the date the travel expense or other incidental cost was incurred, and the former law is continued in effect for that purpose.

§ 22A.003. Consolidation of Related Actions.

(a) In this section, "related case" means any case in which this state or a state officer or agency is a defendant that arises from the same nucleus of operative facts as the claim before a special three-judge district court under this chapter, regardless of the legal claims or causes of action asserted in the related case.

(b) On the motion of any party to a case assigned to a special three-judge district court under Section 22A.002, the court by order shall consolidate with the cause of action before the court any related case pending in any district court or other court in this state.

(c) A case consolidated under Subsection (b) must be transferred to the special three-judge district court if the court finds that transfer is necessary. The transfer may occur without the consent of the parties to the related case or of the court in which the related case is pending.

Added by Acts 2015, 84th Leg., c. 186, § 1, eff. Sept. 1, 2015.

§ 22A.004. Application of Texas Rules of Civil Procedure.

(a) Except as provided by this section, the Texas Rules of Civil Procedure and all other statutes and rules applicable to civil litigation in a district court in this state apply to proceedings before a special three-judge district court.

(b) The supreme court may adopt rules for the operation of a special three-judge district court convened under this chapter and for the procedures of the court.

Added by Acts 2015, 84th Leg., c. 186, § 1, eff. Sept. 1, 2015.

§ 22A.005. Actions by Judge or Justice.

(a) With the unanimous consent of the three judges sitting on a special three-judge district court, a judge or justice of the court may:

(1) independently conduct pretrial proceedings; and

(2) enter interlocutory orders before trial.

(b) A judge or justice of a special three-judge district court may not independently enter a temporary restraining order, temporary injunction, or any order that finally disposes of a claim before the court.

(c) Any independent action taken by one judge or justice of a special three-judge district court related to a claim before the court may be reviewed by the entire court at any time before final judgment.

Added by Acts 2015, 84th Leg., c. 186, § 1, eff. Sept. 1, 2015.

§ 22A.006. Appeal.

(a) An appeal from an appealable interlocutory order or final judgment of a special three-judge district court is to the supreme court.

(b) The supreme court may adopt rules for appeals from a special three-judge district court.

Added by Acts 2015, 84th Leg., c. 186, § 1, eff. Sept. 1, 2015.

CHAPTER 24.
DISTRICT COURTS

SUBCHAPTER A.
GENERAL PROVISIONS

§ 24.001. Age Qualification of Judges.

A district judge must be at least 25 years old.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

§ 24.007. Jurisdiction.

(a) The district court has the jurisdiction provided by Article V, Section 8, of the Texas Constitution.

(b) A district court has original jurisdiction of a civil matter in which the amount in controversy is more than $500, exclusive of interest.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 148, § 1.36, eff. Sept. 1, 1987; Acts 2011, 82nd Leg., 1st C.S., c. 3, § 3.02, eff. Jan. 1, 2012..

§ 24.008. Other Jurisdiction.

The district court may hear and determine any cause that is cognizable by courts of law or equity and may grant any relief that could be granted by either courts of law or equity.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

§ 24.009. Jurisdictional Amount if Parties Properly Join in One Suit.

If two or more persons originally and properly join in one suit, the suit for jurisdictional purposes is treated as if one party is suing for the aggregate amount of all their claims added together, excluding interest and costs. This section does not prevent jurisdiction from attaching on any other ground.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

§ 24.010. Jurisdiction of Failure to Pay Over Certain Money.

The district court may hear and determine:

(1) motions against sheriffs and other officers of the court for failure to pay over money collected under the process of the court or other defalcation of duty in connection with the process; and

(2) motions against attorneys for money collected by them and not paid over.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

§ 24.011. Writ Power.

A judge of a district court may, either in term time or vacation, grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari, and supersedeas and all other writs necessary to the enforcement of the court's jurisdiction.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

CHAPTER 25.
STATUTORY COUNTY COURTS

SUBCHAPTER A.
GENERAL PROVISIONS

§ 25.0001. Application of Subchapter.

(a) This subchapter applies to each statutory county court in this state. If a provision of this subchapter conflicts with a specific provision for a particular court or county, the specific provision controls.

(b) A statement in Subchapter C that a general provision of this subchapter does not apply to a specific statutory court or the statutory courts of a specific county does not affect the application of other laws on the same subject that may affect the court or courts.

Added by Acts 1987, 70th Leg., c. 148, § 4.01, eff. Sept. 1, 1987.

§ 25.0003. Jurisdiction.

(a) A statutory county court has jurisdiction over all causes and proceedings, civil and criminal, original and appellate, prescribed by law for county courts.

(b) A statutory county court does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business that is within the jurisdiction of the commissioners court of each county.

(c) In addition to other jurisdiction provided by law, a statutory county court exercising civil jurisdiction concurrent with the constitutional jurisdiction of the county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $200,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition; and

(2) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy.

[Text of subsection (c) as amended by Acts 2019, c. 696, § 2, eff. Sept. 1, 2020.]

(c) In addition to other jurisdiction provided by law, a statutory county court exercising civil jurisdiction concurrent with the constitutional jurisdiction of the county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $250,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition; and

(2) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy.

(d) Except as provided by Subsection (e), a statutory county court has, concurrent with the county court, the probate jurisdiction provided by general law for county courts.

(e) In a county that has a statutory probate court, a statutory probate court is the only county court created by statute with probate jurisdiction.

(f) A statutory county court does not have the jurisdiction of a statutory probate court granted statutory probate courts by the Estates Code.

Added by Acts 1987, 70th Leg., c. 148, § 4.01, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., c. 746, §§ 2, 3, eff. Oct. 1, 1991; Acts 1999, 76th Leg., c. 431, § 2, eff. Sept. 1, 1999; Acts 2005, 79th Leg., c. 265, § 6.002, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., 1st C.S., 3, § 4.02, eff. Jan. 1, 2012; Acts 2017, 85th Leg., R.S., c. 324, § 22.022, eff. Sept. 1, 2017; Acts 2019, 86th Leg., c. 696, § 2, eff. Sept. 1, 2020.

Section 36 of Acts 2019, 86th Leg., c. 696, provides:

This Act applies only to a cause of action filed on or after the effective date of this Act. A cause of action filed before that date is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 25.0004. Powers and Duties.

(a) A statutory county court or its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or any court of inferior jurisdiction in the county.

(b) A statutory county court or its judge may punish for contempt as prescribed by general law.

(c) The judge of a statutory county court has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) Except as provided in Subsection (e), the judge of a statutory county court has no authority over the county's administrative business that is performed by the county judge.

(e) The judge of a statutory county court may be delegated authority to hear an application under Section 25.052, 26.07, or 61.312, Alcoholic Beverage Code.

(f) The judge of a statutory county court does not have general supervisory control or appellate review of the commissioners court.

(g) A judge of a statutory county court has the judicial immunity of a district judge.

Added by Acts 1987, 70th Leg., c. 148, § 4.01, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., H.B. 1989, § 1, eff. Sept. 1, 2001; Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.03, eff. Jan. 1, 2012.

SUBCHAPTER B.
GENERAL PROVISIONS RELATING TO STATUTORY PROBATE CODES

§ 25.0021. Jurisdiction.

(a) If this section conflicts with a specific provision for a particular statutory probate court or county, the specific provision controls, except that this section controls over a specific provision for a particular court or county if the specific provision attempts to create jurisdiction in a statutory probate court other than jurisdiction over probate, guardianship, mental health, or eminent domain proceedings.

(b) A statutory probate court as that term is defined in Section 22.007(c), Estates Code, has:

(1) the general jurisdiction of a probate court as provided by the Estates Code; and

(2) the jurisdiction provided by law for a county court to hear and determine actions, cases, matters, or proceedings instituted under:

(A) Section 166.046, 192.027, 193.007, 552.015, 552.019, 711.004, or 714.003, Health and Safety Code;

(B) Chapter 462, Health and Safety Code; or

(C) Subtitle C or D, Title 7, Health and Safety Code.

Added by Acts 1987, 70th Leg., c. 148, § 4.01, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., c. 635, § 1, eff. Sept. 1, 2001; Acts 2017, 85th Leg., R.S., c. 324, § 22.023, eff. Sept. 1, 2017.

§ 25.00251. Public Probate Administrator.

(a) A statutory probate court judge, with the concurrence of the commissioners court, may appoint a public probate administrator for the county in which the statutory probate court is located. One person shall serve as the public probate administrator for all statutory probate courts in the county unless the commissioners court has authorized additional public probate administrators.

(b) If a county has more than one statutory probate court, the presiding judges of all of the statutory probate courts located in the county shall designate, by a majority vote, a specific statutory probate court judge to appoint and administer the office of the public probate administrator in that county. If the statutory probate court judges cannot, by a majority vote, determine which statutory probate court judge shall appoint and administer the office of the public probate administrator in that county, the chief presiding statutory probate court judge shall cast the tiebreaking vote to decide which statutory probate court judge shall appoint and administer the office of the public probate administrator in that county.

(c) The public probate administrator may be a person, a charitable organization, or any other suitable entity.

(d) The commissioners court shall set the compensation of the public probate administrator.

(e) The public probate administrator, with the consent of and at salaries set by the commissioners court, may employ assistants, deputies, clerks, and any other employees as necessary to carry out Chapter 455, Estates Code.

Added by Acts 2013, 83rd Leg., R.S., c. 671, § 1, eff. Jan. 1, 2014.

§ 25.0026. Powers and Duties.

(a) A statutory probate court or its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court or any court of inferior jurisdiction in the county.

(b) A statutory probate court or its judge may punish for contempt as prescribed by general law.

(c) The judge of a statutory probate court has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) The judge of a statutory probate court has no authority over the county's administrative business that is performed by the county judge.

Added by Acts 1991, 72nd Leg., c. 394, § 2, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., c. 746, § 7, eff. Oct. 1, 1991.

SUBCHAPTER C.
PROVISIONS RELATING TO PARTICULAR COUNTIES

§ 25.0592. Dallas County Court at Law Provisions.

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Dallas County has concurrent jurisdiction with the district court in civil cases regardless of the amount in controversy.

(b) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, Sec. 4.50(a)(25), eff. January 1, 2012.

(c) If a civil cause or proceeding that could have been filed in a civil district court of Dallas County is filed in a county court at law in Dallas County and the county court at law does not have subject matter jurisdiction over the cause or proceeding, the filing, docketing, or assignment of the cause or proceeding in or to a county court at law is considered a clerical error, and that clerical error shall be corrected by a judgment or order nunc pro tunc. The cause or proceeding is considered filed, docketed, or assigned to the district court of the local administrative judge in the first instance rather than to a county court at law in Dallas County. The judge of a county court at law in Dallas County who acts in the cause or proceeding is considered assigned to the district court of the local administrative judge for that purpose and has all the powers of the judge of that district court under the assignment.

(d) Notwithstanding Section 31.004, Civil Practice and Remedies Code, a judgment or determination of fact or law in a proceeding in a county court at law in Dallas County is res judicata and constitutes a basis for collateral estoppel in a proceeding in any other court, except for appeals from other tribunals.

(e) Repealed by Acts 1991, 72nd Leg., c. 746, Sec. 70, eff. Oct. 1, 1991.

(f) A bond is not required of a judge of a county court at law.

(g) A judge of a county court at law shall be paid an annual salary that is not less than $1,000 less than the total annual salary, including supplements, received by a district judge in the county. The salary shall be paid out of the county treasury by the commissioners court.

(h) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, Sec. 4.50(a)(25), eff. January 1, 2012.

(i) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, Sec. 4.50(a)(25), eff. January 1, 2012.

(j) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, Sec. 4.50(a)(25), eff. January 1, 2012.

(k) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, Sec. 4.50(a)(25), eff. January 1, 2012.

(l) Sections 25.0006 and 25.0007(b) do not apply to a county court at law in Dallas County.

Added by Acts 1987, 70th Leg., c. 148, § 4.01, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., 2nd C.S., c. 1, § 15.04, eff. Jan. 1, 1991; Acts 1991, 72nd Leg., c. 746, § 70, eff. Oct. 1, 1991; Acts 1997, 75th Leg., c. 237, § 1, eff. May 23, 1997; Acts 2011, 82nd Leg., 1st C.S., c. 3, Sec. 4.50(a)(25), eff. Jan. 1, 2012; Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 2.008(a), eff. Sept. 1, 2023.

Section 2.008(b) of Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), provides:

Section 25.0592(l), Government Code, as amended by this section, applies only to a jury impaneled on or after September 1, 2023.

§ 25.1032. Harris County Civil Court at Law Provisions.

(a) A county civil court at law in Harris County has jurisdiction over all civil matters and causes, original and appellate, prescribed by law for county courts, but does not have the jurisdiction of a probate court. A county civil court at law has jurisdiction in appeals of civil cases from justice courts in Harris County.

(b) Repealed by Acts 1991, 72nd Leg., c. 746, § 70, eff. Oct. 1, 1991.

(c) A county civil court at law has exclusive jurisdiction in Harris County of eminent domain proceedings, both statutory and inverse, if the amount in controversy in a statutory proceeding does not exceed the amount provided by Section 25.0003(c) in civil cases. Notwithstanding Section 21.013, Property Code, a party initiating a condemnation proceeding in Harris County may file a petition with the district clerk when the amount in controversy exceeds the amount provided by Section 25.0003(c). The amount in controversy is the amount of the bona fide offer made by the entity with eminent domain authority to acquire the property from the property owner voluntarily.

(d) In addition to other jurisdiction provided by law, a county civil court at law has jurisdiction to:

(1) decide the issue of title to real or personal property;

(2) hear a suit to recover damages for slander or defamation of character;

(3) hear a suit for the enforcement of a lien on real property;

(4) hear a suit for the forfeiture of a corporate charter;

(5) hear a suit for the trial of the right to property valued at $ 200 or more that has been levied on under a writ of execution, sequestration, or attachment; and

(6) hear a suit for the recovery of real property.

(d) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(41), eff. Jan. 1, 2012.

(e) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(41), eff. Jan. 1, 2012.

(f) The judge of a county civil court at law shall be paid an annual salary that is not less than the total annual salary received by a judge of a probate court in the county.

(g Repealed by Acts 2011, 82nd Leg., 1st C.S. 3, § 4.50(a)(41), eff. Jan. 1, 2012.

(h) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(41), eff. Jan. 1, 2012.

(i) The official court reporter of a county civil court at law is entitled to receive the same salary as a reporter of a district court in the county.

(j) The county clerk shall keep separate dockets for each of the county civil courts at law. The county clerk shall tax the official court reporter's fee as costs in civil actions in a county civil court at law in the same manner as the fee is taxed in civil cases in the district courts.

(k) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(41), eff. Jan. 1, 2012.

(l) Sections 25.0006(b) and 25.0008 do not apply to a county civil court at law in Harris County.

Added by Acts 1987, 70th Leg., c. 148, § 4.01, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 2, §§ 8.10(a), (b), 8.11(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., c. 445, § 1, eff. June 14, 1989; Acts 1989, 71st Leg., 2nd C.S., c. 1, § 15.07, eff. Jan. 1, 1991; Acts 1991, 72nd Leg., c. 746, § 70, eff. Oct. 1, 1991; Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(41), eff. Jan. 1, 2012; Acts 2015, 84th Leg., c. 462, § 1, eff. Sept. 1, 2015.

Section 2 of Acts 2015, 84th Leg., c. 462, provides:

The change in law made by this Act applies only to an eminent domain proceeding for which a petition is filed on or after the effective date of this Act. An eminent domain proceeding for which a petition is filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 25.1034. Harris County Probate Court Provisions.

(a) Repealed by Acts 2001, 77th Leg., c. 635, § 3(2), eff. Sept. 1, 2001.

(b) The Probate Court No. 3 of Harris County has primary responsibility for mental illness proceedings and for all administration related to mental illness proceedings, including budget preparation, staff management, and the adoption of administrative policy. The Probate Court No. 4 of Harris County has secondary responsibility for mental illness proceedings.

(c) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(43), eff. Jan. 1, 2012.

(d) Repealed by Acts 1989, 71st Leg., c. 1078, § 2, eff. Aug. 28, 1989.

(e) Repealed by Acts 1989, 71st Leg., c. 1078, § 2, eff. Aug. 28, 1989.

(f) Repealed by Acts 2007, 80th Leg., c. 331, § 2, eff. Oct. 1, 2007.

(g) A special judge of a county civil court at law may be appointed or elected in the manner provided by law for the appointment or election of a special county judge.

(h) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(43), eff. Jan. 1, 2012.

(i) The official court reporter of a county civil court at law is entitled to receive the same salary as a reporter of a district court in the county.

(j) Repealed by Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 2.011(b), eff. Sept. 1, 2023.

(k) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(43), eff. Jan. 1, 2012.

(l) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(43), eff. Jan. 1, 2012.

Added by Acts 1987, 70th Leg., c. 148, § 4.01, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 2, §§ 8.10(a), (b), 8.11(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., c. 445, § 1, eff. June 14, 1989; Acts 1989, 71st Leg., 2nd C.S., c. 1, § 15.07, eff. Jan. 1, 1991; Acts 1991, 72nd Leg., c. 746, § 70, eff. Oct. 1, 1991; Subsec. (f) repealed by Acts 2007, 80th Leg., c. 331, § 2, eff. Oct. 1, 2007; Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(43), eff. Jan. 1, 2012.

§ 25.1863. Probate Jurisdiction: Contested Cases.

(a) Except as provided by Subsection (b), a county court at law in Parker County does not have the jurisdiction of a probate court.

(b) A county court at law has concurrent jurisdiction with the district court over contested probate matters. Notwithstanding the requirement in Section 32.003(a), Estates Code, that the judge of the constitutional county court transfer a contested probate proceeding to the district court, the judge of the constitutional county court shall transfer the proceeding under that section to either a county court at law in Parker County or a district court in Parker County. A county court at law has the jurisdiction, powers, and duties that a district court has under Section 32.003(a), Estates Code, for the transferred proceeding, and the county clerk acts as clerk for the proceeding. The contested proceeding may be transferred between a county court at law in Parker County and a district court in Parker County as provided by local rules of administration.

Added by Acts 1989, 71st Leg., c. 2, 8.17(a), eff. Aug. 28, 1989. Amended by Acts, 2003, 78th Leg., c. 377, § 6, eff. Sept. 1, 2003; Acts 2007, 80th Leg., R.S., c. 947, § 2, eff. Oct. 1, 2007Acts 2009, 81st Leg., R.S., c. 1351, § 12(f), eff. Sept. 1, 2009; Acts 2017, 85th Leg., R.S., c. 324, § 22.028, eff. Sept. 1, 2017.

§ 25.2292. Travis County Court at Law Provisions. [Effective through Aug. 31. 2020.]

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Travis County has concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds $500 but does not exceed $250,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition.

(b) The County Court at Law Number 9 of Travis County shall give preference to criminal cases.

(c) In addition to the jurisdiction provided by Section 25.0003 and other law, the County Court at Law Number 4 of Travis County has concurrent jurisdiction with the district court in state jail felony and third degree felony cases involving family violence, as defined by Section 71.004, Family Code. The court shall give preference to cases in which family violence is alleged, including cases under Title 4, Family Code.

(d) In civil cases, the jury is composed of six members unless:

(1) the amount in controversy exceeds $100,000; and

(2) a party to the case files a written request for a 12-member jury not later than the 30th day before the date of the trial.

(e) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(89), eff. Jan. 1, 2012.

(f) Repealed by Acts 2019, 86th Leg., c. 1121, § 34(1), eff. Sept. 1, 2019.

(g) Repealed by Acts 2019, 86th Leg., c. 1121, § 34(1), eff. Sept. 1, 2019.

(h) Repealed by Acts 1989, 71st Leg., c. 1131, § 3, eff. Sept. 1, 1989.

(i) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(89), eff. Jan. 1, 2012.

(j) All cases from justice courts or other inferior courts must be appealed directly to a county court at law.

(k) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(89), eff. Jan. 1, 2012.

(l) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(89), eff. Jan. 1, 2012.

(m) Section 25.0007 does not apply to a county court at law in Travis County.

(n) The County Court at Law Number 8 of Travis County shall give preference to criminal cases.

Added by Acts 1987, 70th Leg., c. 148, § 4.01, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 2, § 8.21(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., c. 1131, §§ 1, 3, eff. Sept. 1, 1989; Acts 1989, 71st Leg., 2nd C.S., c. 1, § 15.24, eff. Jan. 1, 1991; Acts 1991, 72nd Leg., c. 746, § 70, eff. Oct. 1, 1991; Acts 1997, 75th Leg., c. 578, § 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., c. 1079, § 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., c. 1203, § 1, eff. Sept. 1, 2001; Subsec. (n) added by Acts 2007, 80th Leg., c. 514, § 2, eff. Jan. 1, 2008; Subsec. (f) amended by Acts 2009, 81st Leg., R.S., c. 959, § 1, Sept. 1, 2009; Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(89), eff. Jan. 1, 2012; Acts 2013, 83rd Leg., R.S., c. 1059, § 1, eff. Jan. 1, 2015; Subsec. (f) and (g) repealed by Acts 2019, 86th Leg., c. 1121, 34(1), eff. Sept. 1, 2019.

§ 25.2292. Travis County Court at Law Provisions. [Effective Sept. 1. 2020.]

(a) Repealed by Acts 2019, 86th Leg. c. 696, § 34(3), eff. Sept. 1, 2020.

(b) The County Court at Law Number 9 of Travis County shall give preference to criminal cases.

(c) In addition to the jurisdiction provided by Section 25.0003 and other law, the County Court at Law Number 4 of Travis County has con-current jurisdiction with the district court in state jail felony and third degree felony cases involving family violence, as defined by Section 71.004, Family Code. The court shall give preference to cases in which family violence is alleged, including cases under Title 4, Family Code.

(d) In civil cases, the jury is composed of six members except as otherwise provided by the constitution, Section 25.0007(c), or other law. Failure to object before a six-member jury is seated and sworn constitutes a waiver of a 12-member jury.

(e) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(89), eff. Jan. 1, 2012.

(f) Repealed by Acts 2019, 86th Leg., c. 1121, § 34(1), eff. Sept. 1, 2019.

(g) Repealed by Acts 2019, 86th Leg., c. 1121, § 34(1), eff. Sept. 1, 2019.

(h) Repealed by Acts 1989, 71st Leg., c. 1131, § 3, eff. Sept. 1, 1989.

(i) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(89), eff. Jan. 1, 2012.

(j) All cases from justice courts or other inferior courts must be appealed directly to a county court at law.

(k) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(89), eff. Jan. 1, 2012.

(l) Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(89), eff. Jan. 1, 2012.

(m) Repealed by Acts 2019, 86th Leg. c. 696, § 34(3), eff. Sept. 1, 2020.

(n) The County Court at Law Number 8 of Travis County shall give preference to criminal cases.

Added by Acts 1987, 70th Leg., c. 148, § 4.01, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 2, § 8.21(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., c. 1131, §§ 1, 3, eff. Sept. 1, 1989; Acts 1989, 71st Leg., 2nd C.S., c. 1, § 15.24, eff. Jan. 1, 1991; Acts 1991, 72nd Leg., c. 746, § 70, eff. Oct. 1, 1991; Acts 1997, 75th Leg., c. 578, § 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., c. 1079, § 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., c. 1203, § 1, eff. Sept. 1, 2001; Subsec. (n) added by Acts 2007, 80th Leg., c. 514, § 2, eff. Jan. 1, 2008; Subsec. (f) amended by Acts 2009, 81st Leg., R.S., c. 959, § 1, Sept. 1, 2009; Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(89), eff. Jan. 1, 2012; Acts 2013, 83rd Leg., R.S., c. 1059, § 1, eff. Jan. 1, 2015; Subsec. (f) and (g) repealed by Acts 2019, 86th Leg., c. 1121, 34(1), eff. Sept. 1, 2019; Subsec (d) amended and subsec. (a) and (m) repealed by Acts 2019, 86th Leg., c. 696, §§ 25, 34(3), eff. Sept. 1, 2020.

Section 36 of Acts 2019, 86th Leg., c. 696, provides:

This Act applies only to a cause of action filed on or after the effective date of this Act. A cause of action filed before that date is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 25.2293. Travis County Probate Court Provisions.

(a) Repealed by Acts 2001, 77th Leg., ch. 635, Sec. 3(2), eff. Sept. 1, 2001.

(b) Repealed by Acts 2003, 78th Leg., ch. 1276, Sec. 9.003.

(c) A statutory probate court has eminent domain jurisdiction. All actions, cases, matters, or proceedings of eminent domain arising under Chapter 21, Property Code, or under Section 251.101, Transportation Code , shall be filed and docketed in Probate Court No. 1 of Travis County. A statutory probate court may transfer an eminent domain proceeding to a county court at law in the county.

(d) Probate Court No. 2 of Travis County has primary responsibility for mental health matters.

(e) The county clerk shall docket:

(1) all mental health matters in Probate Court No. 2, notwithstanding the local rules adopted under Section 74.093;

(2) all odd-numbered probate, guardianship, and trust cases, and related cases, as defined by the local rules, in Probate Court No. 1; and

(3) all even-numbered probate, guardianship, and trust cases, and related cases, as defined by the local rules, in Probate Court No. 2.

(f) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 3, Sec. 4.50(a)(90), eff. January 1, 2012.

(g) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 3, Sec. 4.50(a)(90), eff. January 1, 2012.

(h) The county clerk shall appoint a deputy clerk for each statutory probate court. A deputy clerk serves at the pleasure of the judge of the court to which the deputy clerk is assigned. A deputy clerk must take the constitutional oath of office, and the county clerk may require the deputy clerk to furnish a bond in an amount, conditioned and payable, as required by law. A deputy clerk acts in the name of the county clerk and may perform any other service required by the judge of a statutory probate court. A deputy clerk shall attend all sessions of the court to which the deputy clerk is assigned.

(i) The official court reporter of a statutory probate court is entitled to the same amount of compensation paid to the official court reporters in the district courts in the county. The reporter's salary shall be paid in the same manner as the compensation of the official court reporters of the district courts.

(j) The judge of a statutory probate court may appoint an administrative assistant and an auditor to aid the judge in the performance of his duties. The judge sets the salary of the administrative assistant and the salary of the auditor by an order entered in the minutes of the court. The appointments and the salaries may be changed only by order of the judge. The salaries of the auditor and the administrative assistant shall be paid monthly out of the county's general fund or any other fund available for that purpose.

(k) In case of the absence, disqualification, or incapacity of a judge of a statutory probate court of Travis County, or for any other reason, the judges of the statutory probate courts of Travis County may sit and act for each other in any matter or proceeding pending in either court.

(l) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 3, Sec. 4.50(a)(90), eff. January 1, 2012.

(m) Repealed by Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 2.019(b), eff. Oct. 1, 2023.

Acts 1991, 72nd Leg., c. 746, § 70, eff. Oct. 1, 1991. Added by Acts 1989, 71st Leg., c. 2, § 8.21(c), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., c. 1131, § 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., c. 76, § 13, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., c. 394, § 4, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., c. 746, § 70, eff. Oct. 1991; Acts 1997, 75th Leg., c. 165, § 30.185, eff. Sept. 1, 1997; Acts 2001, 77th Leg., c. 426, § 7, eff. Sept. 1, 2001; Acts 2001, 77th Leg., c. 635, § 3(2), eff. Sept. 1, 2001; Acts 2001, 77th Leg., c. 677, §§ 1, 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., c. 1276, § 9.003, eff. Sept. 1, 2003; Subsec. (m) added by Acts 2009, 81st Leg., R.S., c. 959, § 2, Sept. 1, 2009; Acts 2011, 82nd Leg., 1st C.S., c. 3, § 4.50(a)(90), eff. Jan. 1, 2012; Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 2.019(a) and (b), eff. Oct. 1, 2023.

CHAPTER 26.
CONSTITUTIONAL COUNTY COURTS

SUBCHAPTER C.
APPOINTMENT OF VISITING JUDGES IN CERTAIN COUNTIES

§ 26.021. Application of Subchapter.

This subchapter applies only to a county in which:

(1) there is no statutory county court at law or statutory probate court; and

(2) all duties of the county court devolve on the county judge.

Added by Acts 1985, 69th Leg., c. 480, 1, eff. Sept. 1, 1985.

§ 26.022. Appointment for Particular Matters.

(a) The county judge for good cause may at any time appoint a visiting judge with respect to any pending civil or criminal matter.

(b) The visiting judge may be appointed on motion of the court or on motion of any counsel of record in the matter. Each counsel of record is entitled to notice and hearing on the matter.

(c) To be appointed a visiting judge, a person must be agreed on by the counsels of record, if the counsels are able to agree.

(d) The motion for appointment and the order appointing the visiting judge shall be noted on the docket. A written motion or order may be filed among the papers of the case. (e) The visiting judge has the powers of the county judge in relation to the matter involved.

Added by Acts 1985, 69th Leg., c. 480, 1, eff. Sept. 1, 1985; Amended by Acts 1995, 74th Leg., c. 782, 7, eff. Sept. 1, 1995; Acts 1999, 76th Leg., c. 1388, § 9, eff. Sept. 1, 1999.

SUBCHAPTER D.
JURISDICTION AND POWERS

§ 26.041. General Jurisdiction; Changes.

A county court has the jurisdiction conferred by this subchapter and other law.

Acts 1985, 69th Leg., c. 480, 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 148, 1.38, eff. Sept. 1, 1987.

§ 26.042. Civil Jurisdiction; Juvenile Jurisdiction. [Effective through Aug. 31, 2020.]

(a) A county court has concurrent jurisdiction with the justice courts in civil cases in which the matter in controversy exceeds $200 in value but does not exceed $10,000, exclusive of interest.

(b) A county court has juvenile jurisdiction as provided by Section 23.001.

(c) If under Subchapter E a county court has original concurrent jurisdiction with the justice courts in all civil matters in which the justice courts have jurisdiction, an appeal or writ of error may not be taken to the court of appeals from a final judgment of the county court in a civil case in which:

(1) the county court has appellate or original concurrent jurisdiction with the justice courts; and

(2) the judgment or amount in controversy does not exceed $250, exclusive of interest and costs.

(d) A county court has concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds $500 but does not exceed $5,000, exclusive of interest.

(e) A county court has appellate jurisdiction in civil cases over which the justice courts have original jurisdiction in cases in which the judg-ment appealed from or the amount in controversy exceeds $250, exclusive of costs.

Added by Acts 1985, 69th Leg., c. 480, 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 148, 1.39, eff. Sept. 1, 1987; Acts 1987, 70th Leg., c. 745, 1, eff. June 20, 1987; Acts 1991, 72nd Leg., c. 776, 1, eff. Sept. 1, 1991; Subsec. (a) amended by Acts 2007, 80th Leg., c. 383, § 1, eff. Sept. 1, 2007; Subsec. (e) amended by Acts 2007, 80th Leg., c. 553, § 1, eff. Sept. 1, 2007; Subsec (c) amended by Acts 2009, 81st Leg., R.S., c. 1351, eff. Sept., 1, 2009.

Section 4 of Acts 2007, 80th Leg., c. 383, provides:

This Act applies only to a cause of action filed on or after the effective date of this Act. A cause of action filed before the effective date of this Act is governed by the law in effect at the time the cause of action was filed, and that law is continued in effect for that purpose.

Section 4 of Acts 2007, 80th Leg., c. 553, provides:

This Act applies only to a cause of action filed on or after the effective date of this Act. A cause of action filed before the effective date of this Act is governed by the law in effect at the time the cause of action was filed, and that law is continued in effect for that purpose.

Section 14 of Acts 2009, 81st Leg., R.S., c. 1351, provides:

Except as otherwise provided by this Act, the changes in law made by this Act apply only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

§ 26.042. Civil Jurisdiction; Juvenile Jurisdiction. [Effective Sept. 1, 2020.]

(a) A county court has concurrent jurisdiction with the justice courts in civil cases in which the matter in controversy exceeds $200 in value but does not exceed $20,000, exclusive of interest.

(b) A county court has juvenile jurisdiction as provided by Section 23.001.

(c) If under Subchapter E a county court has original concurrent jurisdiction with the justice courts in all civil matters in which the justice courts have jurisdiction, an appeal or writ of error may not be taken to the court of appeals from a final judgment of the county court in a civil case in which:

(1) the county court has appellate or original concurrent jurisdiction with the justice courts; and

(2) the judgment or amount in controversy does not exceed $250, exclusive of interest and costs.

(d) A county court has concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds $500 but does not exceed $5,000, exclusive of interest.

(e) A county court has appellate jurisdiction in civil cases over which the justice courts have original jurisdiction in cases in which the judgment appealed from or the amount in controversy exceeds $250, exclusive of costs.

Added by Acts 1985, 69th Leg., c. 480, 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 148, 1.39, eff. Sept. 1, 1987; Acts 1987, 70th Leg., c. 745, 1, eff. June 20, 1987; Acts 1991, 72nd Leg., c. 776, 1, eff. Sept. 1, 1991; Subsec. (a) amended by Acts 2007, 80th Leg., c. 383, § 1, eff. Sept. 1, 2007; Subsec. (e) amended by Acts 2007, 80th Leg., c. 553, § 1, eff. Sept. 1, 2007; Subsec (c) amended by Acts 2009, 81st Leg., R.S., c. 1351, eff. Sept., 1, 2009; Subsec. (a) amended by Acts 2019, 86th Leg., c. 696, § 31, eff. Sept. 1, 2020.

Section 4 of Acts 2007, 80th Leg., c. 383, provides:

This Act applies only to a cause of action filed on or after the effective date of this Act. A cause of action filed before the effective date of this Act is governed by the law in effect at the time the cause of action was filed, and that law is continued in effect for that purpose.

Section 4 of Acts 2007, 80th Leg., c. 553, provides:

This Act applies only to a cause of action filed on or after the effective date of this Act. A cause of action filed before the effective date of this Act is governed by the law in effect at the time the cause of action was filed, and that law is continued in effect for that purpose.

Section 14 of Acts 2009, 81st Leg., R.S., c. 1351, provides:

Except as otherwise provided by this Act, the changes in law made by this Act apply only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

Section 36 of Acts 2019, 86th Leg., c. 696, provides:

This Act applies only to a cause of action filed on or after the effective date of this Act. A cause of action filed before that date is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 26.043. Civil Matters in Which County Court Is Without Jurisdiction.

A county court does not have jurisdiction in:

(1) a suit to recover damages for slander or defamation of character;

(2) a suit for the enforcement of a lien on land;

(3) a suit in behalf of the state for escheat;

(4) a suit for divorce;

(5) a suit for the forfeiture of a corporate charter;

(6) a suit for the trial of the right to property valued at $500 or more and levied on under a writ of execution, sequestration, or attachment;

(7) an eminent domain case; or

(8) a suit for the recovery of land.

Added by Acts 1985, 69th Leg., c. 480, 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 148, 1.40, eff. Sept. 1, 1987.

§ 26.044. Certiorari Jurisdiction.

A county court has jurisdiction in cases brought from justice court by certiorari.

Added by Acts 1985, 69th Leg., c. 480, 1, eff. Sept. 1, 1985.

§ 26.050. Powers of Law and Equity.

Subject to the limitations stated in this chapter and in the constitution, a county court may hear and determine any cause in law or equity that a court of law or equity recognizes and may grant any relief that may be granted by a court of law or equity.

Added by Acts 1985, 69th Leg., c. 480, 1, eff. Sept. 1, 1985.

§ 26.051. Writ Power.

A county judge, in either term time or vacation, may grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari, and supersedeas and all other writs necessary to the enforcement of the court's jurisdiction.

Added by Acts 1987, 70th Leg., c. 148, 1.42, eff. Sept. 1, 1987.

CHAPTER 27.
JUSTICE COURTS

SUBCHAPTER B.
JURISDICTION AND POWERS

§ 27.031. Jurisdiction. [Effective through Aug. 31, 2020.]

(a) In addition to the jurisdiction and powers provided by the constitution and other law, the justice court has original jurisdiction of:

(1) civil matters in which exclusive jurisdiction is not in the district or county court and in which the amount in controversy is not more than $10,000, exclusive of interest;

(2) cases of forcible entry and detainer; and

(3) foreclosure of mortgages and enforcement of liens on personal property in cases in which the amount in controversy is otherwise within the justice court's jurisdiction.

(b) A justice court does not have jurisdiction of:

(1) a suit in behalf of the state to recover a penalty, forfeiture, or escheat;

(2) a suit for divorce;

(3) a suit to recover damages for slander or defamation of character;

(4) a suit for trial of title to land; or

(5) a suit for the enforcement of a lien on land.

(c) A justice court has concurrent jurisdiction with a municipal court in cases that arise in the municipality's extraterritorial jurisdiction and that arise under an ordinance of the municipality applicable to the extraterritorial jurisdiction under Section 216.902, Local Government Code.

(d) A corporation need not be represented by an attorney in justice court.

(e) The court has concurrent jurisdiction with a district court and a justice court over expunction proceedings relating to the arrest of a person for an offense punishable by fine only.

Added Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 745, § 2, eff. June 20, 1987; Acts 1991, 72nd Leg., c. 776, § 2, eff. Sept. 1, 1991; Acts 2007, 80th Leg., R.S., c. 383, § 2, eff. Sept. 1, 2007; Acts 2007, 80th Leg., R.S., c. 612, § 12, eff. Sept. 1, 2007; Acts 2007, 80th Leg., R.S., c. 1149, § 2, eff. Sept. 1, 2007; Acts 2009, 81st Leg., R.S., c. 87, § 27.001(18), eff. Sept. 1, 2009; Acts 2017, 85th Leg., R.S., c. 1149, § 6, eff. Sept. 1, 2017; Subsec. (a)(4) repealed by Acts 2019, 86th Leg., c. 372, § 3, eff. June 2, 2019.

§ 27.031. Jurisdiction. [Effective Sept. 1, 2020.]

(a) In addition to the jurisdiction and powers provided by the constitution and other law, the justice court has original jurisdiction of:

(1) civil matters in which exclusive jurisdiction is not in the district or county court and in which the amount in controversy is not more than $20,000, exclusive of interest;

(2) cases of forcible entry and detainer; and

(3) foreclosure of mortgages and enforcement of liens on personal property in cases in which the amount in controversy is otherwise within the justice court's jurisdiction.

(b) A justice court does not have jurisdiction of:

(1) a suit in behalf of the state to recover a penalty, forfeiture, or escheat;

(2) a suit for divorce;

(3) a suit to recover damages for slander or defamation of character;

(4) a suit for trial of title to land; or

(5) a suit for the enforcement of a lien on land.

(c) A justice court has concurrent jurisdiction with a municipal court in cases that arise in the municipality's extraterritorial jurisdiction and that arise under an ordinance of the municipality applicable to the extraterritorial jurisdiction under Section 216.902, Local Government Code.

(d) A corporation need not be represented by an attorney in justice court.

(e) The court has concurrent jurisdiction with a district court and a justice court over expunction proceedings relating to the arrest of a person for an offense punishable by fine only.

Added Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 745, § 2, eff. June 20, 1987; Acts 1991, 72nd Leg., c. 776, § 2, eff. Sept. 1, 1991; Acts 2007, 80th Leg., R.S., c. 383, § 2, eff. Sept. 1, 2007; Acts 2007, 80th Leg., R.S., c. 612, § 12, eff. Sept. 1, 2007; Acts 2007, 80th Leg., R.S., c. 1149, § 2, eff. Sept. 1, 2007; Acts 2009, 81st Leg., R.S., c. 87, § 27.001(18), eff. Sept. 1, 2009; Acts 2017, 85th Leg., R.S., c. 1149, § 6, eff. Sept. 1, 2017; Subsec. (a)(4) repealed by Acts 2019, 86th Leg., c. 372, § 3, eff. June 2, 2019; Subsec. (a)(1) amended by Acts 2019, 86th Leg., c. 696, § 32, eff. Sept. 1, 2020.

Section 36 of Acts 2019, 86th Leg., c. 696, provides:

This Act applies only to a cause of action filed on or after the effective date of this Act. A cause of action filed before that date is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 27.032. Extraordinary Remedies.

A justice of the peace may issue writs of attachment, garnishment, and sequestration within the justice's jurisdiction in the same manner as judges and clerks of the district and county courts.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

§ 27.033. Other Powers.

A justice of the peace may:

(1) exercise jurisdiction over other matters cognizable before a justice of the peace under any law of this state; and

(2) proceed with all unfinished business of the office as if the business had been originally begun before that justice.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

SUBCHAPTER C.
CONDUCTING COURT

§ 27.054. Exchange of Benches.

(a) A justice of the peace may hold court for any other justice in any county at the request of that justice.

(b) The justices of any county may exchange benches for a period not to exceed five days if they consider it expedient.

(c) A justice who exchanges benches with another justice is not entitled to receive compensation from the commissioners court of the county in which the regular justice serves.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 2005, 79th Leg., c. 1164, § 1, eff. Sept. 1, 2005.

§ 27.0545. Exchange of Benches: Inquests.

(a) If a justice of the peace or the county judge of a county to which Subchapter A, Chapter 49, Code of Criminal Procedure, applies is not available to conduct an inquest into a person's death occurring in the county, the justice of the peace of the precinct in which the death occurred or the county judge may request a justice of the peace of another county to which that subchapter applies to conduct the inquest.

(b) A justice of the peace who on request conducts an inquest under this section shall, not later than the fifth day after the date the inquest is initiated, transfer all information related to the inquest to the justice of the peace of the precinct in which the death occurred for final disposition of the matter.

(c) A justice of the peace who conducts an inquest under this section is not entitled to receive from the commissioners court of the county in which the death occurred any compensation, other than mileage, for conducting the inquest.

Added by Acts 2017, 85th Leg., R.S., c. 84, § 2, eff. Sept. 1, 2017.

CHAPTER 28.
SMALL CLAIMS COURTS

SUBCHAPTER A.
GENERAL PROVISIONS

§ 28.001. Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 5.06(a), eff. May 1, 2013.

§ 28.002. Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 5.06(a), eff. May 1, 2013.

§ 28.003. Repealed by Acts 2011, 82nd Leg., 1st C.S., c. 3, § 5.06(a), eff. May 1, 2013.

CHAPTER 30.
MUNICIPAL COURTS OF RECORD

SUBCHAPTER A.
GENERAL LAW FOR MUNICIPAL COURTS OF RECORD

§ 30.00003. Creation of Municipal Courts of Record.

(a) The governing body may by ordinance create a municipal court of record if the governing body determines that the creation of the court is necessary to provide a more efficient disposition of the cases arising in the municipality.

(b) The ordinance may establish as many municipal courts of record as needed as determined by the governing body.

(c) Except as provided by Subsection (d), the ordinance shall give each court a numerical designation, beginning with "Municipal Court of Record No. 1."

(d) If a municipality has a unified court of record, that court shall be the "Municipal Court of Record in the City of (name of municipality)" and the municipality may establish by ordinance divisions, beginning with "Division No. 1."

(e) A municipal court of record may not exist concurrently with a municipal court that is not a municipal court of record in the municipality.

(f) A municipal court of record has no terms and may sit for any time for the transaction of business of the court.

Added by Acts 1987, 70th Leg., c. 811, Sec. 1, eff. Aug. 31, 1987. Renumbered from Government Code § 30.483 by Acts 1997, 75th Leg., c. 165, § 8.02, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 691, § 1, eff. Sept. 1, 1999.

SUBTITLE D.
JUDICIAL PERSONNEL AND OFFICIALS

CHAPTER 51.
CLERKS

SUBCHAPTER G.
MISCELLANEOUS PROVISIONS

§ 51.604. Repealed by Acts 2021, 87th Leg., S.B. 41, § 5.01(c)(8), eff. Jan. 1, 2022.

SUBTITLE E.
JURIES

CHAPTER 62.
PETIT JURIES

SUBCHAPTER A.
GENERAL PROVISIONS

§ 62.001. Jury Source; Reconstitution of Jury Wheel.

(a) The jury wheel must be reconstituted by using, as the source:

(1) the names of all persons on the current voter registration lists from all the precincts in the county; and

(2) all names on a current list to be furnished by the Department of Public Safety, showing the citizens of the county who:

(A) hold a valid Texas driver's license or a valid personal identification card or certificate issued by the department; and

(B) are not disqualified from jury service under Section 62.102(1), (2), or (8).

(b) Notwithstanding Subsection (a), the names of persons listed on a register of persons exempt from jury service may not be placed in the jury wheel, as provided by Sections 62.108, 62.109, 62.113, 62.114, and 62.115.

(c) Each year not later than the third Tuesday in November or the date provided by Section 16.032, Election Code, for the cancellation of voter registrations, whichever is earlier, the voter registrar of each county shall furnish to the secretary of state a current voter registration list from all the precincts in the county that, except as provided by Subsection (d), includes:

(1) the complete name, mailing address, date of birth, voter registration number, and precinct number for each voter;

(2) if available, the Texas driver's license number or personal identification card or certificate number and social security number for each voter; and

(3) any other information included on the voter registration list of the county.

(d) The list required by Subsection (a)(1) must exclude the names of persons on the suspense list maintained under Section 15.081, Election Code..

(e) The voter registrar shall send a list of the names of persons excluded to the secretary of state with the list required by Subsection (c).

(f) The Department of Public Safety shall furnish a list to the secretary of state that shows the names required under Subsection (a)(2) and that contains any of the information enumerated in Subsection (c) that is available to the department, including citizenship status and county of residence. The list shall exclude the names of convicted felons, persons who are not citizens of the United States, persons residing outside the county, and the duplicate name of any registrant. The department shall furnish the list to the secretary of state on or before the first Monday in October of each year.

(g) The secretary of state shall accept the lists furnished as provided by Subsections (c) through (f). The secretary of state shall combine the lists, eliminate duplicate names, and send the combined list to each county on or before December 31 of each year or as may be required under a plan developed in accordance with Section 62.011. The district clerk of a county that has adopted a plan under Section 62.011 shall give the secretary of state notice not later than the 90th day before the date the list is required. The list furnished the county must be in a format, electronic or printed copy, as requested by the county and must be certified by the secretary of state stating that the list contains the names required by Subsections (c) through (f), eliminating duplications. The secretary of state shall furnish the list free of charge.

(h) If the secretary of state is unable to furnish the list as provided in this section because of the failure of the voter registrar to furnish the county voter registration list to the secretary of state, the county tax assessor-collector, sheriff, county clerk, and district clerk in the county shall meet at the county courthouse between January 1 and January 15 of the following year and shall reconstitute the jury wheel for the county, except as provided under a plan adopted under Section 62.011. The deadlines included in the plan control for preparing the list and reconstituting the wheel. The secretary of state shall send the list furnished by the Department of Public Safety as provided by Subsection (f) to the voter registrar, who shall combine the lists as described in this section for use as the juror source and certify the combined list as required of the secretary of state under Subsection (g).

(i) The commissioners court may, instead of using the method provided by Subsections (c) through (h), contract with another governmental unit or a private person to combine the voter registration list with the list furnished by the Department of Public Safety. Subsections (c) through (h) do not apply to a county in which the commissioners court has contracted with another governmental unit or a private person under this subsection. The Department of Public Safety may not charge a fee for furnishing a list under this subsection. Each list must contain the name, date of birth, address, county of residence, and citizenship status of each person listed. If practical, each list must contain any other information useful in determining if the person is qualified to serve as a juror.

(j) Notwithstanding Subsection (a), in a county with a population of 250,000 or more, the names of persons who are summoned for jury service in the county and who appear for service must be removed from the jury wheel and may not be maintained in the jury wheel until the third anniversary of the date the person appeared for service or until the next date the jury wheel is reconstituted, whichever date occurs earlier. This subsection applies regardless of whether the person served on a jury as a result of the summons.

(k) In reconstituting the jury wheel, the county or district clerk shall update jury wheel cards to reflect addresses that have been changed as provided by Section 62.0146.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., c. 132, § 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., c. 789, § 1, eff. June 15, 1989; Acts 1991, 72nd Leg., c. 442, § 1, eff. Jan. 1, 1992; Acts 1997, 75th Leg., c. 425, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 640, § 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., c. 571, § 1, eff. June 11, 2001; Acts 2017, 85th Leg., R.S., c. 250, § 1, eff. May 29, 2017; Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 8.004, eff. Sept. 1, 2023.

§ 62.011. Electronic or Mechanical Method of Selection.

(a) On the recommendation of a majority of the district and criminal district judges of a county, the commissioners court, by order entered in its minutes, may adopt a plan for the selection of names of persons for jury service with the aid of electronic or mechanical equipment instead of drawing the names from a jury wheel.

(b) A plan authorized by this section for the selection of names of prospective jurors must:

(1) be proposed in writing to the commissioners court by a majority of the district and criminal district judges of the county at a meeting of the judges called for that purpose;

(2) specify that the source of names of persons for jury service is the same as that provided by Section 62.001 and that the names of persons listed in a register of persons exempt from jury service may not be used in preparing the record of names from which a jury list is selected, as provided by Sections 62.108 and 62.109;

(3) provide a fair, impartial, and objective method of selecting names of persons for jury service with the aid of electronic or mechanical equipment;

(4) designate the district clerk, or in a county with a population of at least 1.7 million and in which more than 70 percent of the population resides in a single municipality, a bailiff appointed as provided under Section 62.019, as the officer in charge of the selection process and define the officer's duties; and

(5) provide that the method of selection either will use the same record of names for the selection of persons for jury service until that record is exhausted or will use the same record of names for a period of time specified by the plan.

(c) The provisions of this subchapter relating to the selection of names of persons for jury service by the use of a jury wheel do not apply in a county that adopts a plan authorized by this section for the selection of names of prospective jurors by the use of electronic or mechanical equipment.

(d) A state agency or the secretary of state may not charge a fee for furnishing a list of names required by Section 62.001.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., c. 132, §§ 3, 4, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., c. 442, § 2, eff. Jan. 1, 1992; Acts 1995, 74th Leg., c. 677, § 1, eff. Sept. 1, 1995; Acts 2023, 88th Leg., R.S., c. 644 (HB 4559), § 39, eff. Sept. 1, 2023.

§ 62.0111. Computer or Telephone Response to Summons.

(a) A plan authorized under Section 62.011 for the selection of names of prospective jurors may allow for a prospective juror to appear in response to a summons by:

(1) contacting the county officer responsible for summoning jurors by computer;

(2) calling an automated telephone system; or

(3) appearing before the court in person.

(b) A plan adopted under Subsection (a) may allow for a prospective juror to provide information to the county officer responsible for summoning jurors or for the county officer to provide information to the prospective juror by computer or automated telephone system, including:

(1) information that permits the court to determine whether the prospective juror is qualified for jury service under Section 62.102;

(2) information that permits the court to determine whether the prospective juror is exempt from jury service under Section 62.106;

(3) submission of a request by the prospective juror for a postponement of or excuse from jury service under Section 62.110;

(4) information for jury assignment under Section 62.016, including:

(A) the prospective juror's postponement status;

(B) if the prospective juror could potentially serve on a jury in a justice court, the residency of the prospective juror; and

(C) if the prospective juror could potentially serve on a jury in a criminal matter, whether the prospective juror has been convicted of misdemeanor theft;

(5) completion and submission by the prospective juror of the written juror questionnaire under Section 62.0132;

(6) the prospective juror's electronic mail address; and

(7) notification to the prospective juror by electronic mail of:

(A) whether the prospective juror is qualified for jury service;

(B) the status of the exemption, postponement, or judicial excuse request of the prospective juror; or

(C) whether the prospective juror has been assigned to a jury panel.

(c) The county officer responsible for summoning jurors shall purge the electronic mail address of a prospective juror collected under Subsection (b):

(1) if the prospective juror serves on a jury, not later than the 30th day after the date that:

(A) the county sends the person payment for jury service; or

(B) the county would otherwise send the person payment for jury service, if the person has donated the payment under Section 61.003; or

(2) if the prospective juror does not serve on a jury, not later than the 30th day after the date that the court releases the person from jury service.

Added by Acts 2003, c. 276, § 1, eff. Sept. 1, 2003. Amended by Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 8.005, eff. Sept. 1, 2023

§ 62.0125. Summons for Jury Service on General Election Day Prohibited.

Prospective jurors may not be summoned to appear for jury service on the date of the general election for state and county officers.

Added by Acts 2003, c. 398, § 1, eff. Sept. 1, 2003.

§ 62.013. Summons for Jury Service by Clerk, Sheriff, or Constable.

(a) Except as provided by Section 62.014, the clerk, sheriff, or constable, on receipt of a jury list from a county or district clerk, shall immediately notify the persons whose names are on the list to appear for jury service on the date designated by the judge.

(b) The clerk, sheriff, or constable shall notify each prospective juror to appear for jury service:

(1) by an oral summons; or

(2) if the judge ordering the summons so directs, by a written summons sent by registered mail or certified mail, return receipt requested, or by first class mail to the address on the jury wheel card or the address on the current voter registration list of the county.

(c) Delivery of a written summons is sufficient if the mail containing the summons is received by a person authorized by the United States Postal Service to receive it.

(d) The content of an oral or written summons to appear for jury service is sufficient if it includes the time and place for the appearance of the prospective juror for jury service, the purpose for which he is to appear, and the penalty for his failure to appear as required.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., c. 424, § 2, eff. Sept. 1, 1993; Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 8.008, eff. Sept. 1, 2023.

§ 62.0131. Form of Written Jury Summons.

(a) The Office of Court Administration of the Texas Judicial System shall develop and maintain a model for a uniform written jury summons in this state.

(b) The model must include:

(1) the option to provide:

(A) the exemptions and restrictions governing jury service under Subchapter B; or

(B) the electronic address of the court's Internet website on which is posted the exemptions and restrictions governing jury service under Subchapter B;

(2) the information under Chapter 122, Civil Practice and Remedies Code, relating to the duties of an employer with regard to an employee who is summoned for jury service;

(3) notice of the contempt action to which the person summoned for jury service is subject under Section 62.0141 for failure to comply with the jury summons; and

(4) the option to:

(A) include in the jury summons the juror questionnaire required by Section 62.0132;

(B) provide the electronic address of the court's Internet website from which the juror questionnaire may be easily printed; or

(C) in counties in which the district and criminal district judges adopted a plan for an electronic jury selection method under Section 62.011, provide the electronic address of the court's Internet website for the prospective juror to access and complete the juror questionnaire.

(c) A written jury summons must conform with the model established under this section and must be 3-1/2 by 5 inches or larger in size.

(d) In developing and maintaining the model required by this section, the Office of Court Administration of the Texas Judicial System shall solicit and consider the opinions of the members of the judiciary, district clerks, and attorneys.

Added by Acts 1999, 76th Leg., c. 539, § 1, eff. Sept. 1, 1999. Amended by Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 8.009, eff. Sept. 1, 2023

§ 62.0132. Juror Questionnaire.

(a) The Office of Court Administration of the Texas Judicial System shall develop and maintain a questionnaire to accompany a written jury summons.

(b) A written jury summons must include:

(1) a copy of the questionnaire developed under this section; or

(2) the electronic address of the court's Internet website from which the questionnaire developed under this section may be easily printed.

(c) The questionnaire must require a person to provide biographical and demographic information that is relevant to service as a jury member, including the person's:

(1) name, sex, race, and age;

(2) residence address and mailing address;

(3) education level, occupation, and place of employment;

(4) marital status and the name, occupation, and place of employment of the person's spouse;

(5) citizenship status and county of residence; and

(6) any electronic address.

(d) Except as provided by this subsection, a person who has received a jury summons shall complete and submit a juror questionnaire when the person reports for jury duty. If the district and criminal district judges of a county adopt a plan for an electronic jury selection method under Section 62.011, the county may allow a person to complete and submit a juror questionnaire on the court's Internet website as authorized under Section 62.0111(b)(5).

(e) In developing and maintaining the questionnaire required by this section, the Office of Court Administration of the Texas Judicial System shall solicit and consider the opinions of the members of the judiciary, district clerks, and attorneys.

(f) Except as provided by Subsection (g), information contained in a completed questionnaire is confidential and is not subject to Chapter 552.

(g) The information contained in a completed questionnaire may be disclosed to:

(1) a judge assigned to hear a cause of action in which the respondent to the questionnaire is a potential juror;

(2) court personnel;

(3) a litigant and a litigant's attorney in a cause of action in which the respondent to the questionnaire is a potential juror; and

(4) other than information provided that is related to Section 62.102(8) or (9), the voter registrar of a county in connection with any matter of voter registration or the administration of elections.

(h) The questionnaire must notify a person that if the person states that the person is not a citizen, the person will no longer be eligible to vote if the person fails to provide proof of citizenship.

Added by Acts 1999, 76th Leg., c. 539, § 1, eff. Sept. 1, 1999. Amended by Acts 2011, 82nd Leg., R.S., c. 683, § 5, eff. Sept. 1, 2011; Acts 2017, 85th Leg., R.S., c. 713, § 8, eff. June 12, 2017; Acts 2017, 85th Leg., R.S., c. 22, § 1, eff. Sept. 1, 2017; Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), §§ 8.010 and 8.011, eff. Sept. 1, 2023.

Section 2 of Acts 2017, 85th Leg., R.S., c. 22, provide:

The change in law made by this Act to Section 62.0132, Government Code, applies only to a written jury summons sent on or after the effective date of this Act. A written jury summons sent before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

§ 62.014. Summons for Jury Service by Clerks, Sheriffs, or Bailiffs.

(a) In a county with at least nine district courts, the district judges may direct that prospective jurors be summoned for jury service by the clerk, the sheriff, or a bailiff, or an assistant or deputy bailiff, in charge of the central jury room and the general panel of the county.

(b) A summons under this section to appear for jury service may be made verbally in person, by registered mail, by ordinary mail, or by any other method as determined by the district judges of the county.

(c) Prospective jurors summoned under this section for service on the general jury panel serve as jurors in civil and criminal cases, and additional summons for service in criminal cases is not required.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), §§ 8.012 and 8.013, eff. Sept. 1, 2023.

§ 62.0141. Failure to Answer Jury Summons.

In addition to any criminal penalty prescribed by law, a person summoned for jury service who does not comply with the summons as required by law or who knowingly provides false information in a request for an exemption or to be excused from jury service is subject to a contempt action punishable by a fine of not less than $100 nor more than $1,000.

Acts 1991, 72nd Leg., c. 442, § 3, eff. Jan. 1, 1992. Amended by Acts 2005, 79th Leg., c. 1360, § 3, eff. Sept. 1, 2005.

§ 62.0142. Notice on Written Summons.

If a written summons for jury duty allows a person to claim a disqualification or exemption by signing a statement and returning it to the clerk of the court, the form must notify the person that by claiming a disqualification or exemption based on:

(1) the lack of citizenship, the person will no longer be eligible to vote if the person fails to provide proof of citizenship; or

(2) lack of residence in the county, the person might no longer be eligible to vote in the county.

Acts 2005, 79th Leg., c. 559, § 1, eff. Sept. 1, 2005. Amended by Acts 2011, 82nd Leg., R.S., c. 683, § 6, eff. Sept. 1, 2011.

§ 62.0143. Postponement of Jury Service.

(a) A person summoned for jury service may request a postponement of the person's initial appearance for jury service. The person may request the postponement by contacting the clerk of the court in person, in writing, or by telephone before the date on which the person is summoned to appear.

(b) On receipt of a request under Subsection (a), the clerk of the court shall grant the person a postponement if:

(1) the person has not been granted a postponement in that county during the one-year period preceding the date on which the person is summoned to appear; and

(2) the person and the clerk determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.

(c) A person who receives a postponement under Subsection (b) may request a subsequent postponement in the manner described by Subsection (a). The clerk of the court may approve the subsequent postponement only because of an extreme emergency that could not have been anticipated, such as a death in the person's family, sudden serious illness suffered by the person, or a natural disaster or national emergency in which the person is personally involved. Before the clerk may grant the subsequent postponement, the person and the clerk must determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was to appear after the postponement under Subsection (b).

Acts 2005, 79th Leg., c. 1360, § 4, eff. Sept. 1, 2005. Renumbered from Government Code, § 62.0142 by Acts 2007, 80th Leg., c. 921, § 17.001(26), eff. Sept. 1, 2007.

Section 17.003 of Acts 2007, 80th Leg., c. 921, provides:

If the number, letter, or designation assigned by Section 17.001 of this Act conflicts with a number, letter, or designation assigned by another Act of the 80th Legislature:
(1) the other Act controls, and the change made by Section 17.001 of this Act has no effect; and
(2) any cross-reference change made by Section 17.002 of this Act to conform to that change made by Section 17.001 of this Act has no effect.

§ 62.0144. Postponement of Jury Service in Certain Counties.

(a) This section applies only to a county:

(1) with a population of 1.4 million or more; and

(2) that has within its boundaries at least two municipalities that each have a population of 300,000 or more.

(b) A person summoned for jury service may request a postponement of the person's initial appearance for jury service. The person may request the postponement by contacting the clerk of the court, or the court's designee, in person, in writing, or by telephone before the date on which the person is summoned to appear.

(c) On receipt of a request under Subsection (b), the clerk of the court or the court's designee shall grant the person a postponement if:

(1) the person has not been granted a postponement in that county since the date on which the jury wheel from which the person was selected to appear was most recently reconstituted; and

(2) the person and the clerk or the court's designee determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.

(d) A person who receives a postponement under Subsection (c) may request subsequent postponements in the manner described by Subsection (b). The clerk of the court or the court's designee may approve a subsequent postponement if the clerk or the court's designee determines that the person has a legitimate reason for requesting the postponement. Before the clerk or the court's designee may grant the subsequent postponement, the person and the clerk or the court's designee must determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was to appear after the later of:

(1) the postponement under Subsection (c); or

(2) the most recent postponement granted under this subsection.

Added by Acts 2007, 80th Leg., c. 140, § 1, eff. Sept. 1, 2007.

Section 2 of Acts 2007, 80th Leg., c. 140, provides:

The change in law made by this Act applies only to a person summoned to appear for jury service who is required to appear on or after the effective date of this Act. A person summoned to appear for jury service who is required to appear before the effective date of this Act is governed by the law in effect on the date the person is required to appear, and the former law is continued in effect for that purpose.

§ 62.0145. Removal of Certain Persons from Pool of Prospective Jurors.

Except as provided by Section 62.0146, if a written summons for jury service sent by a clerk, sheriff, constable, or bailiff is undeliverable, the county or district clerk may remove from the jury wheel the jury wheel card for the person summoned or the district clerk, or in a county with a population of at least 1.7 million and in which more than 75 percent of the population resides in a single municipality, a bailiff appointed as provided under Section 62.019, may remove the person's name from the record of names for selection of persons for jury service under Section 62.011.

Acts 1997, 75th Leg., c. 777, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 571, § 2, eff. June 11, 2001; Acts 2015, 84th Leg., c. 609, § 3, eff. June 16, 2015; Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 8.014, eff. Sept. 1, 2023.

§ 62.0146. Updating Addresses of Certain Persons in Pool of Prospective Jurors.

If a written summons for jury service sent by a clerk, sheriff, constable, or bailiff is returned with a notation from the United States Postal Service of a change of address for the person summoned, the county or district clerk may update the jury wheel card to reflect the person's new address.

Acts 2001, 77th Leg., c. 571, § 3, eff. June 11, 2001. Amended by Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 8.015, eff. Sept. 1, 2023

§ 62.015. Selection of Jury Panel.

(a) On the day that jurors appear for jury service in a justice, county, or district court, the judge, if jury trials have been set, shall select from the names on the jury lists a sufficient number of qualified jurors to serve on the jury panel.

(b) If the court at any time does not have a sufficient number of prospective jurors present whose names are on the jury lists and who are not excused by the judge from jury service, the judge shall order the clerk, sheriff, or constable to summon additional prospective jurors to provide the requisite number of jurors for the panel. The names of additional jurors to be summoned by the sheriff or constable to fill a jury panel shall be drawn from the jury wheel under orders of the judge. Additional jurors summoned to fill a jury panel shall be discharged when their services are no longer required.

(c) The judge may order all or part of a panel of jurors to stand adjourned from jury service until a subsequent date in the term, but a juror may not be paid for the time that he stands adjourned from jury service.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., c. 7, § 5, eff. Sept. 1, 1991; Acts 1997, 75th Leg., c. 36, § 2, eff. Sept. 1, 1997; Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 8.016, eff. Sept. 1, 2023.

§ 62.016. Interchangeable Juries in Certain Counties.

(a) In each county with at least three district or criminal district courts, the district judges shall meet and determine the approximate number of prospective jurors that are reasonably necessary for each week of the year for a general panel of jurors for service in the county court, the justice courts, and all district and statutory county courts of the county. A majority of the district judges may act to carry out the provisions of this section.

(b) The district judges shall order that the number of names of prospective jurors that they determine are reasonably necessary for each week's general panel be drawn from the jury wheel. They shall order the drawing of names of prospective jurors for as many weeks in advance as they consider proper and may increase or decrease the number of names drawn for any week.

(c) The district judges shall designate from time to time a judge to whom the general panels report for jury service. The judge for the designated period shall organize, control, and supervise the members of the general jury panel.

(d) The clerk or sheriff shall notify the persons whose names are drawn from the jury wheel to appear before the designated judge for jury service. The judge shall hear the excuses of the prospective jurors and swear them in for jury service for the week for which they are to serve as jurors.

(e) When impaneled, the prospective jurors constitute a general jury panel for service as jurors in all justice, county, and district courts in the county and shall be used interchangeably in all of those courts. A county may summon jurors chosen for service under this section to the justice court in the manner prescribed by Section 62.412.

(f) In the event of a deficiency of jurors to satisfy the jury requirements of the justice, county, and district courts, the judge having control of the general jury panel shall order a sufficient number of additional names drawn to meet the emergency. The names of additional jurors for the general panel must be drawn from the jury wheel except as provided by Section 62.011. The additional jurors act only as special jurors and shall be discharged as soon as their services are no longer required.

(g) If it becomes necessary to reduce the number of persons on the general panel for the week of its selection because of a lack of work in a court or for other cause, the judge having control of the general jury panel shall cause the clerk to draw from the general panel the number of names that the judge determines is required for the week. The prospective jurors whose names are drawn shall continue to serve on the general panel for the remainder of the week, and the others are excused.

(h) In a county with a population of more than 1.5 million, the district judges, by a majority vote, may authorize the drawing of two general jury panels for the week, with one to be used in the courts that have a criminal docket and the other to be used in the courts that have a civil docket.

(i) Except as modified by this section and Section 62.011, the law governing jury wheels applies in the counties that use general jury panels interchangeably in their county and district courts.

(j) This section does not apply to a selection of jurors in a capital case or a mental health proceeding.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 148, § 2.80(a), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., c. 7, § 6, eff. Sept. 1, 1991; Acts 1999, 76th Leg., c. 838, § 1, eff. June 18, 1999; Acts 2011, 82nd Leg., R.S., c. 1163, § 19, eff. Sept. 1, 2011; Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 8.017, eff. Sept. 1, 2023.

§ 62.017. Interchangeable Jurors in Certain Other Counties.

(a) In a county with two district courts, the judges of the two courts may meet at a time fixed by them and determine the approximate number of prospective jurors that are reasonably necessary for each week of the year for a general panel of jurors for service in both district courts. The judges shall act together to carry out the provisions of this section.

(b) The district judges may order that the number of names of prospective jurors that they determine is reasonably necessary for each week's general panel be drawn from the jury wheel. They may order the drawing of names of prospective jurors for as many weeks in advance as they consider proper and may increase or decrease the number of names drawn for any week.

(c) The district judges shall designate from time to time the judge to whom the general panels report for jury service. The judge for the designated period shall organize, control, and supervise the members of the general jury panel.

(d) The clerk or sheriff shall notify the persons whose names are drawn from the jury wheel to appear before the designated judge for jury service. The judge shall hear the excuses of the prospective jurors and swear them in for jury service for the week for which they are to serve as jurors.

(e) When impaneled, the prospective jurors constitute a general jury panel for service as jurors in both district courts in the county and shall be used interchangeably in those courts. With the approval of both district judges, prospective jurors impaneled under this section may constitute a general jury panel for service as jurors in the justice courts, the county court, and all statutory county courts in the county, in addition to service as jurors in both district courts, and in that event, shall be used interchangeably in all district, justice, and county courts.

(f) In the event of a deficiency of jurors to satisfy the jury requirements of any of the courts, the judge having control of the general jury panel shall order sufficient additional names drawn to meet the emergency. The names of additional jurors for the general panel must be drawn from the jury wheel except as provided by Section 62.011. The additional jurors act only as special jurors and shall be discharged as soon as their services are no longer required.

(g) If it becomes necessary to reduce the number of persons on the general panel for the week of its selection because of a lack of work in a court or for other cause, the judge having control of the general jury panel shall cause the clerk to draw from the general panel the number of names that the judge determines is required for the week. The prospective jurors whose names are drawn shall continue to serve on the general panel for the remainder of the week, and the others are excused.

(h) Except as modified by this section and Section 62.011, the law governing jury wheels applies in the counties that use general jury panels interchangeably in their courts.

(i) This section does not apply to a selection of jurors in a capital case or a mental health commitment.

(j) The method for interchangeable jury panels authorized by this section is in addition to the other methods authorized by this subchapter. The adoption of the method provided by this section is in the discretion of the district judges of the counties with two district courts.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., c. 7, § 7, eff. Sept. 1, 1991; Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 8.018, eff. Sept. 1, 2023.

§ 62.0175. Interchangeable Jurors in Counties With a Single District Court at Law With Concurrent Jurisdiction.

(a) In a county with only one district court and only one county court at law that has concurrent jurisdiction with the district court in any matter, the judges of the two courts may meet at a time set by them and determine the approximate number of prospective jurors that are reasonably necessary for each week of the year for a general panel of jurors for service in both courts. The judges shall act together to carry out the provisions of this section.

(b) The judges may order that the number of names of prospective jurors that they determine is reasonably necessary for each week's general panel be drawn from the jury wheel. They may order the drawing of names of prospective jurors for as many weeks in advance as they consider proper and may increase or decrease the number of names drawn for any week.

(c) A general panel shall report to the district judge for jury service, and the district judge shall organize, control, and supervise the members of the general panel.

(d) The clerk or sheriff shall notify the persons whose names are drawn from the jury wheel to appear before the district judge for jury service. The judge shall hear the excuses of the prospective jurors and swear them in for jury service for the week for which they are to serve as jurors.

(e) When impaneled, the prospective jurors constitute a general panel for service as jurors in both courts and shall be used interchangeably in those courts. With the approval of both judges, prospective jurors impaneled under this section may constitute a general panel for service as jurors in the justice courts, the county court, and all other county courts at law in the county, in addition to service as jurors in the district court and the county court at law that has concurrent jurisdiction. In that event, the general panel shall be used interchangeably in the district court, county court, county courts at law, and justice courts.

(f) In the event of a deficiency of jurors to satisfy the jury requirements of any of the courts, the district judge shall order sufficient additional names drawn to meet the emergency. The names of additional jurors for the general panel must be drawn from the jury wheel except as provided by Section 62.011. The additional jurors act only as special jurors and shall be discharged as soon as their services are no longer required.

(g) If it becomes necessary to reduce the number of persons on the general panel for the week of its selection because of a lack of work in a court or for other cause, the district judge shall cause the clerk to draw from the general panel the number of names that the judge determines is required for the week. The prospective jurors whose names are drawn shall continue to serve on the general panel for the remainder of the week, and the others are excused.

(h) Except as modified by this section and Section 62.011, the law governing jury wheels applies in the counties that use general panels interchangeably in their courts.

(i) This section does not apply to a selection of jurors in a capital case or a mental health commitment.

Added by Acts 2005, 79th Leg., c. 1114, § 2, eff. June 18, 2005. Amended by Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 8.019, eff. Sept. 1, 2023.

§ 62.018. Quarters of General Panels.

(a) The commissioners court of a county that uses an interchangeable general jury panel shall provide a comfortable place in or near the county courthouse for the use and convenience of the persons on the panel.

(b) The persons on the panel shall stay in or conveniently near the place provided for them when not in service so that they are at all times subject to service in a court as provided by this subchapter without delaying the proceedings of the court.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

§ 62.019. Bailiffs for General Panels.

(a) Except as provided by this section, the sheriff of a county that uses an interchangeable general jury panel shall assign one of his deputies to take care of the persons on the panel, provide for their wants, and call them as their services are required by the judges of the courts using the interchangeable jury panel. The assigned deputy has general control of the persons on the panel when they are not in actual service as jurors.

(b) In a county with at least nine district courts, a majority of the district judges, with the approval of the commissioners court, may appoint a bailiff, and the assistant or deputy bailiffs that the judges consider necessary, to be in charge of the central jury room and the general panel. If the district judges in such a county appoint a bailiff and the necessary assistant or deputy bailiffs, the sheriff may not assign a deputy to the central jury room and the general panel. If the district judges do not appoint a bailiff to be in charge of the central jury room and the general panel, the sheriff shall perform the duties in connection with the jury room and general panel as provided by law.

(c) A bailiff or assistant or deputy bailiff appointed by the district judges serves a two-year term beginning January 1 of each odd-numbered year. The salary of each is set by the commissioners court on the recommendation of the district judges.

(d) The bailiffs and assistant and deputy bailiffs appointed by the district judges shall take care of the general panel and perform the duties in connection with the supervision of the central jury room and the general panel that are required by the district judges. They may notify prospective jurors whose names are drawn from the jury wheel or selected by other means provided by law to appear for jury service and may serve notices on absent jurors as directed by the district judge having control of the general jury panel.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

§ 62.020. Alternate Jurors.

(a) In district court, the judge may direct that not more than four jurors in addition to the regular jury be called and impaneled to sit as alternate jurors.

(b) In county court, the judge may direct that not more than two jurors in addition to the regular jury be called and impaneled to sit as alternate jurors.

(c) Alternate jurors shall be drawn and selected in the same manner as regular jurors. An alternate juror must meet the same qualifications, is subject to the same examination and challenges, shall take the same oath, has the same functions, powers, and privileges, and shall be accorded the same facilities and security as a regular juror.

(d) In the order in which they are called, alternate jurors shall replace jurors who, prior to the time the jury retires to consider its verdict, become or found to be unable or disqualified to perform their duties. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict.

(e) Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law or by rule if one or two alternate jurors are to be impaneled. Each side is entitled to two peremptory challenges in addition to those otherwise allowed by law or by rule if three or four alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law or by rule may not be used against an alternate juror.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

§ 62.021. Dismissal of Juror Removed From Panel.

In a county with a population of 2.5 million or more, a prospective juror removed from a jury panel for cause, by peremptory challenge or for any other reason, must be dismissed from jury service. After dismissal, the person may not be placed on another jury panel until the person's name is returned to the jury wheel and drawn again for jury service.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., c. 597, § 70, eff. Sept. 1, 1991; Acts 2011, 82nd Leg., R.S., c. 1163, § 20, eff. Sept. 1, 2011; Acts 2023, 88th Leg., R.S., c. 644 (HB 4559), § 41, eff. Sept. 1, 2023.

SUBCHAPTER B.
JUROR QUALIFICATIONS

§ 62.101. Jury Service.

All individuals are competent petit jurors unless disqualified under this subchapter and are liable for jury service except as otherwise provided by this subchapter.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

§ 62.102. General Qualifications for Jury Service.

A person is disqualified to serve as a petit juror unless the person:

(1) is at least 18 years of age;

(2) is a citizen of the United States;

(3) is a resident of this state and of the county in which the person is to serve as a juror;

(4) is qualified under the constitution and laws to vote in the county in which the person is to serve as a juror;

(5) is of sound mind and good moral character;

(6) is able to read and write;

(7) has not served as a petit juror for six days during the preceding three months in the county court or during the preceding six months in the district court;

(8) has not been convicted of misdemeanor theft or a felony; and

(9) is not under indictment or other legal accusation for misdemeanor theft or a felony.

Added by Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 2005, 79th Leg., c. 801, § 4, eff. Sept. 1, 2005; Acts 2015, 84th Leg., c. 568, eff. Sept. 1, 2015.

§ 62.103. Suspension of General Qualification.

(a) A court may suspend the qualification for jury service that requires a person to be able to read and write if it appears to the court that the requisite number of jurors able to read and write cannot be found in the county.

(b) A court may suspend the qualification for jury service that requires a person to have less than six days of service as a petit juror during the preceding three months in the county court or during the preceding six months in the district court if it appears to the court that the county's sparse population makes its enforcement seriously inconvenient.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

§ 62.1031. Failure to Register to Vote.

Failure to register to vote does not disqualify a person from jury service.

Added by Acts 1989, 71st Leg., c. 132, § 5, eff. Sept. 1, 1989.

§ 62.104. Disqualification for Legal Blindness.

(a) A person who is legally blind is not disqualified to serve as a juror in a civil case solely because of his legal blindness except as provided by this section.

(b) A legally blind person is disqualified to serve as a juror in a civil case if, in the opinion of the court, his blindness renders him unfit to serve as a juror in that particular case.

(c) In this section, "legally blind" means having:

(1) no more than 20/200 of visual acuity in the better eye with correcting lenses; or

(2) visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

§ 62.1041. Deaf or Hard of Hearing Juror.

(a) A deaf or hard of hearing person is not disqualified to serve as a juror solely because of hearing loss except as provided by this section.

(b) A deaf or hard of hearing person is disqualified to serve as a juror if, in the opinion of the court, his hearing loss renders him unfit to serve as a juror in that particular case.

(c) A deaf or hard of hearing person serving as a juror shall be reasonably accommodated in accordance with the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.). An interpreter who is assisting a deaf or hard of hearing person serving as a juror may accompany the juror during all proceedings and deliberations in the case.

(d) If an interpreter is provided to a deaf or hard of hearing person serving as a juror in a district, county, or justice court, the county shall pay the cost of obtaining those services.

(e) A deaf or hard of hearing juror may request an auxiliary aid or service for a municipal court proceeding. The city shall honor the request unless the city can demonstrate that another effective means of communication exists. The city shall pay the cost unless the auxiliary aid or service will result in a fundamental alteration of the municipal court proceeding or in undue financial or administrative burdens.

(f) In this section, "deaf or hard of hearing" means having a hearing impairment, regardless of the existence of a speech impairment, that inhibits comprehension of an examination or proceeding or communication with others.

Added by Acts 1987, 70th Leg., c. 550, § 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., c. 271, § 1, eff. Sept. 1, 1995.

§ 62.105. Disqualification for Particular Jury.

A person is disqualified to serve as a petit juror in a particular case if he:

(1) is a witness in the case;

(2) is interested, directly or indirectly, in the subject matter of the case;

(3) is related by consanguinity or affinity within the third degree, as determined under Chapter 573, to a party in the case;

(4) has a bias or prejudice in favor of or against a party in the case; or

(5) has served as a petit juror in a former trial of the same case or in another case involving the same questions of fact.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 148, § 2.81, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., c. 561, § 23, eff. Aug. 26, 1991; Acts 1995, 74th Leg., c. 76, § 5.95(28), eff. Sept. 1, 1995.

§ 62.106. Exemption From Jury Service.

(a) A person qualified to serve as a petit juror may establish an exemption from jury service if the person:

(1) is over 75 years of age;

(2) has legal custody of a child younger than 12 years of age and the person's service on the jury requires leaving the child without adequate supervision;

(3) is a student of a public or private secondary school;

(4) is a person enrolled and in actual attendance at an institution of higher education;

(5) is an officer or an employee of the senate, the house of representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;

(6) is summoned for service in a county with a population of at least 200,000, unless that county uses a jury plan under Section 62.011 and the period authorized under Section 62.011(b)(5) exceeds two years, and the person has served as a petit juror in the county during the 24-month period preceding the date the person is to appear for jury service;

(7) is the primary caretaker of a person who is unable to care for himself or herself;

(8) except as provided by Subsection (b), is summoned for service in a county with a population of at least 250,000 and the person has served as a petit juror in the county during the three-year period preceding the date the person is to appear for jury service; or

(9) is a member of the United States military forces serving on active duty and deployed to a location away from the person's home station and out of the person's county of residence. (b) Subsection (a)(8) does not apply if the jury wheel in the county has been reconstituted after the date the person served as a petit juror.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 733, § 1, eff. Aug. 31, 1987; Acts 1987, 70th Leg., c. 798, § 1, eff. Aug. 31, 1987; Acts 1989, 71st Leg., c. 2, § 8.35, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., c. 442, § 4, eff. Jan. 1, 1992; Acts 1997, 75th Leg., c. 165, § 9.01, eff. Sept. 1, 1997; Acts 1997, 75th Leg., c. 686, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 640, § 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 153, § 1, eff. Sept. 1, 2003; Subsec. (a) amended by Acts 2009, 81st Leg., R.S., c. 599, § 1, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., R.S., c. 1022, § 2, eff. June 17, 2011; Acts 2015, 84th Leg., c. 1010, § 1, eff. Sept. 1, 2015; Acts 2023, 88th Leg., R.S., c. 816 (HB 3474), § 8.020, eff. Sept. 1, 2023; Acts 2023, 88th Leg., R.S., c. 185 (HB 2015), § 1, eff. Sept. 1, 2023.

Section 2 of Acts 2009, 81st Leg., R.S., c. 599, provides:

This Act applies only to a person summoned to appear for jury service who is required to appear on or after the effective date of this Act. A person summoned to appear for jury service who is required to appear before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

Section 2 of Acts 2015, 84th Leg., c. 1010, provides:

This Act applies only to a person summoned to appear for jury service who is required to appear on or after the effective date of this Act. A person summoned to appear for jury service who is required to appear before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

§ 62.107. Procedures for Establishing Exemption.

(a) A person who is notified to appear for jury service may establish an exemption from the service under Section 62.106 without appearing in person by filing a signed statement of the ground of his exemption with the clerk of the court before the date on which he is summoned to appear.

(b) A person may also claim an exemption from jury service under Section 62.106 by filing with the sheriff, voter registrar, or district or county clerk of the county of the person's residence a sworn statement that sets forth the ground of and claims the exemption. The name of a person who claims an exemption by filing the sworn statement may not be placed in the jury wheel for the ensuing year.

(c) A person who files a statement with a clerk of the court, as provided by Subsection (a), claiming an exemption because the person is over 75 years of age, may also claim the permanent exemption on that ground authorized by Section 62.108 by including in the statement filed with the clerk a declaration that the person desires the permanent exemption. Promptly after a statement claiming a permanent exemption on the basis of age is filed, the clerk of the court with whom it is filed shall have a copy delivered to the voter registrar of the county.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., c. 686, § 2, eff. Sept. 1, 1997; Acts 2011, 82nd Leg., R.S., c. 24, § 1, eff. Sept. 1, 2011; Acts 2023, 88th Leg., R.S., c. 816 (HB 3474), § 8.021, eff. Sept. 1, 2023; Acts 2023, 88th Leg., R.S., c. 185 (HB 2015), § 2, eff. Sept. 1, 2023.

Section 4 of Acts 2011, 82nd Leg., R.S., c. 24, provides:

The change in law made by this Act applies only to a person claiming an exemption from jury service or rescinding an exemption from jury service on or after the effective date of this Act. A person claiming an exemption from jury service or rescinding an exemption from jury service before the effective date of this Act is governed by the law in effect on the date the person claims or rescinds the exemption, and the former law is continued in effect for that purpose.

§ 62.108. Permanent Exemption for Elderly.

(a) A person who is entitled to exemption from jury service because the person is over 75 years of age may establish a permanent exemption on that ground as provided by this section or Section 62.107.

(b) A person may claim a permanent exemption:

(1) by filing with the voter registrar of the county, by mail or personal delivery, a signed statement affirming that the person is over 75 years of age and desires a permanent exemption on that ground; or

(2) in the manner provided by Section 62.107(c).

(c) The voter registrar of the county shall maintain a current register indicating the name of each person who has claimed and is entitled to a permanent exemption from jury service because the person is over 75 years of age.

(d) The name of a person on the register of persons permanently exempt from jury service may not be placed in the jury wheel or otherwise used in preparing the record of names from which a jury is selected.

(e) A person who has claimed a permanent exemption from jury service because the person is over 75 years of age may rescind the exemption at any time by filing a signed request for the rescission with the voter registrar of the county. Rescission of a permanent exemption does not affect the right of a person who is over 70 years of age to claim permanent exemption at a later time.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., c. 686, § 3, eff. Sept. 1, 1997; Acts 2011, 82nd Leg., R.S., c. 24, § 2, eff. Sept. 1, 2011; Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 8.022, eff. Sept. 1, 2023; Acts 2023, 88th Leg., R.S., c. 185 (HB 2015), § 3, eff. Sept. 1, 2023.

Section 4 of Acts 2011, 82nd Leg., R.S., c. 24, provides:

The change in law made by this Act applies only to a person claiming an exemption from jury service or rescinding an exemption from jury service on or after the effective date of this Act. A person claiming an exemption from jury service or rescinding an exemption from jury service before the effective date of this Act is governed by the law in effect on the date the person claims or rescinds the exemption, and the former law is continued in effect for that purpose.

§ 62.109. Exemption for Physical or Mental Impairment or Inability to Comprehend English.

(a) The judge of a district court by order may permanently or for a specified period exempt from service as a juror in all the county and district courts in the county a person with a physical or mental impairment or with an inability to comprehend or communicate in the English language that makes it impossible or very difficult for the person to serve on a jury.

(b) A person requesting an exemption under this section must submit to the court an affidavit stating the person's name and address and the reason for and the duration of the requested exemption. A person requesting an exemption due to a physical or mental impairment must attach to the affidavit a statement from a physician. The affidavit and physician's statement may be submitted to the court at the time the person is summoned for jury service or at any other time.

(c) The clerk of the district court shall promptly notify the voter registrar of the county of the name and address of each person permanently exempted. The voter registrar shall maintain a current register showing the name and address of each person permanently exempt from jury service under this section.

(d) A person listed on the register may not be summoned for jury service during the period for which the person is exempt. The name of a person listed on the register may not be placed in the jury wheel or otherwise used in preparing the record of names from which a jury list is selected during the period for which the person is exempt.

(e) A person exempt from jury service under this section may rescind the exemption at any time by filing a signed request for the rescission with the voter registrar of the county.

(f) An affidavit accompanying a request for an exemption from the jury service because of a physical or mental impairment may be presented by the affiant or by a friend or relative of the affiant. The affidavit must state:

(1) the name and address of the physician whose statement accompanies the affidavit;

(2) whether the request is for a permanent or temporary exemption;

(3) the period of time for which a temporary exemption is requested; and

(4) that as a direct result of the physical or mental impairment it is impossible or very difficult for the affiant to serve on a jury.

(g) An affidavit accompanying a request for an exemption from jury service because of an inability to comprehend or communicate in the English language must be presented by the affiant in person. The affidavit must:

(1) be sworn to by the affiant in person before the district clerk or a deputy district clerk; and

(2) be subscribed with a statement by a third party that the affidavit was read to the affiant before signing and that the affiant stated that it was his request to be permanently exempted from jury service in the county.

(h) The name and address of a person exempted from jury service under this section shall be added to or deleted from the list or register at any time permitted by law and when the names and addresses of eligible jurors are regularly deleted or added to the list or register.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 2011, 82nd Leg., R.S., c. 24, § 3, eff. Sept. 1, 2011; Acts 2023, 88th Leg., R.S., c. 861 (HB 3474), § 8.023, eff. Sept. 1, 2023.

Section 4 of Acts 2011, 82nd Leg., R.S., c. 24, provides:

The change in law made by this Act applies only to a person claiming an exemption from jury service or rescinding an exemption from jury service on or after the effective date of this Act. A person claiming an exemption from jury service or rescinding an exemption from jury service before the effective date of this Act is governed by the law in effect on the date the person claims or rescinds the exemption, and the former law is continued in effect for that purpose.

§ 62.110. Judicial Excuse of Jurors.

(a) Except as provided by this section, a court may hear any reasonable sworn excuse of a prospective juror, including any claim of an exemption or a lack of qualification, and if the excuse is considered sufficient shall release him from jury service entirely or until another day of the term, as appropriate.

(b) Pursuant to a plan approved by the commissioners court of the county in the same manner as a plan is approved for jury selection under Section 62.011, the court's designee may:

(1) hear any reasonable excuse of a prospective juror, including any claim of an exemption or a lack of qualification; and

(2) discharge the juror or release him from jury service until a specified day of the term, as appropriate, if:

(A) the excuse is considered sufficient; and

(B) the juror submits to the court's designee a statement of the ground of the exemption or lack of qualification or other excuse.

(c) The court or the court's designee as provided by this section may not excuse a prospective juror for an economic reason unless each party of record is present and approves the release of the juror for that reason.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 589, § 3, eff. Aug. 31, 1987; Acts 1987, 70th Leg., 2nd C.S., c. 43, § 4, eff. Oct. 20, 1987; Acts 2005, 79th Leg., c. 905, § 2, eff. Sept. 1, 2005.

§ 62.111. Penalty for Defaulting Jurors.

A juror lawfully notified shall be fined not less than $100 nor more than $500 if the juror:

(1) fails to attend court in obedience to the notice without reasonable excuse; or

(2) files a false claim of exemption from jury service.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 2009, 81st Leg., R.S., c. 640, § 1, eff. Sept. 1, 2009.

Section 4 of Acts 2009, 81st Leg., R.S., c. 640, provides:

The change in law made by this Act applies only to a juror who fails to attend or provides a false claim of exemption on or after the effective date of this Act. A violation that occurred before the effective date of this Act is governed by the law in effect when the violation occurred, and the former law is continued in effect for that purpose.

§ 62.112. Excuse of Juror for Religious Holy Day.

(a) In this section:

(1) "Religious organization" means an organization that meets the standards for qualifications as a religious organization under Section 11.20, Tax Code.

(2) "Religious holy day" means a day which the tenets of a religious organization prohibit its members from participating in secular activities, such as court proceedings.

(b) If a prospective juror is required to appear at a court proceeding on a religious holy day observed by the prospective juror, the court or the court's designee shall release the prospective juror from jury service entirely or until another day of the term. If the court determines that a term of a court proceeding may extend to cover a day on which a religious holy is observed by the prospective juror, the court or the court's designee shall release the prospective juror from jury service entirely or until another day of the term.

(c) A prospective juror who seeks to be released from jury service may be required to file with the court an affidavit stating:

(1) the grounds for the release; and

(2) that the juror holds religious beliefs that prohibit him from taking part in a court proceeding on the day for which the release from jury duty is sought.

Added by Acts 1987, 70th Leg., c. 589, § 4, eff. Aug. 31, 1987; Acts 1987, 70th Leg., c. 825, § 3, eff. Sept. 1, 1987.

SUBCHAPTER C.
DISTRICT COURT JURIES

§ 62.201. Number of Jurors.

The jury in a district court is composed of 12 persons, except that the parties may agree to try a particular case with fewer than 12 jurors.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985.

SUBCHAPTER D.
COUNTY COURT AND JUSTICE COURT JURIES

§ 62.301. Number of Jurors. [Effective through Aug. 31, 2020.]

The jury in the county courts and in the justice courts is composed of six persons.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., c. 424, § 4, eff. Sept. 1, 1993.

§ 62.301. Number of Jurors. [Effective Sept. 1, 2020.]

The jury in the county courts and in the justice courts is composed of six persons.

Acts 1985, 69th Leg., c. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., c. 424, § 4, eff. Sept. 1, 1993; Acts 2019, 86th Leg., c. 696, § 33, eff, Sept. 1, 2020.

Section 36 of Acts 2019, 86th Leg., c. 696, provides:

This Act applies only to a cause of action filed on or after the effective date of this Act. A cause of action filed before that date is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SUBTITLE F.
COURT ADMINISTRATION

CHAPTER 74.
COURT ADMINISTRATION ACT

SUBCHAPTER B.
SUPREME COURT

§ 74.024. Rules.

(a) The supreme court may adopt rules of administration setting policies and guidelines necessary or desirable for the operation and management of the court system and for the efficient administration of justice.

(b) The supreme court shall request the advice of the court of criminal appeals before adopting rules affecting the administration of criminal justice.

(c) The supreme court may consider the adoption of rules relating to:

(1) nonbinding time standards for pleading, discovery, motions, and dispositions;

(2) nonbinding dismissal of inactive cases from dockets, if the dismissal is warranted;

(3) attorney's accountability for and incentives to avoid delay and to meet time standards;

(4) penalties for filing frivolous motions;

(5) firm trial dates;

(6) restrictive devices on discovery;

(7) a uniform dockets policy;

(8) formalization of settlement conferences or settlement programs;

(9) standards for selection and management of nonjudicial personnel;

(10) transfer of related cases for consolidated or coordinated pretrial proceedings; and

(11) the conducting of proceedings under Rule 11, Rules of Judicial Administration, by a district court outside the county in which the case is pending.

(d) Any rules adopted under this section remain in effect unless and until disapproved by the legislature. The clerk of the supreme court shall file with the secretary of state the rules or any amendments to the rules adopted by the supreme court under this section and shall mail a copy of the rules and any amendments to each registered member of the State Bar not later than the 120th day before the date on which they become effective. The supreme court shall allow a period of 60 days for review and comment on the rules and any amendments. The clerk of the supreme court shall report the rules or amendments to the rules to the next regular session of the legislature by mailing a copy of the rules or amendments to the rules to each elected member of the legislature on or before December 1 immediately preceding the session.

Added by Acts 1987, 70th Leg., c. 674, § 2.01, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., c. 204, § 3.01, eff. Sept. 1, 2003; Acts c. 747, § 1, eff. Sept. 1, 2003; Acts 2005, 79th Leg., c. 728, § 8.001, eff. Sept. 1, 2005.

SUBCHAPTER C.
ADMINISTRATIVE JUDICIAL REGIONS

§ 74.052. Assignment of Judges.

(a) Judges may be assigned in the manner provided by this chapter to hold court when necessary to dispose of accumulated business in the region.

(b) Repealed by Acts 1987, 70th Leg., c. 674, Sec. 2.13, eff. Sept. 1, 1987.

Renumbered from § 74.031 and amended by Acts 1987, 70th Leg., c. 148, § 2.93(a), eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., c. 674, § 2.13, eff. Sept. 1, 1987.

§ 74.053. Objection to Judge Assigned to a Trial Court.

(a) When a judge is assigned to a trial court under this chapter:

(1) the order of assignment must state whether the judge is an active, former, retired, or senior judge; and

(2) the presiding judge shall, if it is reasonable and practicable and if time permits, give notice of the assignment to each attorney representing a party to the case that is to be heard in whole or part by the assigned judge.

(b) If a party to a civil case files a timely objection to the assignment, the judge shall not hear the case. Except as provided by Subsection (d), each party to the case is only entitled to one objection under this section for that case.

(c) An objection under this section must be filed not later than the seventh day after the date the party receives actual notice of the assignment or before the date the first hearing or trial, including pretrial hearings, commences, whichever date occurs earlier. The presiding judge may extend the time to file an objection under this section on written motion by a party who demonstrates good cause.

(d) An assigned judge or justice who was defeated in the last primary or general election for which the judge or justice was a candidate for the judicial office held by the judge or justice may not sit in a case if either party objects to the judge or justice.

(e) An active judge assigned under this chapter is not subject to an objection.

(f) For purposes of this section, notice of assignment may be given and an objection to an assignment may be filed by electronic mail.

(g) In this section, "party" includes multiple parties aligned in a case as determined by the presiding judge.

Added by Acts 1987, 70th Leg., c. 148, § 2.93(a), eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 2, § 8.37(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., c. 270, § 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., c. 785, § 2, eff. June 16, 1991; Acts 2003, 78th Leg., c. 315, § 10, eff. Sept. 1, 2003.

SUBCHAPTER D.
ADMINISTRATION BY COUNTY

§ 74.091. Local Administrative District Judge.

(a) There is a local administrative district judge in each county.

(b) In a county with two or more district courts the judges of those courts shall elect a district judge as local administrative district judge for a term of not more than two years. The local administrative district judge may not be elected on the basis of rotation or seniority.

(c) In a county with only one district judge, the district judge serves as the local administrative district judge.

Added by Acts 1987, 70th Leg., c. 148, § 2.93(a), eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 646, § 12, eff. Aug. 28, 1989.

§ 74.0911. Local Administrative Statutory County Court Judge

(a) There is a local administrative statutory county court judge in each county that has a statutory county court.

(b) In a county with two or more statutory county courts, the judges of those courts shall elect a statutory county court judge as local administrative statutory county court judge for a term of not more than two years. A local administrative statutory county court judge may not be elected on the basis of rotation or seniority.

(c) In a county with only one statutory county court, the statutory county court judge serves as the local administrative statutory county court judge.

Added by Acts 1989, 71st Leg., c. 646, § 13, eff. Aug. 28, 1989.

§ 74.092. Duties of Local Administrative Judge.

(a) A local administrative judge, for the courts for which the judge serves as local administrative judge, shall:

(1) implement and execute the local rules of administration, including the assignment, docketing, transfer, and hearing of cases;

(2) appoint any special or standing committees necessary or desirable for court management and administration;

(3) promulgate local rules of administration if the other judges do not act by a majority vote;

(4) recommend to the regional presiding judge any needs for assignment from outside the county to dispose of court caseloads;

(5) supervise the expeditious movement of court caseloads, subject to local, regional, and state rules of administration;

(6) provide the supreme court and the office of court administration requested statistical and management information;

(7) set the hours and places for holding court in the county;

(8) supervise the employment and performance of nonjudicial personnel;

(9) supervise the budget and fiscal matters of the local courts, subject to local rules of administration;

(10) coordinate and cooperate with any other local administrative judge in the district in the assignment of cases in the courts' concurrent jurisdiction for the efficient operation of the court system and the effective administration of justice;

(11) if requested by the courts the judge serves, establish and maintain the lists required by Section 37.003 and ensure appointments are made from the lists in accordance with Section 37.004;

(12) perform other duties as may be directed by the chief justice or a regional presiding judge; and

(13) establish a court security committee to adopt security policies and procedures for the courts served by the local administrative district judge that is composed of:

(A) the local administrative district judge, or the judge's designee, who serves as presiding officer of the committee;

(B) a representative of the sheriff's office;

(C) a representative of the county commissioners court;

(D) one judge of each type of court in the county other than a municipal court or a municipal court of record;

(E) a representative of any county attorney's office, district attorney's office, or criminal district attorney's office that serves in the applicable courts; and

(F) any other person the committee determines necessary to assist the committee.

(b) A court security committee may recommend to the county commissioners court the uses of resources and expenditures of money for courthouse security, but may not direct the assignment of those resources or the expenditure of those funds.

Added by Acts 1987, 70th Leg., c. 148, § 2.93(a), eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 646, § 14, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., c. 746, § 68, eff. Oct. 1, 1991; Acts 2009, 81st Leg., R.S., c. 1224, § 1, eff. Sept. 1, 2009; Acts 2015, 84th Leg., c. 1223, § 3, eff. Sept. 1, 2015; Acts 2017, 85th Leg., R.S., c. 190, § 9, eff. Sept. 1, 2017.

Section 6 of Acts 2015, 84th Leg., c. 1223, provides:

Chapter 37, Government Code, as added by this Act, and Section 74.092, Government Code, as amended by this Act, apply only to the appointment of an attorney ad litem, guardian ad litem, mediator, or guardian made on or after the effective date of this Act. An appointment made before the effective date of this Act is governed by the law in effect on the date the appointment was made, and the former law is continued in effect for that purpose.

Section 28 of Acts 2017, 85th Leg., R.S., c. 190, provides:

(a) Not later than January 1, 2018, the Office of Court Administration of the Texas Judicial System, the Department of Public Safety, the Texas Ethics Commission, each county clerk, each registrar, and any other county official responsible for county records shall establish the policies and procedures necessary to comply with the changes in law made by this Act.

(b) As soon as practicable after the effective date of this Act:

(1) the Office of Court Administration of the Texas Judicial System shall establish the judicial security division; and

(2) each judge required to establish a court security committee under this Act shall establish the committee.

§ 74.093. Rules of Administration.

(a) The district and statutory county court judges in each county shall, by majority vote, adopt local rules of administration.

(b) The rules must provide for:

(1) assignment, docketing, transfer, and hearing of all cases, subject to jurisdictional limitations of the district courts and statutory county courts;

(2) designation of court divisions or branches responsible for certain matters;

(3) holding court at least once a week in the county unless in the opinion of the local administrative judge sessions at other intervals will result in more efficient court administration;

(4) fair and equitable division of caseloads; and

(5) plans for judicial vacation, sick leave, attendance at educational programs, and similar matters.

(c) The rules may provide for:

(1) the selection and authority of a presiding judge of the courts giving preference to a specified class of cases, such as civil, criminal, juvenile, or family law cases;

(2) other strategies for managing cases that require special judicial attention;

(3) a coordinated response for the transaction of essential judicial functions in the event of a disaster; and

(4) any other matter necessary to carry out this chapter or to improve the administration and management of the court system and its auxiliary services.

(c-1) The rules may provide for the establishment and maintenance of the lists required by Section 37.003, including the establishment and maintenance of more than one of a list required by that section that is categorized by the type of case, such as family law or probate law, and the person's qualifications.

(d) Rules relating to the transfer of cases or proceedings shall not allow the transfer of cases from one court to another unless the cases are within the jurisdiction of the court to which it is transferred. When a case is transferred from one court to another as provided under this section, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court.

Added by Acts 1987, 70th Leg., c. 148, § 2.93(a), eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 646, § 15, eff. Aug. 28, 1989; Subsec (c) amended by Acts 2009, 81st Leg., R.S., c. 1281, § 2, eff. June 19, 2009; Subsec. (c) amended by Acts 2009, 81st Leg., R.S., c. 1280, § 5.02, eff. June, 19, 2009; Acts 2011, 82nd Leg., 1st C.S., c. 3, § 7.03, eff. Jan. 1, 2012; Acts 2015, 84th Leg., c. 1223, § 4, eff. Sept. 1, 2015.

§ 74.094. Hearing Cases.

(a) A district or statutory county court judge may hear and determine a matter pending in any district or statutory county court in the county regardless of whether the matter is preliminary or final or whether there is a judgment in the matter. The judge may sign a judgment or order in any of the courts regardless of whether the case is transferred. The judgment, order, or action is valid and binding as if the case were pending in the court of the judge who acts in the matter. The authority of this subsection applies to an active, former, or retired judge assigned to a court having jurisdiction as provided by Subchapter C.

(b) The judges shall try any case and hear any proceeding as assigned by the local administrative judge.

(c) The clerk shall file, docket, transfer, and assign the cases as directed by the local administrative judge in accordance with the local rules.

(d) Judges of district courts and statutory county courts may serve as masters and magistrates of courts, other than their own, subject to other provisions of law and court rules.

(e) A judge who has jurisdiction over a suit pending in one county may, unless objected to by any party, conduct any of the judicial proceedings except the trial on the merits in a different county.

(f) A pretrial judge assigned to hear pretrial matters in related cases under Rule 11, Texas Rules of Judicial Administration, may hold pretrial proceedings and hearings on pretrial matters for a case to which the judge has been assigned in:

(1) the county in which the case is pending; or

(2) a county in which there is pending a related case to which the pretrial judge has been assigned.

Added by Acts 1987, 70th Leg., c. 674, § 2.10, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 2, § 8.40(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., c. 179, § 2(d)(2), eff. Sept. 1, 1989; Acts 1999, 76th Leg., c. 1551, § 1, eff. Sept. 1, 1999.

§ 74.096. Terms of Court.

The terms of all courts covered by this subchapter begin on the first Monday in January and the first Monday in July of each year, except as may otherwise be provided by law. Each term of court continues until the next succeeding term begins.

Added by Acts 1987, 70th Leg., c. 148, § 2.93(a), eff. Sept. 1, 1987.

§ 74.097. Local Administrative District Judge for Blanco, Burnet, Llano, and San Saba Counties.

Notwithstanding Section 74.091(b), the local administrative district judge for Blanco, Burnet, Llano, and San Saba Counties is selected on the basis of seniority from the district judges of the 33rd Judicial District and the 424th Judicial District.

Added by Acts 2005, 79th Leg., c. 1352, § 16, eff. Sept. 1, 2005.

SUBCHAPTER F.
TRANSFER OF CASES AND EXCHANGE OF BENCHES BETWEEN CERTAIN COURTS

§ 74.121. Transfer of Cases; Exchange of Benches.

(a) The judges of constitutional county courts, statutory county courts, justice courts, and small claims courts in a county may transfer cases to and from the dockets of their respective courts, except that a case may not be transferred from one court to another without the consent of the judge of the court to which it is transferred and may not be transferred unless it is within the jurisdiction of the court to which it is transferred. The judges of those courts within a county may exchange benches and courtrooms with each other so that if one is absent, disabled, or disqualified, the other may hold court for him without the necessity of transferring the case. Either judge may hear all or any part of a case pending in court and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. A judge may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(b)(1) The judge of a statutory county court may transfer a case to the docket of the district court, except that a case may not be transferred without the consent of the judge of the court to which it is being transferred and may not be transferred unless it is within the jurisdiction of the court to which it is transferred.

(2) Notwithstanding Subdivision (1), in matters of concurrent jurisdiction, a judge of a statutory county court in Midland County and a judge of a district court in Midland County may exchange benches and courtrooms with each other and may transfer cases between their dockets in the same manner that judges of district courts exchange benches and transfer cases under Section 24.003.

(c) When a case is transferred from one court to another as provided by this section, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court. The obligees in all bonds and recognizances taken in and for a court from which a case is transferred, and all witnesses summoned to appear in a court from which a case is transferred, are required to appear before the court to which the case is transferred as if originally required to appear before the court to which the transfer is made.

Added by Acts 1987, 70th Leg., c. 148, § 2.93(a), eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 646, § 16, eff. Aug. 28, 1989; Acts 1995, 74th Leg., c. 654, § 1, eff. Sept. 1, 1995; Acts 2011, 82nd Leg., 1st R.S., c. 3, § 3.11, eff. Jan. 1, 2012.

SUBCHAPTER H.
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

§ 74.161. Judicial Panel on Multidistrict Litigation.

(a) The judicial panel on multidistrict litigation consists of five members designated from time to time by the chief justice of the supreme court. The members of the panel must be active court of appeals justices or administrative judges.

(b) The concurrence of three panel members is necessary to any action by the panel.

Added by Acts 2003, 78th Leg., c. 779, § 3.02, eff. Sept. 1, 2003.

§ 74.162. Transfer of Cases by Panel.

Subject to Section 74.1625 and notwithstanding any other law, the judicial panel on multidistrict litigation may transfer civil actions involving one or more common questions of fact pending in the same or different constitutional courts, county court at law, probate courts, or district courts to any district court for consolidated or coordinated pretrial proceedings, including summary judgment or other dispositive motions, but not for trial on the merits. A transfer may be made by the judicial panel on multidistrict litigation on its determination that the transfer will:

(1) be for the convenience of the parties and witnesses; and

(2) promote the just and efficient conduct of the actions.

Added by Acts 2003, 78th Leg., c. 779, § 3.02, eff. Sept. 1, 2003. Amended by Acts 2019, 86th Leg., c. 397, § 1, eff. Sept. 1, 2019.

Section 3 of Acts 2019, 86th Leg., c. 397, § 3, provides:

The changes in law made by this Act apply to an action commenced on or after the effective date of this Act, or pending on that date, and for which the trial, or any new trial or retrial following a motion, appeal, or otherwise, begins on or after that date.

§ 74.1625. Prohibited Transfer of Cases.

(a) Notwithstanding any other law, the judicial panel on multidistrict litigation may not transfer:

(1) an action brought under Subchapter E, Chapter 17, Business & Commerce Code, except an action specifically authorized by Section 17.50 of that code; or

(2) an action brought under Chapter 36, Human Resources Code.

(b) Notwithstanding Section 22.004, the supreme court may not amend or adopt rules in conflict with this section.

Amended by Acts 2019, 86th Leg., c. 397, § 1, eff. Sept. 1, 2019.

Section 3 of Acts 2019, 86th Leg., c. 397, § 3, provides:

The changes in law made by this Act apply to an action commenced on or after the effective date of this Act, or pending on that date, and for which the trial, or any new trial or retrial following a motion, appeal, or otherwise, begins on or after that date.

§ 74.163. Operation; Rules.

(a) The judicial panel on multidistrict litigation must operate according to rules of practice and procedure adopted by the supreme court under Section 74.024. The rules adopted by the supreme court must:

(1) allow the panel to transfer related civil actions for consolidate or coordinated pretrial proceedings;

(2) allow transfer of civil actions only on the panel's written finding that transfer is for the convenience of the parties and witnesses and will promote the just and efficient conduct of the actions;

(3) require the remand of transferred actions to the transferor court for trial on the merits; and

(4) provide for appellate review of certain or all panel orders by extraordinary writ.

(b) The panel may prescribe additional rules for the conduct of its business not inconsistent with the law or rules adopted by the supreme court.

Added by Acts 2003, 78th Leg., c. 779, § 3.02, eff. Sept. 1, 2003.

§ 74.164. Authority to Preside.

Notwithstanding any other law to the contrary, a judge who is qualified and authorized by law to preside in the court to which an action is transferred under this subchapter may preside over the transferred action as if the transferred action were originally filed in the transferor court.

Added by Acts 2003, 78th Leg., c. 779, § 3.02, eff. Sept. 1, 2003.

Texas Estates Code

TITLE 1.
GENERAL PROVISIONS

CHAPTER 22.
DEFINITIONS

§ 22.001. Applicability of Definitions.

(a) Except as provided by Subsection (b), the definition for a term provided by this chapter applies in this code unless a different meaning of the term is otherwise apparent from the context in which the term is used.

(b) If Title 3 provides a definition for a term that is different from the definition provided by this chapter, the definition for the term provided by Title 3 applies in that title.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., R.S., c. 161, § 6.005, eff. Jan. 1, 2013.

§ 22.002. Authorized Corporate Surety.

"Authorized corporate surety" means a domestic or foreign corporation authorized to engage in business in this state for the purpose of issuing surety, guaranty, or indemnity bonds that guarantee the fidelity of an executor or administrator.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.003. Charitable Organization.

"Charitable organization" means:

(1) a nonprofit corporation, trust, community chest, fund, foundation, or other entity that is:

(A) exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, by being described by Section 501(c)(3) of that code; and

(B) organized and operated exclusively for:

(i) religious, charitable, scientific, educational, or literary purposes;

(ii) testing for public safety;

(iii) preventing cruelty to children or animals; or

(iv) promoting amateur sports competition; or

(2) any other entity that is organized and operated exclusively for the purposes listed in Section 501(c)(3), Internal Revenue Code of 1986.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.004. Child.

(a) "Child" includes an adopted child, regardless of whether the adoption occurred through:

(1) an existing or former statutory procedure; or

(2) an equitable adoption or acts of estoppel.

(b) The term "child" does not include a child who does not have a presumed father unless a provision of this code expressly states that a child who does not have a presumed father is included.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2017, 85th Leg., R.S., c. 844, § 1, eff. Sept. 1, 2017.

§ 22.005. Claims.

"Claims" includes:

(1) liabilities of a decedent that survive the decedent's death, including taxes, regardless of whether the liabilities arise in contract or tort or otherwise;

(2) funeral expenses;

(3) the expense of a tombstone;

(4) expenses of administration;

(5) estate and inheritance taxes; and

(6) debts due such estates.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.006. Corporate Fiduciary.

"Corporate fiduciary" means a financial institution, as defined by Section 201.101, Finance Code, that:

(1) is existing or engaged in business under the laws of this state, another state, or the United States;

(2) has trust powers; and

(3) is authorized by law to act under the order or appointment of a court of record, without giving bond, as receiver, trustee, executor, administrator, or, although the financial institution does not have general depository powers, depository for any money paid into the court, or to become sole guarantor or surety in or on any bond required to be given under the laws of this state.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.007. Court; County Court, Probate Court, and Statutory Probate Court.

(a) "Court" means and includes:

(1) a county court in the exercise of its probate jurisdiction;

(2) a court created by statute and authorized to exercise original probate jurisdiction; and

(3) a district court exercising original probate jurisdiction in a contested matter.

(b) The terms "county court" and "probate court" are synonymous and mean:

(1) a county court in the exercise of its probate jurisdiction;

(2) a court created by statute and authorized to exercise original probate jurisdiction; and

(3) a district court exercising probate jurisdiction in a contested matter.

(c) "Statutory probate court" means a court created by statute and designated as a statutory probate court under Chapter 25, Government Code. For purposes of this code, the term does not include a county court at law exercising probate jurisdiction unless the court is designated a statutory probate court under Chapter 25, Government Code.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.008. Devise.

"Devise":

(1) used as a noun, includes a testamentary disposition of real property, personal property, or both; and

(2) used as a verb, means to dispose of real property, personal property, or both, by will.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.009. Devisee.

"Devisee" includes a legatee.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.010. Distributee.

"Distributee" means a person who is entitled to a part of the estate of a decedent under a lawful will or the statutes of descent and distribution.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.011. Dockett.

"Docket" means the probate docket.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.012. Estate.

"Estate" means a decedent's property, as that property:

(1) exists originally and as the property changes in form by sale, reinvestment, or otherwise;

(2) is augmented by any accretions and other additions to the property, including any property to be distributed to the decedent's representative by the trustee of a trust that terminates on the decedent's death, and substitutions for the property; and

(3) is diminished by any decreases in or distributions from the property.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.013. Exempt Property.

"Exempt property" means the property in a decedent's estate that is exempt from execution or forced sale by the constitution or laws of this state, and any allowance paid instead of that property.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.014. Governmental Agency of the State.

"Governmental agency of the state" means:

(1) a municipality;

(2) a county;

(3) a public school district;

(4) a special-purpose district or authority;

(5) a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education, as defined by Section 61.003, Education Code;

(6) the legislature or a legislative agency;

(7) the supreme court, the court of criminal appeals, a court of appeals, or a district, county, or justice of the peace court;

(8) a judicial agency having statewide jurisdiction; and

(9) the State Bar of Texas.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.015. Heir.

"Heir" means a person who is entitled under the statutes of descent and distribution to a part of the estate of a decedent who dies intestate. The term includes the decedent's surviving spouse.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.016. Incapacitated Person.

A person is "incapacitated" if the person:

(1) is a minor;

(2) is an adult who, because of a physical or mental condition, is substantially unable to:

(A) provide food, clothing, or shelter for himself or herself;

(B) care for the person's own physical health; or

(C) manage the person's own financial affairs; or

(3) must have a guardian appointed for the person to receive funds due the person from a governmental source.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.017. Independent Executor.

"Independent executor" means the personal representative of an estate under independent administration as provided by Chapter 401 and Section 402.001. The term includes an independent administrator.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., R.S., c. 161, § 6.006, eff. Jan. 1, 2013.

§ 22.018. Interested Person; Person Interested.

"Interested person" or "person interested" means:

(1) an heir, devisee, spouse, creditor, or any other having a property right in or claim against an estate being administered; and

(2) anyone interested in the welfare of an incapacitated person, including a minor.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.019. Judge.

"Judge" means the presiding judge of any court having original jurisdiction over probate proceedings, regardless of whether the court is:

(1) a county court in the exercise of its probate jurisdiction;

(2) a court created by statute and authorized to exercise probate jurisdiction; or

(3) a district court exercising probate jurisdiction in a contested matter.

Added by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.020. Legacy.

"Legacy" includes a gift or devise of real or personal property made by a will.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.021. Legatee.

"Legatee" includes a person who is entitled to a legacy under a will.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.022. Minor.

"Minor" means a person younger than 18 years of age who:

(1) has never been married; and

(2) has not had the disabilities of minority removed for general purposes.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.024. Mortgage; Lien.

"Mortgage" and "lien" include:

(1) a deed of trust;

(2) a vendor's lien, a mechanic's, materialman's, or laborer's lien, an attachment or garnishment lien, and a federal or state tax lien;

(3) a chattel mortgage;

(4) a judgment; and

(5) a pledge by hypothecation.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.025. Net Estate.

"Net estate" means a decedent's property excluding:

(1) homestead rights;

(2) exempt property;

(3) the family allowance; and

(4) an enforceable claim against the decedent's estate.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.026. Next of Kin.

"Next of kin" includes:

(1) an adopted child or the adopted child's descendants; and

(2) the adoptive parent of the adopted child.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.027. Person.

(a) "Person" includes a natural person and a corporation.

(b) Except as otherwise provided by this code, the definition of "person" assigned by Section 311.005, Government Code, does not apply to any provision in this code.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2015, 84th Leg., c. 841, § 2, eff. Sept. 1, 2015.

§ 22.028. Personal Property.

"Personal property" includes an interest in:

(1) goods;

(2) money;

(3) a chose in action;

(4) an evidence of debt; and

(5) a real chattel.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.029. Probate Matter; Probate Proceedings; Proceeding in Probate; Proceedings for Probate.

The terms "probate matter," "probate proceedings," "proceeding in probate," and "proceedings for probate" are synonymous and include a matter or proceeding relating to a decedent's estate.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.0295. Qualified Delivery Method.

"Qualified delivery method" means delivery by:

(1) hand delivery by courier, with courier's proof of delivery receipt;

(2) certified or registered mail, return receipt requested, with return receipt; or

(3) a private delivery service designated as a designated delivery service by the United States Secretary of the Treasury under Section 7502(f)(2), Internal Revenue Code of 1986, with proof of delivery receipt.

Added by Acts 2023, 88th Leg., R.S., c. 205 (SB 1373), § 1, eff. Sept. 1, 2023

§ 22.030. Real Property.

"Real property" includes estates and interests in land, whether corporeal or incorporeal or legal or equitable. The term does not include a real chattel.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.031. Representative; Personal Representative.

(a) "Representative" and "personal representative" include:

(1) an executor and independent executor;

(2) an administrator, independent administrator, and temporary administrator; and

(3) a successor to an executor or administrator listed in Subdivision (1) or (2).

(b) The inclusion of an independent executor in Subsection (a) may not be construed to subject an independent executor to the control of the courts in probate matters with respect to settlement of estates, except as expressly provided by law.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.032. Surety.

"Surety" includes a personal surety and a corporate surety.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.033. Ward.

"Ward" means a person for whom a guardian has been appointed.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

§ 22.034. Will.

"Will" includes:

(1) a codicil; and

(2) a testamentary instrument that merely:

(A) appoints an executor or guardian;

(B) directs how property may not be disposed of; or

(C) revokes another will.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 1, eff. Jan. 1, 2014.

TITLE 2.
ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE A.
SCOPE, JURISDICTION, VENUE, AND COURTS

CHAPTER 32.
JURISDICTION

§ 32.001. General Probate Court Jurisdiction; Appeals.

(a) All probate proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in Section 31.002 for that type of court.

(b) A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.

(c) A final order issued by a probate court is appealable to the court of appeals.

Redesignated by Acts 2009, 81st Leg., R.S., c. 1351, § 13(a), eff. Jan. 1, 2014.

§ 32.002. Original Jurisdiction for Probate Proceedings.

(a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of probate proceedings.

(b) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of probate proceedings, unless otherwise provided by law. The judge of a county court may hear probate proceedings while sitting for the judge of any other county court.

(c) In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of probate proceedings.

Redesignated by Acts 2009, 81st Leg., R.S., c. 1351, § 13(a), eff. Jan. 1, 2014.

§ 32.003. Jurisdiction of Contested Probate Proceeding in County with No Statutory Probate Court or Statutory County Court.

(a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, according to the motion:

(1) request the assignment of a statutory probate court judge to hear the contested matter, as provided by Section 25.0022, Government Code; or

(2) transfer the contested matter to the district court, which may then hear the contested matter as if originally filed in the district court.

(b) If a party to a probate proceeding files a motion for the assignment of a statutory probate court judge to hear a contested matter in the proceeding before the judge of the county court transfers the contested matter to a district court under this section, the county judge shall grant the motion for the assignment of a statutory probate court judge and may not transfer the matter to the district court unless the party withdraws the motion.

(b-1) If a judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a probate proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, the judge may request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(c) A party to a probate proceeding may file a motion for the assignment of a statutory probate court judge under this section before a matter in the proceeding becomes contested, and the motion is given effect as a motion for assignment of a statutory probate court judge under Subsection (a) if the matter later becomes contested.

(d) Notwithstanding any other law, a transfer of a contested matter in a probate proceeding to a district court under any authority other than the authority provided by this section:

(1) is disregarded for purposes of this section; and

(2) does not defeat the right of a party to the proceeding to have the matter assigned to a statutory probate court judge in accordance with this section.

(e) A statutory probate court judge assigned to a contested matter in a probate proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this subtitle. A statutory probate court judge assigned to hear only the contested matter in a probate proceeding shall, on resolution of the matter, including any appeal of the matter, return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. A statutory probate court judge assigned to the entire probate proceeding as provided by Subsection (b-1) shall, on resolution of the contested matter in the proceeding, including any appeal of the matter, return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(f) A district court to which a contested matter is transferred under this section has the jurisdiction and authority granted to a statutory probate court by this subtitle. On resolution of a contested matter transferred to the district court under this section, including any appeal of the matter, the district court shall return the matter to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable.

(g) If only the contested matter in a probate proceeding is assigned to a statutory probate court judge under this section, or if the contested matter in a probate proceeding is transferred to a district court under this section, the county court shall continue to exercise jurisdiction over the management of the estate, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Any matter related to a probate proceeding in which a contested matter is transferred to a district court may be brought in the district court. The district court in which a matter related to the proceeding is filed may, on its own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the estate.

(h) If a contested matter in a probate proceeding is transferred to a district court under this section, the district court has jurisdiction of any contested matter in the proceeding that is subsequently filed, and the county court shall transfer those contested matters to the district court. If a statutory probate court judge is assigned under this section to hear a contested matter in a probate proceeding, the statutory probate court judge shall be assigned to hear any contested matter in the proceeding that is subsequently filed.

(i) The clerk of a district court to which a contested matter in a probate proceeding is transferred under this section may perform in relation to the contested matter any function a county clerk may perform with respect to that type of matter.

Redesignated by Acts 2009, 81st Leg., R.S., c. 1351, § 13(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., R.S., c. 1338, § 2.02, eff. Jan. 1, 2014.

§ 32.004. Jurisdiction of Contested Probate Proceeding in County with No Statutory Probate Court.

(a) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, transfer the contested matter to the county court at law. In addition, the judge of the county court, on the judge's own motion or on the motion of a party to the proceeding, may transfer the entire proceeding to the county court at law.

(b) A county court at law to which a proceeding is transferred under this section may hear the proceeding as if originally filed in that court. If only a contested matter in the proceeding is transferred, on the resolution of the matter, the matter shall be returned to the county court for further proceedings not inconsistent with the orders of the county court at law.

Redesignated by Acts 2009, 81st Leg., R.S., c. 1351, § 13(a), eff. Jan. 1, 2014.

§ 32.005. Exclusive Jurisdiction of Probate Proceeding in County with Statutory Probate Court.

(a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all probate proceedings, regardless of whether contested or uncontested. A cause of action related to the probate proceeding must be brought in a statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 32.007 or with the jurisdiction of any other court.

(b) This section shall be construed in conjunction and in harmony with Section 145 and all other sections of this title relating to independent executors, but may not be construed to expand the court's control over an independent executor.

Redesignated by Acts 2009, 81st Leg., R.S., c. 1351, § 13(a), eff. Jan. 1, 2014.

§ 32.006. Jurisdiction of Statutory Probate Court with Respect to Trusts and Powers of Attorney.

In a county in which there is a statutory probate court, the statutory probate court has jurisdiction of:

(1) an action by or against a trustee;

(2) an action involving an inter vivos trust, testamentary trust, or charitable trust;

(3) an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and

(4) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

Redesignated by Acts 2009, 81st Leg., R.S., c. 1351, § 13(a), eff. Jan. 1, 2014.

§ 32.007. Concurrent Jurisdiction with District Court.

A statutory probate court has concurrent jurisdiction with the district court in:

(1) a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a personal representative;

(2) an action by or against a trustee;

(3) an action involving an inter vivos trust, testamentary trust, or charitable trust, including a charitable trust as defined by Section 123.001, Property Code;

(4) an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate;

(5) an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and

(6) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

Redesignated by Acts 2009, 81st Leg., R.S., c. 1351, § 13(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., R.S., c. 1338, § 2.03, eff. Jan. 1, 2014.

CHAPTER 34.
MATTERS RELATING TO CERTAIN OTHER TYPES OF PROCEEDINGS

§ 34.001. Transfer to Statutory Probate Court of Proceeding Related to Probate Proceeding.

(a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to the judge's court from a district, county, or statutory court a cause of action related to a probate proceeding pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

(b) Notwithstanding any other provision of this subtitle, Title 1, Chapter 51, 52, 53, 54, 55, or 151, or Section 351.001, 351.002, 351.053, 351.352, 351.353, 351.354, or 351.355, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

Redesignated by Acts 2009, 81st Leg., R.S., c. 680, § 2, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., R.S., c. 1338, § 1.03, eff. Sept. 1, 2011. Redesignated by Acts 2013, 83rd Leg., R.S., c. 161, § 6.009, eff. Jan 1, 2014; Acts 2015, 84th Leg., c. 1236, § 20.006, eff. Sept. 1, 2015.

Texas Property Code

TITLE 4.
ACTIONS AND REMEDIES

CHAPTER 21.
EMINENT DOMAIN

SUBCHAPTER A.
JURISDICTION

§ 21.001. Concurrent Jurisdiction.

District courts and county courts at law have concurrent jurisdiction in eminent domain cases. A county court has no jurisdiction in eminent domain cases.

Added by Acts 1983, 68th Leg., p. 3498, c. 576, § 1, eff. Jan. 1, 1984.

§ 21.002. Transfer of Cases.

If an eminent domain case is pending in a county court at law and the court determines that the case involves an issue of title or any other matter that cannot be fully adjudicated in that court, the judge shall transfer the case to a district court.

Added by Acts 1983, 68th Leg., p. 3498, c. 576, § 1, eff. Jan. 1, 1984.

§ 21.003. District Court Authority.

A district court may determine all issues, including the authority to condemn property and the assessment of damages, in any suit:

(1) in which this state, a political subdivision of this state, a person, an association of persons, or a corporation is a party; and

(2) that involves a claim for property or for damages to property occupied by the party under the party's eminent domain authority or for an injunction to prevent the party from entering or using the property under the party's eminent domain authority.

Added by Acts 1983, 68th Leg., p. 3498, c. 576, § 1, eff. Jan. 1, 1984.

SUBCHAPTER B.
PROCEDURE

§ 21.013. Venue; Fees and Processing For Suit Filed in District Court.

(a) The venue of a condemnation proceeding is the county in which the owner of the property being condemned resides if the owner resides in a county in which part of the property is located. Otherwise, the venue of a condemnation proceeding is any county in which at least part of the property is located.

(b) Except where otherwise provided by law, a party initiating a condemnation proceeding in a county in which there is one or more county courts at law with jurisdiction shall file the petition with any clerk authorized to handle such filings for that court or courts.

(c) A party initiating a condemnation proceeding in a county in which there is not a county court at law must file the condemnation petition with the district clerk. The filing fee shall be due at the time of filing.

(d) District and county clerks shall assign an equal number of eminent domain cases in rotation to each court with jurisdiction that the clerk serves.

Added by Acts 1983, 68th Leg., p. 3499, c. 576, § 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., c. 760, § 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., c. 756, § 1, eff. June 18, 1999; Acts 2021, 87th Leg., S.B. 41, § 4.091, eff. Jan. 1, 2022.

Order of
The Supreme Court of Texas
and
The Court of Court of Criminal Appeals

The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness. In fulfilling his or her primary duty to a client, a lawyer must be ever mindful of the profession's broader duty to the legal system.

The Supreme Court of Texas and the Court of Criminal Appeals are committed to eliminating a practice in our State by a minority of lawyers of abusive tactics which have surfaced in many parts of our country. We believe such tactics are a disservice to our citizens, harmful to clients, and demeaning to our profession.

The abusive tactics range from lack of civility to outright hostility and obstructionism. Such behavior does not serve justice but tends to delay and often deny justice. The lawyers who use abusive tactics, instead of being part of the solution, have become part of the problem.

The desire for respect and confidence by lawyers from the public should provide the members of our profession with the necessary incentive to attain the highest degree of ethical and professional conduct. These rules are primarily aspirational. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence.

These standards are not a set of rules that lawyers can use and abuse to incite ancillary litigation or arguments over whether or not they have been observed.

We must always be mindful that the practice of law is a profession. As members of a learned art we pursue a common calling in the spirit of public service. We have a proud tradition. Throughout the history of our nation, the members of our citizenry have looked to the ranks of our profession for leadership and guidance. Let us now as a profession each rededicate ourselves to practice law so we can restore public confidence in our profession, faithfully serve our clients, and fulfill our responsibility to the legal system.

The Supreme Court of Texas and the Court of Criminal Appeals hereby promulgate and adopt "**The Texas Lawyer's Creed—A Mandate for Professionalism**" as attached hereto and made a part hereof.

In Chambers, this 7th day of November, 1989.

The Texas Lawyer's Creed—A Mandate for Professionalism

Promulgated by
The Supreme Court of Texas
The Court of Criminal Appeals
November 7, 1989

I am a lawyer; I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this Creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.
3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.

5. I will advise my client of proper and expected behavior.

6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.

7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.

8. I will advise my client that we will not pursue tactics which are intended primarily for delay.

9. I will advise my client that we will not pursue any course of action that is without merit.

10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.

11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.

2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.

3. I will identify for other counsel or parties all changes I have made in documents submitted for review.

4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.

5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are canceled.

6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.

7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.

8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about the counsel's intention to proceed.

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the ruling of the Court.

13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, Court appearance, or hearing until a good faith effort has been made to schedule it by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for the protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and the administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, the Court and members of the Court staff with courtesy and civility.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.