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New Rules: A Pocket Introduction

By James Hambleton and Jim Paulsen

Some Texas practitioners are still recovering from the trauma of discovering that many of their favorite statutes, such as Article 1995 (venue) and 2031b (long-arm jurisdiction) have been renumbered by the Legislature and hidden in a new document entitled the Civil Practice and Remedies Code. To them, news that the Texas Supreme Court and Court of Criminal Appeals have cooperated in producing the Texas Rules of Appellate Procedure is only further confirmation of the existence of a plot against long-time practitioners. No longer will one be able to refer to "Rule 21c motions" and "Rule 452-unpublished" opinions. Librarians may add the complaint that two hardbound volumes of West Publishing Company's annotated Rules of Civil Procedure — scarcely one year old — must now be replaced.

All in all, though, the new Rules of Appellate Procedure, effective Sept. 1, 1986, should be welcomed by bench and bar alike. The cooperation of this state's two high courts has produced a coordinated system of rules that should reduce confusion among attorneys and court personnel. In the process, the rules formerly applicable only to civil appeals have been reorganized, and are now presented in a format that more logically follows the flow of an appeal.

To understand fully the status of the new rules, some historical background is useful. The need for a uniform set of appellate rules can be traced back to 1981, the year that Texas intermediate appellate courts were given criminal jurisdiction. Some problems developed in the courts of appeals, attributable in part to obsolete criminal statutes and unjustifiable differences between civil and criminal appeal procedure. See Guitard, *Proposed Uniform Rules of Appellate Procedure*, 48 Tex. B.J. 24 (1985).

In 1983, the Senate-House Select Committee on the Judiciary was established in order to study and make recommendations on issues affecting the structure and operation of the state court system. One recommendation was that the civil and criminal rules of appellate procedure be harmonized. The Court of Criminal Appeals and the Supreme Court appointed a joint advisory committee which met throughout 1984. This committee produced a draft of combined rules of appellate procedure, printed in the February 1985 *Texas Bar Journal*. These proposed rules, however, covered only procedure in the intermediate courts.

A major impediment to a coordinated system of appellate rules, however, was the fact that, unlike the Texas Supreme Court, the Court of Criminal Appeals had no clear legislative authority to promulgate rules of procedure. While the 69th Legislature gave the Court of Criminal Appeals rulemaking authority (See Article 1811f), the legislation had a "Cinderella Clause" — If the Court of Criminal Appeals did not adopt a "comprehensive body of rules" by midnight, Jan. 1, 1986, its rulemaking authority would vanish.

To its credit, the Court of Criminal Appeals did produce a "comprehensive body of rules" with two full weeks to spare.

These rules, although in essence a draft of appellate rules for both civil and criminal cases, were carefully restricted by court order only to criminal appeals. They appear in the April and May issues of the *Texas Bar Journal* and the March 4, 1986 edition of West's *Texas Cases*. These rules, however, are not and never will be effective.

Unlike the Court of Criminal Appeals, the Texas Supreme Court operated under no time constraints. In reorganizing and rationalizing the rules, the Supreme Court Advisory Committee continued to work through March of this year, although the December 1985 Court of Criminal Appeals draft (which incorporated a number of civil suggestions) was not changed substantially. The Rules of Appellate Procedure were made applicable to civil cases by Supreme Court order of April 10, 1986. In an order of the same date, the Court of Criminal Appeals approved an identical version of the rules "in the nature of a complete substitute" for the Dec. 18, 1985 rules. In consequence, Texas now has a unified and comprehensive set of rules for both civil and criminal appeals.

No attempt is made here to summarize the specific substantive changes made by the new rules. As a general matter, though, it could safely be said that the changes in criminal appellate procedure are *very* substantive. As but one example, it is now required that notice of appeal be in writing, and be filed with the trial court clerk. As a general philosophy, it would appear that criminal practice has been modified to conform to civil practice, whenever practical. This extends even to matters as minor as "grounds of error," which are now "points of error," as in civil cases.

In the rules applicable to civil cases, or generally to all cases, comparatively few substantive changes have been made. The order of the rules has been greatly modified, however, to follow more closely the flow of a case through the appellate process. Anomalies such as Rule 21c, which governs extensions of time on appeal but appears in the section entitled "General Rules" for "Practice in District and County Courts," will be reduced significantly in the new rules. Likewise, changes in the headings of many rules have been made to reflect better the contents of the rules. This should not be taken to mean that there are no major substantive changes in the rules applicable to civil or to both civil and criminal cases. Many details have been changed, and appellate practitioners on both sides of the docket would be well advised to check their established procedures carefully against the new rules.

For the time being, analysis of substantive changes made in the Rules of Appellate Procedure is made more difficult by the fact that the rules issued on April 10 contain no derivation notes. In other words, although new Rule 90 is based in part on old Tex. R. Civ. P. 452, there is nothing in the court order to show this fact. In part, the failure to show derivation makes sense. In particular, since the rules primarily applicable to criminal cases have been greatly modified, sources notes might have been more misleading than helpful.

Derivation notes for those rules based mostly on the original civil rules will appear in the West "Desk Copy" edition of the *Texas Rules of Court*. This publication will be available before Sept. 1. Since the authors understand that the new desk copy will not retain the civil and criminal rules in effect until Sept. 1, practitioners would be well advised to keep old copies until the effective date of the new rules.

James Hambleton is director of the State Law Library in Austin and Jim Paulsen is an associate in the Houston law firm of Liddell, Sapp & Zivley.

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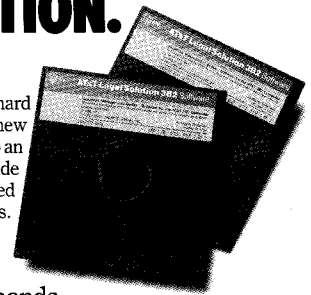
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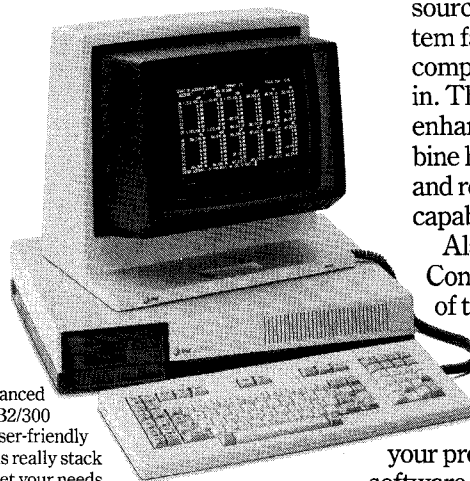


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Order of April 10, 1986

Promulgating New Rules Of Appellate Procedure

Effective September 1, 1986

IT IS ORDERED by the Supreme Court of Texas that the Texas Rules of Appellate Procedure are hereby adopted and promulgated to govern actions in the various courts of this State.

IT IS FURTHER ORDERED that a copy of these rules shall be filed by the Clerk of this Court, for and in behalf and as the act of this Court, by means of a duplicate original copy of this order, with the Secretary of State; and the publication of such new rules shall be made by the Clerk of this Court, for and in behalf and as the act of this Court in the *Texas Bar Journal* and a copy thereof mailed by said Clerk to each registered member of the State Bar of Texas, at least 60 days before the effective date thereof;

IT IS FURTHER ORDERED that these new rules shall become effective on September 1, 1986;

IT IS FURTHER ORDERED that these rules shall be recorded in the Minutes of this Court.

IT IS FURTHER ORDERED that the official copy of these rules as signed by this Court shall be preserved by the Clerk of this Court in that office as one of the permanent records of the Supreme Court of Texas.

SIGNED AND ENTERED in duplicate originals this 10th day of April, 1986.

/s/ John L. Hill
Chief Justice

/s/ Sears McGee
Justice

/s/ Robert M. Campbell
Justice

/s/ Franklin S. Spears
Justice

/s/ C.L. Ray
Justice

/s/ James P. Wallace
Justice

/s/ Ted Z. Robertson
Justice

/s/ William W. Kilgarlin
Justice

/s/ Raul A. Gonzalez
Justice

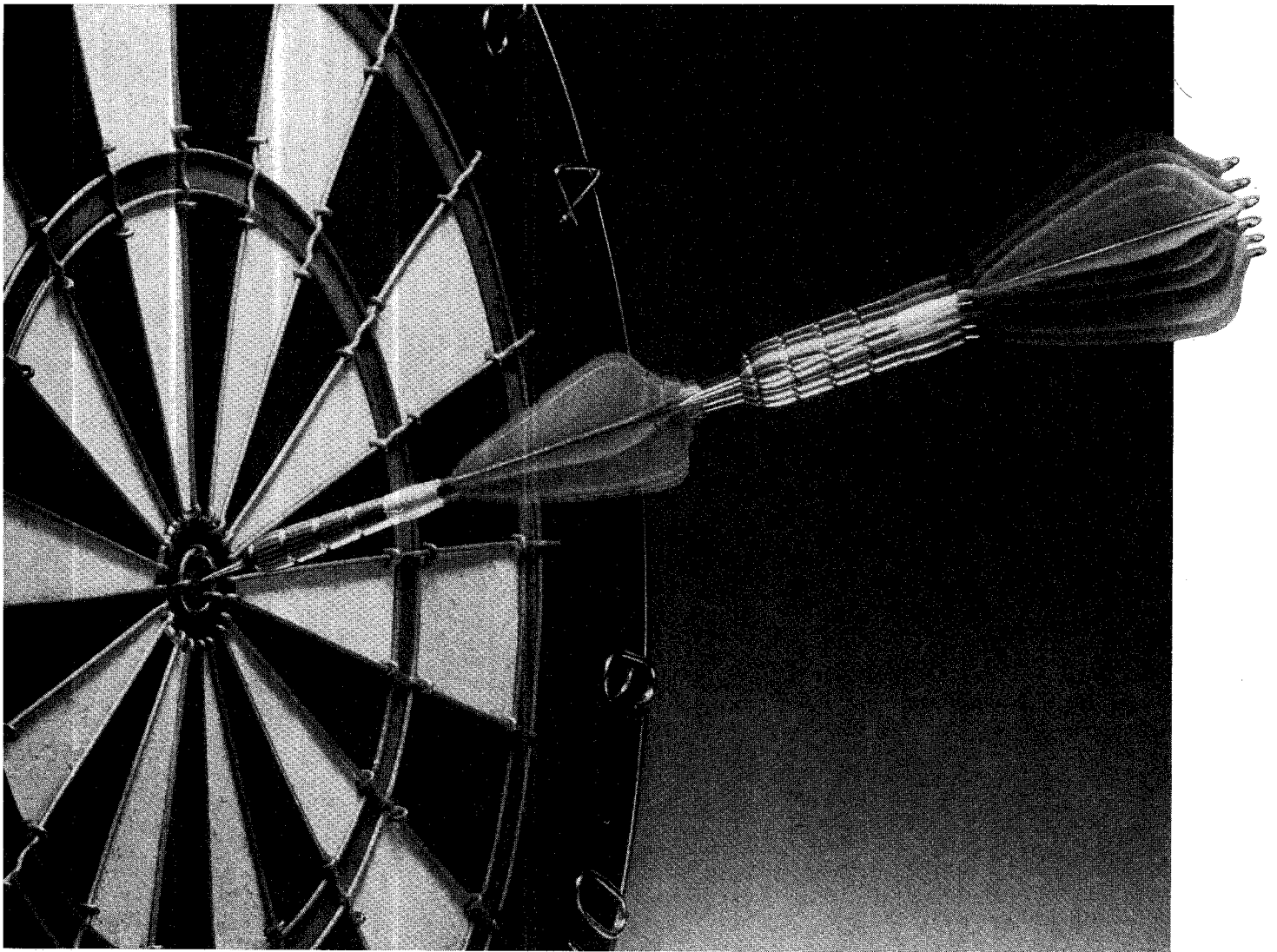
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Order Adopting Amendments to Rules Of Posttrial, Appellate and Review Procedure in Criminal Cases

BE IT ORDERED by the Court of Criminal Appeals that the following appended amendments in the nature of a complete substitute to rules of posttrial, appellate and review procedure heretofore adopted and promulgated by this Court December 18, 1985, are hereby adopted and promulgated to govern criminal cases and criminal law matters [Article V, §5 and Article 4.04, C.C.P.], under authority of and in conformity with Acts 1985, 69th Leg., Ch. 685, p. 5136, §§1-4 and Articles 44.33 and 44.45, Code of Criminal Procedure. Unless specifically restricted to procedure in civil cases ["actions of a civil nature (Rule 2, T.R.Civ.P.)], these rules shall govern posttrial, appellate and review procedures in criminal cases and criminal law matters. This order does not amend any existing rule, promulgate any new rule nor repeal any rule in the Texas Rules of Civil Procedure. No rule promulgated by this order shall be applicable to any civil case unless and until it has been promulgated by the Supreme Court of Texas. When promulgated by the Supreme Court of Texas these rules shall be known and cited as the Texas Rules of Appellate Procedure.

BE IT FURTHER ORDERED that the Clerk of this Court shall file with the Secretary of State of the State of Texas, for and in behalf and as the act of this Court, a duplicate original copy of this order and these rules, and the Clerk shall cause them to be published in the *Texas Register* and the *Texas Bar Journal*, as provided by the above Act.

BE IT FURTHER ORDERED that these rules become effective September 1, 1986, and remain in effect unless and until disapproved, modified or changed by the Legislature or unless and until supplemented or amended by this Court pursuant to the above Act.

BE IT FURTHER ORDERED that Rules of the Court of Criminal Appeals, adopted and promulgated November 30, 1977, and Rules of Post Trial and Appellate Procedure in Criminal Cases, adopted and promulgated July 17, 1981, as amended by order dated July 24, 1981, be and they are hereby repealed effective September 1, 1986; provided, however, that the substance of Rule 201 and of Forms 3, 4 and 5 is not repealed and shall be revised by separate order of this Court in an appendix to these rules.

BE IT FURTHER ORDERED that this order and these rules shall be recorded in the minutes of this Court, and that the original of this order signed by the members of this Court and of these rules shall be preserved by the Clerk of this Court as a permanent record of this Court.

SIGNED and ENTERED in duplicate originals this 10th day of April, 1986.

/s/ John F. Onion, Jr.
Presiding Judge

/s/ Tom G. Davis
Judge

/s/ W.C. Davis
Judge

/s/ Sam Houston Clinton
Judge

/s/ Michael J. McCormick
Judge

/s/ Marvin O. Teague
Judge

/s/ Chuck Miller
Judge

/s/ Charles F. (Chuck) Campbell
Judge

/s/ Bill White
Judge

Section One. Applicability of Rules.

Rule 1. Scope of Rules.

- (a) These rules govern procedure in appeals to courts of appeals from district courts, constitutional county courts, county courts at law and other statutory courts; review by the Court of Criminal Appeals or the Supreme Court of decisions of the courts of appeals; in direct appeals of death penalty cases to the Court of Criminal Appeals from district courts; in direct appeals to the Supreme Court from district courts; and in applications for writs or other relief which a court of appeals, the Court of Criminal Appeals, the Supreme Court or any judge of any appellate court is competent to give.
- (b) Local Rules. Each court of appeals may, from time to time, make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made shall before their promulgation be furnished to the Supreme Court and to the Court of Criminal Appeals for approval.

Rule 2. Relationship to Jurisdiction and Suspension.

- (a) Relationship to Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the courts of appeals, the Court of Criminal Appeals or the Supreme Court as established by law.
- (b) Suspension of Rules in Criminal Matters. Except as otherwise provided in these rules, in the interest of expediting a decision or for other good cause shown, a court of appeals or the Court of Criminal Appeals may suspend requirements and provisions of any rule in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction. Provided, however, that nothing in this rule shall be construed to allow any court to suspend requirements or provisions of the Code of Criminal Procedure.

Section Two. General Provisions.

Rule 3. Definitions; Uniform Terminology.

- (a) Terms in Rules. Certain terms used in these rules are defined as follows: "Appellant" is the party taking the appeal or suing out a writ of error to the court of appeals. "Appellee" is the party adverse to "appellant." "Petitioner" is the party applying to the Supreme Court for a writ of error. "Respondent" is the party adverse to "petitioner" in the Supreme Court. "Court below" is the trial court from which the appeal or writ of error is taken. "Appellate court" includes the courts of appeals, the Supreme Court and the Court of Criminal Appeals. "Relator" is the person seeking relief in an original proceeding in the appellate court. "Respondent" is the party against whom relief is sought in an original proceeding in the appellate court. "Applicant" is a party seeking a writ of habeas corpus in the trial court.
- (b) Uniform Terminology in Criminal Cases. In briefs and other papers in criminal appeals, the parties should be referred to as "the appellant" and "the State;" procedural labels such as "appellee," "petitioner," "respondent," "movant," etc., should be avoided unless they are necessary to clarify a question of procedural law. In habeas corpus proceedings the person for whose relief

the writ is asked should be referred to as "the applicant."

Rule 4. Signing, Filing and Service.

- (a) Signing. Each application, brief, motion or other paper filed shall be signed by at least one of the attorneys for the party, shall give the State Bar of Texas identification number, the mailing address and telephone number of each attorney whose name is signed thereto, and shall state that a copy of the paper has been delivered or mailed to each group of opposite parties or their counsel. A party who is not represented by an attorney shall sign his brief and give his address and telephone number. The statement of service on opposite parties by one who is not a licensed attorney shall be verified by affidavit.
- (b) Filing. The filing of records, briefs and other papers in the appellate court as required by these rules shall be made by filing them with the clerk, except that any justice of the court 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. If a motion for rehearing, any matter relating to taking an appeal or writ of error from the trial court to any higher court, or application for writ of error or petition for discretionary review 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 one day or more 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 as filed in time; provided, however, that a certificate of mailing by the United States Postal Service or a legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.
- (c) Number of Copies.
 - (1) Each party shall file six copies of briefs, petitions, motions and other papers with the Clerk of the Court of Appeals in which the case is pending. Any court of appeals may by local rule authorize the filing of fewer or more copies.
 - (2) Each party shall file twelve copies of its application for writ of error with the Clerk of the Court of Appeals. In addition to filing his original petition for discretionary review with the Clerk of the Court of Appeals, the filing party shall deliver eleven copies. The State Prosecuting Attorney may deliver the eleven copies to the Clerk of the Court of Criminal Appeals.
 - (3) Each party shall file twelve copies of all other papers addressed to the Supreme Court or Court of Criminal Appeals with the clerk of the court to which it is addressed.
- (d) Papers Typewritten or Printed. All applications, briefs, petitions, motions and other papers shall be printed or typewritten. Typewritten papers must be with a double space between the lines and on heavy white paper in clear type.
- (e) Service of All Papers Required. Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for him on all other parties to the appeal or review. Service on a party

- represented by counsel shall be made on counsel.
- (f) Manner of Service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.
 - (g) Proof of Service. Papers presented for filing shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made the service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgement or proof of service but shall require such to be filed promptly thereafter.

Rule 5. Computation of Time.

- (a) In General. 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, as defined by Article 4591, Revised Civil Statutes, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday. When the last day of the period is the next day which is neither a Saturday, Sunday nor legal holiday, any paper filed by mail as provided in Rule 4 is mailed on time when it is mailed on the last day of the period.
- (b) Beginning of Periods in Civil Cases.
 - (1) Date of Signing. In civil cases, the date of judgment or order is signed as shown of record shall determine the beginning of the periods described by these rules for filing in the trial court the various documents in connection with an appeal, including but not limited to an appeal bond, certificate of cash deposit, or notice or affidavit in lieu thereof, and bills of exception, and for filing of the petition for writ of error if review is sought by writ of error, and for filing in the appellate court of the transcript and statement of facts; 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 in civil cases 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 in a civil case, the clerk of the court shall immediately give notice to the parties or their attorneys of record by first-class mail advising that the judgment or order was signed. Failure to comply with the provisions of this rule shall not affect the periods mentioned in subparagraph (b)(1) of this rule, except as provided in subparagraph (b)(4).
 - (4) No Notice of Judgment. If within twenty days after the judgment or other appealable order is signed in a civil case, a party adversely affected by it or his attorney has neither received the notice required by subparagraph (b)(3) of this rule nor acquired actual knowledge of the order, then with respect to

that party all the periods mentioned in subparagraph (b)(1) except the period for filing a petition for writ of error shall begin on the date that such party or his attorney received such notice or acquired actual knowledge of the signing, whichever occurred first, but in no event shall such periods begin more than ninety days after the original judgment or other appealable order was signed.

- (5) Motion, Notice and Hearing. In order to establish the application of subparagraph (b)(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.
- (c) Nunc Pro Tunc Order. In civil cases, when a corrected judgment has been signed after expiration of the court's plenary power pursuant to Rule 316 or 317 of the Texas Rules of Civil Procedure, the periods mentioned in subparagraph (b)(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 judgment.
- (d) When Process Served by Publication. With respect to a motion for new trial in a civil case filed more than thirty days after the judgment was signed pursuant to Rule 329 of the Texas Rules of Civil Procedure, when process has been served by publication, the periods provided by subparagraph (b)(1) shall be computed as if the judgment were signed on the date of filing the motion.
- (e) Notice of Judgment of Appellate Courts. When the court of appeals renders judgment or grants or overrules a motion for rehearing, the clerk shall immediately give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be so marked as to be returnable to the clerk in case of nondelivery.
- (f) No Notice of Judgment of Appellate Court. Notwithstanding any provision of these rules concerning the time for filing a motion for extension of the period for filing a motion for rehearing, application for writ of error, or petition for discretionary review, an extension of such period may be granted by the appellate court in which a motion for extension would properly be filed on sworn motion showing that neither the party desiring to file such motion for rehearing, application for writ of error, or petition for discretionary review nor his attorney had notice or actual knowledge of the judgment or order from which such period began to run before the last day of such period and stating the earliest date either the party or his attorney received such notice or actual knowledge. Such a motion for extension shall be filed within fifteen days of the date either the party or his attorney first had such notice or actual knowledge, but in no event more than ninety days after the beginning of such period. When such a motion is granted, the period in question shall begin to run on the date of granting the motion.

Rule 6. Communications With the Appellate Court.

Correspondence or other communications relative to any matter before the court must be conducted with the clerk and shall not be addressed to or conducted with any of the justices or judges or other members of the court's staff.

Rule 7. Substitution of Counsel.

Counsel shall be permitted to withdraw or other counsel may be substituted upon such terms and conditions as may be deemed appropriate by the appellate court. The motion for leave to withdraw as counsel shall be accompanied by either a showing that a copy of the motion has been furnished to the party with a notice advising the party of any ensuing deadlines and settings of the cause or written acceptance of employment by new counsel indicated.

Rule 8. Agreements of Counsel.

All agreements of parties or their counsel relating either to the merits or conduct of the case in the court or in reference to a waiver of any of the requirements prescribed by the rules, looking to the proper preparation of an appeal or writ of error or their counsel, and filed with the transcript or be contained in it, and, to the extent that such agreement may vary the regular order of proceeding, shall be subject to such orders of the appellate court as may be necessary to secure a proper presentation of the case.

Rule 9. Substitution of Parties.

- (a) Death of a Party in Civil Cases. If any party to the record in a cause dies after rendition of judgment in the trial court, and before such cause has been finally disposed of on appeal, such cause shall not abate by such death, but the appeal may be perfected and the court of appeals or the Supreme Court, if it has granted or thereafter grants a writ therein, shall proceed to adjudicate such cause and render judgment therein as if all parties thereto were living, and such judgment shall have the same force and effect as if rendered in the lifetime of all parties thereto. If appellant dies after judgment, and before the expiration of the time for perfecting appeal, sixty days after the date of such death shall be allowed in which to perfect appeal and file the record, and all bonds or other papers may be made in the names of the original parties the same as if all the parties thereto were living.
- (b) Death of Appellant in a Criminal Case. If the appellant in a criminal case dies after an appeal is perfected but before the mandate of the appellate court is issued, the appeal shall be permanently abated.
- (c) Public Officers; Separation from Office
 - (1) When a suit in mandamus, *prohibition*, or injunction is brought against a person holding a public office, in his official capacity, and after final trial and judgment in the trial court, and appeal has been taken, if such person should vacate such office, the suit shall not abate, but his successor may be made a party thereto by a motion showing such facts.
 - (2) Unless waived, the clerk shall give the successor ten days notice of such motion, whereupon the court shall hear and determine same, and its judgment, order or decree shall be enforced, and the successor bound thereby.
 - (3) In such cases, the successor shall not be liable for any costs that have accrued prior to the time he was made a party.

Rule 10. Trial Court Docket of Appealed Cases.

In every case removed by appeal or writ of error to an appellate court, the clerk of the trial court shall, in making up the docket at each succeeding term, keep the said cause in its proper place on the docket for disposition after the appeal has been decided; and immediately upon return of the mandate from the appellate court shall, if the judgment has been affirmed or reversed and rendered, remove the case from the

docket and proceed to issue process to enforce the judgment as in other cases; but if the judgment has been reversed and remanded he shall continue the cause on the docket with its original file number for trial.

Rule 11. Duties of Court Reporters.

- (a) The duties of official court reporters shall be performed under supervision of the presiding judge of the court and shall include, but not be limited to:
 - (1) attending all sessions of court and making a full record of the evidence when requested by the judge or any party to a case, together with all objections to the admissibility of the evidence, the rulings and remarks of the court thereon;
 - (2) making a full record of jury arguments and voir dire examinations when requested to do so by the attorney for any party to a case, together with all objections to such arguments, the rulings and remarks of the court thereon;
 - (3) filing all exhibits with the clerk;
 - (4) preparing official transcripts of all such evidence or other proceedings, or any portion thereof, subject to the laws of this state, these rules and the instructions of the presiding judge of the court; and
 - (5) performing such other duties relating to the reporter's official duties as may be directed by the judge presiding.
- (b) Exhibits and materials used in the trial of a case and all of the record in a case are subject to such orders as the court may enter thereon.
- (c) In case of illness, press of official work, or unavoidable absence or disability of the official court reporter to perform the duties in (a) above, the presiding judge of the court may, in his discretion, authorize a deputy reporter to act in place of and perform the duties of the official reporter.
- (d) When a defendant is convicted and sentenced to a term of more than two years and no appeal is taken, the court reporter shall file the nontranscribed notes of the proceeding with the district clerk within 20 days following the expiration of the time for perfecting appeal. The district clerk shall not be required to retain the notes beyond 15 years from the date of their filing.

Rule 12. Work of Court Reporters.

- (a) It shall be the joint responsibility of the trial and appellate courts to insure that the work of the court reporter is accomplished timely.
- (b) The presiding judge of the trial court shall insure that the work of the court reporter is timely accomplished by setting priorities on the various elements of the reporter's workload to be observed by the reporter in the conduct of the business of the court reporter's office. Duties relating to proceedings before the court shall take preference over other work.
- (c) To aid the judge in setting the priorities in (b) above, each court reporter shall report in writing to the judge on a monthly basis the amount and nature of the business pending in the court reporter's office. A copy of this report shall be filed with the Clerk of the Court of Appeals of each Supreme Judicial District in which the court sits.

Rule 13. Deposit for Costs in Civil Cases.

- (a) Filing Transcript. Upon filing the transcript, the appellant shall deposit with the Clerk of the Court of Appeals the sum of \$50 as costs.
- (b) Motion to Extend or to File Record. Upon filing a motion for extension of time for filing a record or to direct the clerk to file a record on appeal or for writ of

error from the trial court, the movant shall deposit with the Clerk of the Court of Appeals a deposit of \$5 as costs.

- (c) Original Proceedings. Upon the filing of a motion for leave to file a petition for writ of mandamus, prohibition, injunction, or other like proceeding, or a petition for writ of habeas corpus, the movant or relator shall deposit with the clerk a deposit of \$20 as costs if in the court of appeals or \$50 if in the Supreme Court. If the motion for leave is granted, or if the petition for habeas corpus is set for argument, the movant or relator shall deposit an additional sum of \$30 in the court of appeals or \$75 if in the Supreme Court.
- (d) On Application for Writ of Error. Upon filing an application for writ of error with the Clerk of the Court of Appeals, the petitioner shall deliver to the clerk of that court the sum of \$50 as costs in the Supreme Court, and the clerk shall forward the deposit to the Supreme Court with the record. If the writ is granted, the petitioner shall deposit with the Clerk of the Supreme Court the additional sum of \$75 as costs in the Supreme Court.
- (e) Extension of Time for Application for Writ of Error. Upon filing a motion to extend the time for filing an application for writ of error, the petitioner shall file with the Clerk of the Supreme Court the sum of \$50 as costs.
- (f) Direct Appeals to Supreme Court. Upon filing of the record in a direct appeal from the district court to the Supreme Court as provided by Rule 140, the appellant shall deposit the sum of \$100 as costs in the Supreme Court.
- (g) Other Proceedings. Upon filing of other motions or proceedings not specifically enumerated in this rule, when no record has been filed with the clerk, the party filing such motion or proceeding shall deposit the sum of \$10 if in the court of appeals, or \$75 if in the Supreme Court as all costs in such proceedings. When a record is later filed in the same proceeding, only an additional deposit of \$40 shall be required if in the court of appeals or \$50 if in the Supreme Court.
- (h) Amounts May Vary. The dollar amounts provided in this rule may vary from time to time as set by applicable statute, court order, or rule.
- (i) Failure to Make Deposit. If the required deposit for costs is not tendered, the clerk may decline to file the record, motion, or petition, or the court may dismiss the proceeding.
- (j) Exempt Party. No deposit shall be required of any party who, under these rules or any applicable statute, is not required to give security for costs.
- (k) Inability to Pay. If the appellant has filed in the trial court an affidavit of inability to pay costs and has given the notice required by Rule 40(a)(3), and any contest of such affidavit has been overruled, he shall be entitled to file the record in the court of appeals, and, if the decision of the court of appeals is adverse to him, an application for writ of error, without making any deposit for costs. In all other proceedings in which a cost deposit is required by this rule, a party unable to pay such costs may make affidavit of his inability to do so and deliver it to the clerk of the appellate court upon filing the petition or motion. If the affidavit is filed in connection with an application for writ of error, it shall be delivered to the Clerk of the Court of Appeals to be forwarded to the Supreme Court with the record for action by the Supreme Court. Contest of any such affidavit in the appellate court shall be governed by Rule 40(a)(3).

Rule 14. Duty of Clerks to Account.

When the Clerk of the Supreme Court receives any money due a Clerk of the Court of Appeals, or the clerk of any court of appeals receives any money due the Clerk of the Supreme Court, or the clerk of another court of appeals, the clerk so receiving same shall pay such money over to the clerk to whom it is due. If he refuses to do so upon demand, the clerk to whom the same is due may file in the Supreme Court a motion against him, and, upon ten days' notice to him, the Supreme Court may enter judgment against him and the sureties on his official bond for such amount.

Rule 15. Recusal or Disqualification of Justices Of Courts of Appeals, the Supreme Court And Judges of the Court of Criminal Appeals.

- (a) Within thirty days after the filing of a proceeding in a court of appeals, the Supreme Court, or the Court of Criminal Appeals, any party may file with the clerk of the court a motion stating grounds why a justice or judge before whom the case is pending should not sit in the case. The court shall allow the filing of a motion after the expiration of thirty days if the motion is grounded upon reasons not known within the thirty day period and upon a showing of good cause.
- (b) On the day the motion is filed, copies shall be served on all other parties or their counsel of record, together with notice that movant expects the motion to be presented to the justice or judge ten days after the filing of such motion unless otherwise ordered by the justice or judge. Any other party may file with the clerk of the court an opposing or concurring statement at any time before the motion is decided.
- (c) Prior to any further proceeding in the case, the justice or judge shall either recuse himself or certify the matter to the entire court, which will decide the motion by a majority of the justices or judges of the court sitting en banc. A justice or judge who is challenged shall not sit en banc to consider the motion. If a majority of the justices or judges are challenged, the court shall nonetheless decide the motion as to each justice or judge, one at a time, by a majority of the justices or judges sitting en banc except the particular justice or judge being considered each time shall not sit en banc to consider the motion as it directly affects that justice or judge.
- (d) To the extent that a motion to recuse is granted, the matter is not reviewable. To the extent that a motion to recuse is denied, the normal appellate review process shall apply.

Rule 16. Court of Appeals Unable to Take Immediate Action.

The inability of any court of appeals having jurisdiction of a cause, matter, or controversy requiring immediate action to take such immediate action by reason of the illness or absence or unavailability of at least two of the justices thereof may be established either by the certificate of the clerk or any justice of such court of appeals, or by the affidavit of counsel for any party to such proceeding establishing the facts to the satisfaction of the court of appeals from which immediate action is sought. In determining the nearest court of appeals within the meaning section 22.220(b) of the Government Code its straight-line distance from the courthouse of the county where such cause, matter, or controversy is or was last pending in the trial court shall govern. A court of appeals is available to take immediate action under the provisions of said Article when two or more justices thereof, not disqualified, are present for duty or can readily become present for duty within the time when such action must be taken. If the inability of the nearest court of appeals to take such immediate action is also established in the manner hereinabove provided, such action may be taken by the

court of appeals next nearest to such courthouse.

Rule 17. Issuance of Process by Appellate Court.

- (a) Any writ of process issuing from any appellate court shall bear the test of the chief justice or presiding judge under the seal of said court and be signed by the clerk, and, unless otherwise expressly provided by law or by these rules, shall be directed to the party or court to be served, may be served by the sheriff or any constable of any county of the State of Texas within which such person to be served may be found, and shall be returned to the court from which it issued according to the direction of the writ. Whenever such writ or process shall not be executed, the clerk is authorized to issue another like process or writ upon the application of the party who requested the former writ or process. Two or more writs may be issued simultaneously at the request of any party.
- (b) Any party who has appeared in person or by attorney in any proceeding in the appellate court, or who has actual knowledge of the court's opinion, judgment, or order, shall be bound by such opinion, judgment, or order to the same extent as if personally served as provided in subdivision (a).

Rule 18. Duties of Clerk of Appellate Court.

- (a) Docketing the Case. The Clerk of the Court of Appeals shall have the responsibility for docketing the appeal in accordance with Rule 57. The clerk shall put the docket number of a case on each separate item (transcript, statement of facts, brief, motion, pleading, letter, etc.) that is received in connection with that case, as well as putting the docket number on the envelope in which the record is stored.
- (b) Preparing the Record. The record of each case shall be filed in one or more envelopes which in criminal cases shall conform to the following specifications: extra heavy weight stock, one-piece construction with flaps, congress-tie, non-collapsing style construction with closed corners, width of 14½ inches, height of 9 inches, thickness of ½ inch, 1 inch, 1½ inches, 2 inches, 3 inches, or 4 inches. On the front of the first envelope containing the record, the clerk shall set forth the information required by order of the Court of Criminal Appeals.
- (c) Custody of Papers. The clerk shall be responsible for every record or other paper in a cause that is missing from his office, unless he can produce the receipt of an attorney for the same, or otherwise show, by satisfactory evidence, that some one took it from his custody or from the courtroom without his consent, or that it had passed into the hands of one of the justices or judges of the court, and had not been returned to his custody.
- (d) Withdrawing Papers.
 - (1) Receipt. Neither the record nor any of the papers in a cause shall be withdrawn from the custody of the clerk, nor taken from his office or the courtroom, without a receipt left therefor.
 - (2) Case Under Submission. While a case is under submission, either on the merits of the appeal or on motion, the clerk shall not permit the record or any papers to be removed from his office, except on the order of one of the justices or judges of the court.
 - (3) Case Not Under Submission. When the case is pending in the appellate court, but is not under submission, either before submission or after decision, any party or his attorney may obtain possession of the record on leaving the receipt required by subsection (1) but when a decision on the merits

has been issued, only the losing party or his attorney shall be allowed to take the record out of the clerk's office until after said party has filed his motion for a rehearing or until the time for filing such motion has expired.

- (4) Original Exhibits. Original papers and exhibits sent up by order of the court below for the inspection of the appellate court, will be retained in the office, and will not be allowed to go out of the custody of the clerk, except by order of one of the justices or judges of the court, which order must be filed with the papers of the cause. Any party or attorney withdrawing such papers or exhibits shall leave a receipt identifying the papers or exhibits which he had received, and if he fails to return them, the court may accept the opposing party's statement concerning their nature and contents.
- (5) Return of Papers. The attorney or party withdrawing any record, exhibits, or other papers before submission shall return them to the clerk promptly on demand and, in any event, not later than one day before submission. If withdrawn after submission, they shall be returned on demand. No attorney or party shall take or allow to be taken any transcript, statement of facts, or other papers out of the reach of the court so that it cannot be produced in court or in the clerk's office on demand.
- (6) After Decision in the Supreme Court. Attorneys desiring to withdraw papers from the clerk's office after the decision of a cause or of an application for writ of error in the Supreme Court to prepare a motion for rehearing or for some other purpose shall first file with the clerk an agreement with opposing counsel or an order of the court or a justice thereof. The clerk is not authorized to allow papers to be taken from his office without such an agreement or order. Transcripts and other papers in cases finally disposed of shall not be taken from the clerk's office.

Rule 19. Motions in the Appellate Courts.

- (a) Content of Motions; Response; Reply. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with

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particularity the grounds on which it is based, and shall set forth the order of relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response to a motion within 10 days after service of the motion, but the court may shorten or extend the time for responding to any motion.

- (b) Docketing Motions. The clerk shall file each motion under the docket number assigned to the appeal and make an appropriate notation on the docket of the filing of such motion and any response thereto, together with the name of the attorney filing same, if not otherwise shown on the docket.
- (c) Notice of Motions. The clerk, upon filing and docketing a motion shall, unless waived, give notice to the opposite party or his attorney of record, by transmitting a brief notice of the nature or purpose of such motion to said party or his attorneys by letter.
- (d) Evidence on Motions. Motions dependent on facts not apparent in the record and not ex officio known to the court must be supported by affidavits or other satisfactory evidence.
- (e) Determination of Motions. As a general rule, no motion, other than a motion to extend the time for filing the record or briefs in a criminal case, shall be heard or determined until ten days after the notice provided for in paragraph (c) of this Rule 19 has been mailed. In cases of emergency, motions may be acted upon at any time, without awaiting a response. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.
- (f) Power of a Single Justice or Judge to Entertain Motions. In addition to the authority expressly conferred by these rules or by law, a single justice or judge of an appellate court may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that in a civil case a single justice may not act upon a motion for leave to file a petition for a writ of mandamus, prohibition or injunction or dismiss or otherwise determine an appeal or motion for rehearing. In addition, an appellate court may provide by order or rule that any motion or class of motions must be acted upon by the court.

Rule 20. Amicus Briefs.

The clerk of the appellate court may receive but not file amicus curiae briefs. An amicus curiae shall comply with the briefing rules for the parties, and shall show in the brief that copies have been furnished to all attorneys of record in the case.

Section Three. New Trials, Arrest of Judgment, And Nunc Pro Tunc Proceedings In Criminal Cases.

A. New Trials in Criminal Cases.

Rule 30. Definition and Grounds.

- (a) Definition. A "new trial" is the rehearing of a criminal action after a finding or verdict of guilt has been set aside upon motion of an accused. Except to adduce facts of a matter not otherwise shown on the record, a motion for new trial is not a requisite to presenting a point of error on appeal.
- (b) Grounds. A new trial shall be granted an accused for the following reasons:
 - (1) Except in a misdemeanor case when maximum

punishment may be by fine only, where the accused is an individual who has been tried in his absence, unless otherwise authorized by law, or has been denied counsel;

- (2) Where the court has misdirected the jury as to the law or has committed some other material error calculated to injure the rights of the accused;
- (3) Where the verdict has been decided by lot or in any other manner than by a fair expression of opinion by the jurors;
- (4) Where a juror has received a bribe to convict or has been guilty of any other corrupt conduct;
- (5) Where any material witness of the defendant has by force, threats or fraud been prevented from attending the court, or where any evidence tending to establish the innocence of the accused has been intentionally destroyed or withheld preventing its production at trial;
- (6) Where new evidence favorable to the accused has been discovered since trial;
- (7) Where after retiring to deliberate the jury has received other evidence; or where a juror has conversed with any other person in regard to the case; or where a juror became so intoxicated as to render it probable that his verdict was influenced thereby;
- (8) Where the court finds the jury has engaged in such misconduct that the accused has not received a fair and impartial trial; and
- (9) Where the verdict is contrary to the law and evidence.

Rule 31. Motion — Filing, Presenting and Ruling.

- (a) Time to File and Amend.
 - (1) To File. A motion for new trial if filed may be filed prior to, or shall be filed within 30 days after, date sentence is imposed or suspended in open court.
 - (2) To Amend. Before a motion or an amended motion for new trial is overruled it may be amended and filed without leave of court within 30 days after date sentence is imposed or suspended in open court.
- (b) State May Controvert.
 - (1) The State may take issue in writing with the truth of any reason set forth by accused in his motion. That the State has controverted a motion for new trial will not relieve an accused of his responsibility to present his motion timely to the court.
- (c) Time to Present.
 - (1) In Term of Court. An accused shall present his motion for new trial to the court within ten days after filing it, unless in his discretion the trial judge permits it to be presented and heard within 75 days from after date sentence is imposed or suspended in open court.
 - (2) New Term of Court. A motion for new trial need not be heard during the term it is filed. Within time limits prescribed in this rule an accused may file a motion for new trial, present it and have it heard and determined during a new term of court or in vacation.
- (d) Hearing. The court is authorized to hear evidence by affidavit or otherwise and to determine the issues.
- (e) Determination.
 - (1) Time to Rule. The court shall determine a motion for new trial within 75 days after date sentence is imposed or suspended in open court.
 - (2) Ruling. The judge shall not sum up, discuss or comment on evidence in the case. The judge shall grant or refuse the motion for new trial.

- (3) Failure to Rule. A motion not timely determined by written order signed by the judge shall be considered overruled by operation of law upon expiration of the period of time prescribed in section (e)(1) of this rule.

Rule 32. Effect of New Trial.

Granting a new trial restores the case to its position before the former trial including, at the option of either party, arraignment or pretrial proceedings initiated by that party. The prior conviction shall not be regarded as a presumption of guilt, nor shall it be alluded to in argument or in presence of jury.

B. Arrest of Judgment in Criminal Cases.

Rule 33. Motion and Grounds.

- (a) Definition. A motion in arrest of judgment is an oral or written suggestion to the trial court by an accused that judgment was not rendered against him in accordance with law for reasons stated in the motion.
- (b) Grounds. A motion may state a reason that is a ground provided for an exception to substance of an indictment or information or that in relation to the indictment or information a verdict is defective in substance, or any other reason that renders the judgment invalid.

Rule 34. Motion — Time to Make and to Rule.

- (a) Time to Make. A motion in arrest of judgment, if made, may be made prior to, or shall be made within 30 days after, date sentence is imposed or suspended in open court.
- (b) Time to Rule. A court must determine a motion in arrest of judgment by oral order or written order signed by the judge within 75 days after date sentence is imposed or suspended in open court. A motion not timely determined shall be considered overruled by operation of law upon expiration of that period.
- (c) Effect of Overruling. An order overruling a motion in arrest of judgment shall be considered as an order overruling a motion for new trial for purposes of giving notice of appeal.

Rule 35. Effect of Arresting Judgment.

- (a) Effect. Arresting judgment restores an accused to his position before indictment or information was presented.
- (b) Further Effect. If the trial court determines from the evidence adduced at trial that the accused may be convicted on a proper indictment or information or, in relation thereto, on a proper verdict, the judge may remand the accused to custody or fix bail; otherwise the accused shall be discharged.

C. Nunc Pro Tunc Proceedings.

Rule 36. Judgment and Sentence.

- (a) When done. Unless a new trial has been granted, the judgment arrested, or an appeal has been taken, failure of the court to enter judgment and pronounce sentence may be corrected at any time by entering judgment and pronouncing sentence.
- (b) Credit. The trial court shall give the defendant credit on the sentence finally pronounced for all time the defendant has spent in confinement from the time judgment and sentence should have been entered and pronounced, as well as from the time of his arrest and confinement to the time the judgment and sentence should have been entered and pronounced.

Section Four. Appeals from Judgments and Orders Of Trial Courts.

Rule 40. Ordinary Appeal — How Perfected.

(a) Appeals in Civil Cases.

- (1) When Security is Required. When security for costs is required by law, the appeal is perfected when the bond, cash deposit or affidavit in lieu thereof has been filed or made, or if affidavit is contested, when the contest is overruled. The writ of error is perfected when the petition and bond or cash deposit is filed or made (when bond is required), or affidavit in lieu thereof is filed, or, if contested, when the contest is overruled.
- (2) When Security is Not Required. When security for costs on appeal is not required by law, the appellant shall in lieu of a bond file a written notice of appeal with the clerk or judge which shall be filed within the time otherwise required for filing the bond. Oral notice or a recital in the judgment of notice does not comply with this rule. Such notice shall be sufficient if it states the number and style of the case, the court in which pending, and that appellant desires to appeal from the judgment or some designated portion thereof. Copy of the notice shall be mailed by counsel for appellant in the same manner as the mailing of copies of the appeal bond.
- (3) When Party is Unable to Give Security.
 - (A) When the appellant is unable to pay the cost of appeal or give security therefor, he shall be entitled to prosecute an appeal or writ of error by filing with the clerk, within the period prescribed by Rule 41, his affidavit stating that he is unable to pay the costs of appeal or any part thereof, or to give security therefor.
 - (B) The appellant or his attorney shall give notice of the filing of the affidavit to the opposing party or his attorney and to the court reporter of the court where the case was tried within two days after the filing; otherwise, he shall not be entitled to prosecute the appeal without paying the costs or giving security therefor.
 - (C) Any interested officer of the court or party to the suit, may file a contest to the affidavit within ten days after notice thereof, whereupon the court trying the case (if in session) or (if not in session) the judge of the court or county judge of the county in which the case is pending shall set the contest for hearing, and the clerk shall give the parties notice of such setting.
 - (D) The burden of proof at the hearing of the contest shall rest upon the appellant to sustain the allegations of the affidavit.
 - (E) If no contest is filed in the allotted time, the allegations of the affidavit shall be taken as true. If a contest is filed, the court shall hear the same within ten days after its filing unless the court extends the time for hearing and determining the contest by a signed written order made within the ten day period. The court shall not extend the time for more than 20 additional days after the date of the order of extension. If no ruling is made on the contest within the ten day period or within the period of time as extended by the court, the allegations of the affidavit shall be taken as

true.

- (F) If the appellant is able to pay or give security for a part of the costs of appeal, he shall be required to make such payment or give such security (one or both) to the extent of his ability.
 - (4) Notice of Limitation of Appeal. No attempt to limit the scope of an appeal shall be effective as to a party adverse to the appellant unless the severable portion of the judgment from which the appeal is taken is designated in a notice served on the adverse party within 15 days after judgment is signed, or if a motion for new trial is filed by any party, within 75 days after the judgment is signed.
 - (5) Judgment Not Suspended by Appeal. Except as provided in Rule 43, the filing of a bond or the making of a deposit or affidavit does not have the effect of suspending the judgment. Unless a supersedeas bond or deposit is made as provided in Rule 47, execution may issue thereon as if no appeal or writ of error had been taken.
- (b) Appeals in Criminal Cases.
- (1) Appeal is perfected in a criminal case by giving timely notice of appeal; except, it is unnecessary to give notice of appeal in death penalty cases. Notice of appeal shall be given in writing filed with the clerk of the trial court. Such notice shall be sufficient if it shows the desire of the defendant to appeal from the judgment or other appealable order; but if the judgment was rendered upon his plea of guilty or nolo contendere pursuant to Article 1.15, Code of Criminal Procedure, and the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney, in order to prosecute an appeal for a nonjurisdictional defect or error that occurred prior to entry of the plea the notice shall state that the trial court granted permission to appeal or shall specify that those matters were raised by written motion and ruled on before trial. The clerk of the trial court shall note on copies of the notice of appeal the number of the cause and the day that notice was filed, and shall immediately send one copy to the clerk of the appropriate court of appeals and one copy to the attorney for the State.
 - (2) Effect of Appeal in Criminal Cases. In the appeal of a criminal case when the record has been filed in the appellate court all further proceedings in the trial court, except as provided by law or by these rules, shall be suspended and arrested until the mandate of the appellate court is received by the trial court.

Rule 41. Ordinary Appeal — When Perfected.

- (a) Appeals in Civil Cases.
- (1) Time to Perfect Appeal. When security for costs on appeal is required, the bond or affidavit in lieu thereof shall be filed with the clerk within 30 days after the judgment is signed, or, within 90 days after the judgment is signed if a timely motion for new trial has been filed by any party. If a deposit of cash is made in lieu of bond, the same shall be made within the same period.
 - (2) Extension of Time. An extension of time may be granted by the appellate court for late filing of a cost bond or notice of appeal or making the deposit required by paragraph (a)(1) or for filing the affidavit, if such bond or notice of appeal is filed,

deposit is made, or affidavit is filed not later than 15 days after the last day allowed and, within the same period, a motion is filed in the appellate court reasonably explaining the need for such extension. If a contest to an affidavit in lieu of bond is sustained, the time for filing the bond is extended until ten days after the contest is sustained unless the trial court finds and recites that the affidavit is not filed in good faith.

(b) Appeals in Criminal Cases.

- (1) Time to Perfect Appeal. Appeal is perfected when notice of appeal is filed within 30 days after the day sentence is imposed or suspended in open court or the day an appealable order is signed by the trial judge; except, if a motion for new trial is timely filed, notice of appeal shall be filed within 90 days after the day sentence is imposed or suspended in open court.
 - (2) Extension of Time. An extension of time for filing notice of appeal may be granted by the court of appeals if such notice is filed within 15 days after the last day allowed and within the same period a motion is filed in the court of appeals reasonably explaining the need for such extension.
- (c) Prematurely Filed Documents. No appeal bond or affidavit in lieu thereof, notice of appeal, or notice of limitation of appeal shall be held ineffective because prematurely filed. In civil cases, every such instrument shall be deemed to have been filed on the date of but subsequent to the date of signing of the judgment or the date of the overruling of motion for new trial, if such a motion is filed. In criminal cases, every such instrument shall be deemed to have been filed on the date of but subsequent to the imposition or suspension of sentence in open court or the signing of appealable order by the trial judge, provided that no notice of appeal shall be effective if given before a finding of guilt is made or a verdict is received.

Rule 42. Accelerated Appeals in Civil Cases.

(a) Mandatory Acceleration.

- (1) Appeals from interlocutory orders (when allowed by law) shall be accelerated. In appeals from interlocutory orders, no motion for new trial shall be filed. The trial judge need not file findings of fact and conclusions of law, but may file findings and conclusions within 30 days after the judgment is signed.
- (2) Appeals in quo warranto proceedings shall be accelerated. In quo warranto, the filing of a motion for new trial shall not extend the time for perfecting the appeal or the time for filing appellant's brief; but the trial court shall have power to grant such a motion, if timely filed, until 50 days after the judgment or order appealed from is signed. If not determined by written order within that period, the motion shall be deemed overruled by operation of law.
- (3) In all accelerated appeals from interlocutory orders and in quo warranto proceedings, the bond, or the notice or affidavit in lieu thereof, shall be filed, or the deposit in lieu of bond shall be made, within 20 days after the judgment or order is signed. The record shall be filed in the appellate court within 30 days after the judgment or order is signed. The appellant's brief shall be filed within 20 days after the record is filed, and appellee's brief shall be filed within 20 days after appellant's brief is filed. Failure to file either the record or

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appellant's brief within the time specified, unless reasonably explained, shall be ground for dismissal or affirmance under Rule 60, but shall not affect the court's jurisdiction or its authority to consider material filed late.

- (b) Discretionary Acceleration. The court of appeals, on motion of any party or an order of the court, may advance any appeal and give it priority over other cases.
- (c) Transcript and Briefs. The court of appeals may hear an appeal that is accelerated under paragraphs (a) or (b) of this rule on the original papers sent up from the trial court or on sworn and uncontroverted copies of such papers in lieu of a transcript, and may shorten the time for filing briefs or allow the case to be submitted without briefs.

Rule 43. Orders Pending Interlocutory Appeal in Civil Cases.

- (a) Effect of Appeal. No order denying interlocutory relief shall be suspended or superseded by an appeal therefrom. The pendency of an appeal from an order authorizing a cause to proceed as a class action suspends such order and also suspends trial on the merits in such cases. Otherwise, the pendency of an appeal from an order granting interlocutory relief does not suspend the order appealed from unless supersedeas is granted in accordance with subdivision (b) or unless the appellant is entitled to supersede the judgment without security by giving notice of appeal.
- (b) Supersedeas. Except as provided in subdivision (a), the trial court may permit an interlocutory order to be suspended pending an appeal therefrom by filing a supersedeas bond or making a deposit pursuant to Rule 47. Denial of such suspension may be reviewed for abuse of discretion on motion in the appellate court.
- (c) Temporary Orders of Appellate Court. On perfection of an appeal from an interlocutory order, the appellate court may issue such temporary orders as it finds necessary to preserve the rights of the parties until disposition of the appeal and may require such security as it deems appropriate, but it shall not suspend the trial court's order if the appellant's rights would be adequately protected by supersedeas.
- (d) Further Proceedings in Trial Court. Pending an appeal from an interlocutory order, the trial court retains jurisdiction of the cause and may issue further orders, including dissolution of the order appealed from, but the court shall make no order granting substantially the same relief as that granted by the order appealed from, or any order contrary to the temporary orders of the appellate court, or any order that would interfere with or impair the effectiveness of any relief sought or granted on appeal. The trial court may proceed with a trial on the merits, except as provided in subdivision (a).
- (e) Enforcement of Temporary Orders. Pending an appeal from an interlocutory order, the order may be enforced only by the appellate court in which the appeal is pending, except that the appellate court may refer any enforcement proceeding to the trial court with instructions to hear evidence and grant such relief as may be appropriate. The appellate court may also instruct the trial court to make findings and report them with his recommendations to the appellate court.
- (f) Review on Further Orders. When an appeal is pending from an interlocutory order, any further appealable interlocutory order of the trial court concerning the same subject-matter and any interlocutory order that would interfere with or impair the effectiveness of the

relief sought or granted on appeal may be brought before the appellate court for review on motion, either on the original record or with a supplement thereto.

- (g) Mandate. The order of the appellate court on appeal from an interlocutory order takes effect when the mandate is issued. The court may issue the mandate immediately on announcing its decision if the circumstances require, or it may delay the mandate until final disposition of the appeal. All further proceedings in the trial court shall conform to the mandate. If the appellate court modifies its decision after issuing a mandate, a new mandate shall be issued accordingly.
- (h) Rehearing. The appellate court may either deny the right to file a motion for rehearing or shorten the time for filing, and in that event a motion for rehearing shall not be a prerequisite to any review available in the Supreme Court.

Rule 44. Appeals in Habeas Corpus and Bail; Criminal Cases.

- (a) The Record. In habeas corpus or bail proceedings when written notice of appeal from a judgment or an order is filed, the transcript and, if requested by the applicant, a statement of facts, shall be prepared and certified by the clerk of the trial court and, within 15 days after the notice of appeal is filed, sent to the appellate court for review. The appellate court may shorten or extend the time for filing the record if there is a reasonable explanation for the need for such action. When the record is received by the appellate court, the court shall set the time for the filing of briefs, if briefs are desired, and shall set the appeal for submission.
- (b) Hearing. Such cases, taken to the court of appeals by appeal, shall be heard at the earliest practicable time. The appellant need not be personally present, and such appeal shall be heard and determined upon the law and the facts arising upon record. No incidental question which may have arisen on the hearing of the application before the court below shall be reviewed. The only design of the appeal is to do substantial justice to the party appealing.
- (c) Orders on Appeal. In such cases, the appellate court shall render such judgment and make such orders as the law and the nature of the case may require, and may make such orders relative to the costs in the case as may seem right, allowing costs and fixing the amount, or allowing no cost at all.
- (d) Stay of Mandate. Notwithstanding Rule 86 and other provisions of these rules, when an appellate court affirms the judgment of the court below in an extradition matter, thereby sanctioning extradition of appellant, or reverses the judgment of the court below in a bail matter, including bail pending appeal pursuant to Article 44.04(g), CCP, thereby granting or reducing the amount of bail, within 15 days after the appellate court has rendered judgment a party who in good faith intends to seek discretionary review shall file with the clerk of the appellate court a motion for stay of mandate, appending thereto his petition for discretionary review showing reasons for review of the judgment of the appellate court by the Court of Criminal Appeals. The clerk shall promptly submit the motion with appendix to the appellate court or one or more judges as the court deems appropriate for immediate consideration and determination. If the motion for stay is granted, the clerk shall file the petition for discretionary review and process the cause in accordance with Rule 202(f). If the motion is denied, the clerk shall issue a mandate in accordance with the judgment of the appellate court, and the losing party may present the motion

with appendix to the Clerk of the Court of Criminal Appeals who will promptly submit them to the Court or 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 mandate is stayed or recalled, the clerk of the appellate court shall file the petition for discretionary review and process the cause in accordance with Rule 202(f).

- (e) Judgment Conclusive. The judgment of the court of appeals in appeals in such cases shall be final and conclusive if discretionary review is not granted by the Court of Criminal Appeals. If discretionary review is granted, the judgment of the Court of Criminal Appeals shall be final and conclusive. In either case, no further application in the same case can be made for the writ, except in cases specially provided for by law.
- (f) Appellant Detained by Other Than Officer. If the appellant in such a case is detained by any person other than an officer, the sheriff receiving the mandate of the appellate court shall immediately cause the person so held to be discharged; and the mandate shall be sufficient authority therefor.
- (g) Judgment to be Certified. In such cases, the judgment of the appellate court shall be certified by the clerk thereof to the officer holding the defendant in custody or, when he is held by any person other than an officer, to the sheriff of the proper county.

Rule 45. Appeal by Writ of Error in Civil Cases To Court of Appeals.

A party may appeal a final judgment to the court of appeals by petition for writ of error by complying with the requirements set forth below:

- (a) Filing Petition. The party desiring to sue out a writ of error shall file with the clerk of the court in which the judgment was rendered a written petition signed by him or by his attorney, and addressed to the clerk.
- (b) No Participating Party at Trial. No party who participates either in person or by his attorney in the actual trial of the case in the trial court shall be entitled to review by the court of appeals through means of writ of error.
- (c) Requisites of Petition. The petition shall state the names and residences of the parties adversely interested, shall describe the judgment with sufficient certainty to identify it and shall state that the appellant desires to remove the same to the court of appeals for revision and correction.
- (d) Time for Filing. The writ of error, in cases where the same is allowed, may be sued out at any time within six months after the final judgment is signed.
- (e) Cost Bond or Substitute. At the time of filing the petition, or within six months provided by paragraph d, the appellant shall file with the clerk an appeal bond, cash deposit in lieu of bond, affidavit of inability to pay costs, or a notice of appeal if no bond is required, as provided by these rules for appeals.
- (f) Notice. When the petition for writ of error and cost bond, or the clerk's certificate showing cash deposit in lieu of bond, or affidavit of inability to pay costs, or the notice of appeal, if permitted, is filed, the clerk shall notify the parties by mailing a copy of the petition and bond, or the substitute for the bond to all parties to the judgment other than the party or parties filing the petition for writ of error. The failure of the clerk to notify the parties shall not affect the validity of the appeal.
- (g) Recipients and Sufficiency of Notice. The notification

of a party shall be given by mailing copies of the instruments to the attorney of record or, if the party is not represented by an attorney, then to the party at his last known address. Such notification is sufficient notwithstanding the death of the party or his attorney prior to the giving of the notification. The clerk shall note on the file docket the names of the parties to whom he mails the copies, with the date of mailing.

- (h) Perfection. The writ of error is perfected when the petition and bond or cash deposit in lieu of bond is filed or made (when security is required), or affidavit of inability to pay is filed or a contest is overruled, or a notice of appeal, if permitted, is filed.

Rule 46. Bond for Costs on Appeal in Civil Cases.

- (a) Cost Bond. Unless excused by law, the appellant shall execute a bond payable to the appellee in the sum of \$1,000 unless the court fixes a different amount upon its own motion or motion of either party or any interested officer of the court. If the bond is filed in the amount of \$1,000, no approval by the court is necessary. The bond on appeal shall have sufficient surety and shall be conditioned that appellant shall prosecute his appeal or writ of error with effect and shall pay all costs which have accrued in the trial court and the cost of the statement of facts and transcript. Each surety shall give his post office address. Appellant may make the bond payable to the clerk instead of the appellee, and same shall inure to the use and benefit of the appellee and the officers of the court, and shall have the same force and effect as if it were payable to the appellee.
- (b) Deposit. In lieu of a bond, appellant may make a deposit with the clerk pursuant to Rule 48 in the amount of \$1,000, and in that event the clerk shall file among the papers his certificate showing that the deposit has been made and copy same in the transcript, and this shall have the force and effect of an appeal bond.
- (c) Increase or Decrease in Amount. Upon the court's own motion or motion of any party or any interested officer of the court, the court may increase or decrease the amount of the bond or deposit required. The trial court's power to increase or decrease the amount shall continue for 30 days after the bond or certificate is filed, but no order increasing the amount shall affect perfecting of the appeal or the jurisdiction of the appellate court. If a motion to increase the amount is granted, the clerk and official reporter shall have no duty to prepare the record until the appellant complies with the order. If the appellant fails to comply with such order, the appeal shall be subject to dismissal or affirmance under Rule 60. No motion to increase or decrease the amount shall be filed in the appellate court until 30 days after the bond or certificate is filed. In determining the question of whether an appellant's bond or deposit should be increased to more than the minimum amount of \$1,000, the court shall credit the appellant with such sums as have been paid by appellant on the costs to the clerk of the trial court or to the court reporter.
- (d) Notice of Filing. Notification of the filing of the bond or certificate of deposit shall promptly be given by counsel for appellant by mailing a copy thereof to counsel of record or each party other than the appellant or, if a party is not represented by counsel, to the party at his last known address. Counsel shall note on each copy served the date on which the appeal bond or certificate was filed. Failure to serve a copy shall be ground for dismissal of the appeal or other appropriate action if appellee is prejudiced by such failure.
- (e) Payment of Court Reporters. Even if a bond is filed or

deposit in lieu of bond is made, appellant shall either pay or make arrangements to pay the court reporter upon completion and delivery of the statement of facts.

- (f) **Amendment: New Appeal Bond or Deposit.** On motion to dismiss an appeal or writ of error for a defect of substance or form in any bond or deposit given as security for costs, the appellate court may allow the filing of a new bond or the making of a new deposit in the trial court on such terms as the appellate court may prescribe. A certified copy of the new bond or certificate of deposit shall be filed in the appellate court.

Rule 47. Supersedeas Bond or Deposit in Civil Cases.

- (a) **May Suspend Execution.** Unless otherwise provided by law or these rules, an appellant may suspend the execution of the judgment by filing a good and sufficient bond to be approved by the clerk, or making the deposit provided by Rule 48, payable to the appellee in the amount provided below, conditioned that the appellant shall prosecute his appeal or writ of error with effect and, in case the judgment of the Supreme Court or court of appeals shall be against him, he shall perform its judgment, sentence or decree and pay all such damages and costs as said court may award against him. If the bond or deposit is sufficient to secure the costs and is filed or made within the time prescribed by Rule 40, it constitutes sufficient compliance with Rule 46.
- (b) **Money Judgment.** When the judgment awards recovery of a sum of money, the amount of the bond or deposit shall be at least the amount of the judgment, interest, and costs.
- (c) **Land or Property.** When the judgment is for the recovery of land or other property, the bond or deposit shall be further conditioned that the appellant shall, in case the judgment is affirmed, pay to the appellee the value of the rent or hire of such property during the appeal, and the bond or deposit shall be in the amount estimated or fixed by the trial court.
- (d) **Foreclosure on Real Estate.** When the judgment is for the recovery of or foreclosure upon real estate, the appellant may supersede the judgment insofar as it decrees the recovery of or foreclosure against said specific real estate by filing a supersedeas bond or making a deposit in the amount to be fixed by the court below, not less than the rents and hire of said real estate; but if the amount of said supersedeas bond or deposit is less than the amount of the money judgment, with interests and costs, then the appellee shall be allowed to have his execution against any other property of appellant.
- (e) **Foreclosure on Personal Property.** When the judgment is for the recovery of or foreclosure upon specific personal property, the appellant may supersede the judgment insofar as it decrees the recovery of or foreclosure against said specific personal property or by filing a supersedeas bond or making a deposit in an amount to be fixed by the court below, not less than the value of said property on the date of rendition of judgment, but if the amount of the supersedeas bond or deposit is less than the amount of the money judgment with interest and costs, then the appellee shall be allowed to have his execution against any other property of appellant.
- (f) **Other Judgment.** When the judgment is for other than money or property or foreclosure, the bond or deposit shall be in such amount to be fixed by the said court below as will secure the plaintiff in judgment in any loss or damage occasioned by the delay on appeal, but the court may decline to permit the judgment to be suspended on filing by the plaintiff of a bond or deposit to

be fixed by the court in such an amount as will secure the defendant in any loss or damage occasioned by any relief granted if it is determined on final disposition that such relief was improper.

- (g) **Child Custody.** When the judgment is one involving the care or custody of a child, the appeal, with or without a supersedeas bond or deposit shall not have the effect of suspending the judgment as to the care or custody of the child, unless it shall be so ordered by the court rendering the judgment. However, the appellate court, upon a proper showing, may permit the judgment to be superseded in that respect also.
- (h) **For State or Subdivision.** When the judgment is in favor of the State, a municipality, a State agency, or a subdivision of the State in its governmental capacity, and is such that the judgment holder has no pecuniary interest in it and no monetary damages can be shown, the bond or deposit shall be allowed and its amount fixed within the discretion of the trial court, and the liability of the appellant shall be for the face amount if the appeal is not prosecuted with effect. The discretion of the trial court in fixing the amount 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 or deposit may allow recovery for less than its full face amount.
- (i) **Certificate of Deposit.** If the appellant makes a deposit in lieu of a bond, the clerk's certificate that the deposit has been made shall be sufficient evidence thereof.
- (j) **Effect of Bond or Deposit.** Upon the filing and approval of a proper supersedeas bond or the making of a deposit in compliance with these rules, execution of the judgment or so much thereof as has been superseded, shall



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be suspended, and if execution has been issued, the clerk shall forthwith issue a writ of supersedeas.

Rule 48. Deposit in Lieu of Bond.

Wherever these rules provide for the filing of a surety bond, the party may in lieu of filing the bond deposit cash or a 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.

Rule 49. Appellate Review of Bonds in Civil Cases.

- (a) **Sufficiency.** The sufficiency of a cost or supersedeas bond or deposit or of any other bond or deposit under Rule 47 shall be reviewable by the appellate court for insufficiency of the amount or of the sureties or of the securities deposited, whether arising from initial insufficiency or from any subsequent condition which may arise affecting the sufficiency of the bond or deposit. The court in which the appeal is pending shall, upon motion showing such insufficiency, require an additional bond or deposit to be filed in and approved by the clerk of the trial court, and a certified copy to be filed in the appellate court.
- (b) **Excessiveness.** In like manner, the appellate court may review for excessiveness the amount of the bond or deposit fixed by the trial court and may reduce the amount if found to be excessive.
- (c) **Insufficiency of Supersedeas Bond or Deposit.** If the appellate court requires additional bond or other security for supersedeas, execution of the judgment shall be suspended for 20 days after the order is served. If the appellant fails to comply with the order within that period, the clerk shall notify the trial court that execution may be issued on the judgment, but the appeal shall not be dismissed unless the clerk finds that the bond or deposit is insufficient to secure the costs. The additional security shall not release the liability of the surety on the original bond.

If the clerk finds that the original supersedeas bond or deposit is insufficient to secure the costs, he shall notify appellant of such insufficiency. If appellant fails, within 20 days after such notice, to file a new bond or make a new deposit in the trial court sufficient to secure payment of the costs and to file a certified copy of the bond or certificate of deposit in the appellate court, the appeal or writ of error shall be dismissed. The additional security shall not release the liability of the surety on the original supersedeas bond.

Rule 50. Record on Appeal.

- (a) **Contents.** The record on appeal shall consist of a transcript and, where necessary to the appeal, a statement of facts.
- (b) **Stipulation as to Record.** The parties by written stipulation filed with the clerk of the trial court may designate the parts of the record, proceedings and evidence to be included in the record on appeal.
- (c) **Agreed Statement.** The parties may agree upon a brief statement of the case and of the facts proven as will enable the appellate court to determine whether there is error in the judgment. Such statement shall be copied into the transcript in lieu of the proceedings themselves.
- (d) **Burden on Appellant.** The burden is on the appellant,

or other party seeking review, to see that a sufficient record is presented to show error requiring reversal.

- (e) **Lost or Destroyed Record.** When the record or any portion thereof is lost or destroyed it may be substituted in the trial court and when so substituted the record may be prepared and transmitted to the appellate court as in other cases. If the appellant has made a timely request for a statement of facts, but the court reporter's notes and records have been lost or destroyed without appellant's fault, the appellant is entitled to a new trial unless the parties agree on a statement of facts.
- (f) **Violation of Rules: Costs.** An appellate court may impose or withhold costs as the circumstances of the case may require for any infraction of the rules with respect to the preparation of the record on appeal.

Rule 51. The Transcript on Appeal.

- (a) **Contents.** Unless otherwise designated by the parties in accordance with Rule 50, the transcript on appeal shall include copies of the following: in civil cases, the live pleadings upon which the trial was held; in criminal cases, copies of the indictment or information, any special pleas and motions of the defendant which were presented to the court and overruled, and any written waivers; the court's docket sheet; the charge of the court and the verdict of the jury, or the court's findings of fact and conclusions of law; the court's judgment or other order appealed from; any motions for new trial and the order of the court thereon; any notice of appeal; any appeal bond, affidavit in lieu of bond or clerk's certificate of a deposit in lieu of bond; any notice of limitation of appeal in civil cases made pursuant to Rule 40; any formal bills of exception provided for in Rule 52; in civil cases, a certified bill of costs, including the cost of the transcript and the statement of facts (if any), showing any credits for payments made; and, subject to the provisions of paragraph (b) of this rule, any filed paper any party may designate as material.
- (b) **Written Designation.** At or before the time prescribed for perfecting the appeal, any party may file with the clerk a written designation specifying matter for inclusion in the transcript; the designation must be specific and the clerk shall disregard any general designation such as one for "all papers filed in the cause." The failure of the clerk to include designated matter will not be grounds for complaint on appeal if the designation specifying such matter is not timely filed. The party making the designation shall serve a copy of the designation on all other parties.
- (c) **Duty of Clerk.** Upon perfection of the appeal, the clerk of the trial court shall prepare under his hand and seal of the court and immediately transmit the transcript to the appellate court designated by the appellant. The pages of the transcript shall be numbered consecutively and there shall be an index prepared by the clerk showing the location of each document in the transcript. The transcript shall be prepared in the form directed by the Supreme Court and the Court of Criminal Appeals which will make an order or orders in such respect for the guidance of trial clerks. In criminal cases, the transcript shall be made in duplicate and one copy shall be retained by the clerk for use by the parties with permission of the court.
- (d) **Original Exhibits.** When the trial court is of the opinion that original papers or exhibits should be inspected by the appellate court or sent to the appellate court in lieu of copies, it may make such order therefor and for the safekeeping, transportation, and return thereof as it deems proper. The order shall contain a list of such

original exhibits in numerical order, with a brief identifying description of each, and, so far as practicable, all such exhibits shall be arranged in the order listed and firmly bound together. The appellate court on its own initiative may direct the clerk of the court below to send to it any original paper or exhibit for its inspection.

Rule 52. Preservation of Appellate Complaints.

- (a) General Rule. In order to preserve a complaint for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling he desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection or motion. If the trial judge refuses to rule, an objection to the court's refusal to rule is sufficient to preserve the complaint. It is not necessary to formally except to rulings or orders of the trial court.
- (b) Informal Bills of Exception and Offers of Proof. When the court excludes evidence and no party requests an offer of proof, no offer is necessary to preserve error if the substance of the evidence is apparent from the context within which questions were asked. Otherwise, when the court excludes evidence, the party offering same shall as soon as practicable, but before the court's charge is read to the jury, be allowed to make, in the absence of the jury, an offer of proof in the form of a concise statement. The court may, or at the request of a party shall, direct the making of the offer in question and answer form. A transcription of the reporter's notes showing the offer, whether by concise statement or question and answer, showing the objections made, and showing the ruling thereon, when included in the record certified by the reporter, shall establish the nature of the evidence, the objections and the ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made and the ruling. No further offer need be made. No formal bills of exception shall be needed to authorize appellate review of the question whether the court erred in excluding the evidence. When the court hears objections to offered evidence out of the presence of the jury and rules that such evidence be admitted, such objections shall be deemed to apply to such evidence when it is admitted before the jury without the necessity of repeating those objections.
- (c) Formal Bills of Exception. The preparation and filing of formal bills of exception shall be governed by the following rules:
 - (1) No particular form of words shall be required in a bill of exception, but the objection to the ruling or action of the court shall be stated with such circumstances, or so much of the evidence as may be necessary to explain, and no more, and the whole as briefly as possible.
 - (2) When the statement of facts contains all the evidence requisite to explain the bill of exception, evidence need not be set out in the bill; but it shall be sufficient to refer to the same as it appears in the statement of facts.
 - (3) The ruling of the court in giving or qualifying instructions to the jury shall be regarded as approved unless a proper objection is made.
 - (4) Formal bills of exception shall be presented to the judge for his allowance and signature.
 - (5) The judgment shall submit such bill to the adverse party or his counsel, if in attendance on the court,

and if found to be correct, the judge shall sign it without delay and file it with the clerk.

- (6) If the judge finds such bill incorrect, he shall suggest to the party or his counsel such corrections as he deems necessary therein, and if they are agreed to he shall make such corrections, sign the bill and file it with the clerk.
- (7) Should the party not agree to such corrections, the judge shall return the bill to him with his refusal endorsed thereon, and shall prepare, sign and file with the clerk such bill of exception as will, in his opinion, present the ruling of the court as it actually occurred.
- (8) Should the party be dissatisfied with said bill filed by the judge, he may, upon procuring the signatures of three respectable bystanders, citizens of this State, attesting to the correctness of the bill as presented by him, have the same filed as part of the record of the cause; and the truth of the matter in reference thereto may be controverted and maintained by affidavits, not exceeding five in number on each side, to be filed with the papers of the cause, within ten days after the filing of said bill and to be considered as a part of the record relating thereto. On appeal the truth of such bill of exceptions shall be determined from such affidavits.
- (9) In the event a formal bill of exceptions is filed and there is a conflict between its provisions and the provisions of the statement of facts, the bill of exceptions shall control.
- (10) Anything occurring in open court or in chambers that is reported and so certified by the court reporter may be included in the statement of facts rather than in a formal bill of exception; provided that in a civil case the party requesting that all or a part of the jury arguments on the voir dire examination of the jury panel be included in the statement of facts shall pay the cost thereof, which cost shall be separately listed in the certificate of costs prepared by the clerk of the trial court, and the same may be taxed in whole or in part by the appellate court against any party to the appeal.
- (11) Formal bills of exception shall be filed in the trial court within 60 days after the judgment is signed in a civil case or within 60 days after the sentence is pronounced or suspended in open court in a criminal case. When formal bills of exception are filed they may be included in the transcript or in a supplemental transcript.
- (d) Necessity for Motion for New Trial in Civil Cases. A point in a motion for new trial is a prerequisite to appellate complaint in those instances provided in paragraph (b) of Rule 324 of the Texas Rules of Civil Procedure.

Rule 53. The Statement of Facts on Appeal.

- (a) Appellant's Request. In order to present a statement of facts on appeal, the appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter designating the portion of the evidence and other proceedings to be included therein. A copy of such request shall be filed with the clerk of the trial court and another copy served on the appellee.

- (b) Other Requests. Within ten days after service of a copy of appellant's request, any party may in the same manner request additional portions of the evidence and other proceedings to be included.
- (c) Abbreviation of Statement. All matters not essential to the decision of the questions presented on appeal shall be omitted. Formal parts of all exhibits and more than one copy of any document appearing in the statement of facts shall be excluded. All documents shall be abridged by omitting all irrelevant and formal portions thereof.
- (d) Partial Statement. If appellant requests or prepares a partial statement of facts, he shall include in his request or proposal a statement of the points to be relied on and shall thereafter be limited to such points. If such statement is filed, there shall be a presumption on appeal that nothing omitted from the record is relevant to any of the points specified or to the disposition of the appeal. Any other party may designate additional portions of the evidence to be included in the statement of facts.
- (e) Unnecessary Portions. In civil cases if either party requires more of the testimony or other proceedings than is necessary, he shall be required by the appellate court to pay the costs thereof, regardless of the outcome of the appeal.
- (f) Certification by Court Reporter. The statement of facts shall be in sufficient form to be filed in the appellate court when it is certified by the official court reporter.
- (g) Reporter's Fees. The official court reporter shall include in his certification the amount of his charges for preparation of the statement of facts. The Supreme Court and the Court of Criminal Appeals may from time to time make an order providing the fees which court reporters may charge.
- (h) Form. The Supreme Court and the Court of Criminal Appeals will make an order or orders directing the form of the statement of facts and the court reporter will prepare the same in conformity therewith.
- (i) Narrative Statement. A statement of facts prepared by the official reporter shall be in question and answer form. In lieu of requesting such a statement of facts, a party may prepare and file with the clerk of the trial court a condensed statement in narrative form of all or part of the testimony and deliver a true copy to the opposing party or his counsel, and such opposing party, if dissatisfied with the narrative statement, may within ten days after such delivery, require the testimony in question and answer form to be substituted for all or part thereof.
- (j) Free Statement of Facts.
 - (1) Civil Cases. In any case where the appellant has filed the affidavit required by Rule 40 to appeal his case without bond, and no contest is filed, or any contest is overruled, the court or judge upon application of appellant shall order the official reporter to prepare a statement of facts, and to deliver it to appellant, but the court reporter shall receive no pay for same.
 - (2) Criminal Cases. Within the time prescribed for perfecting the appeal an appellant unable to pay for the statement of facts may, by motion and affidavit, move the trial court to have the statement of facts furnished without charge. After hearing the motion, if the court finds the appellant is unable to pay for or give security for the statement of facts, the court shall order the reporter to furnish the statement of facts, and when the court certifies that the statement of facts has been fur-

nished to the appellant, the court reporter shall be paid from the general funds of the county, by the county in which the offense was committed the sum set by the trial judge.

- (k) Duty of Appellant to File. It is the appellant's duty to cause the statement of facts to be filed with the Clerk of the Court of Appeals.
- (l) Duplicate Statement in Criminal Cases. In criminal cases, if any party desires a statement of facts included in the record, a duplicate of the statement of facts shall be prepared by the court reporter and filed with the clerk of the court.
- (m) When No Statement of Facts Filed in Appeals of Criminal Cases. If the clerk of the appellate court does not receive a statement of facts when due, he shall notify the trial judge and the appellant's attorney, if the appellant's attorney can be determined from the transcript, that a statement of facts has not been filed and that in the absence of a statement of facts the appeal will be submitted on the transcript alone. If no statement of facts has been filed, the appellate court may order the trial court to hold a hearing to determine whether the appellant has been deprived of a statement of facts because of ineffective counsel or for any other reason, to make findings of fact and conclusions of law, to appoint counsel if necessary, and to transmit to the appellate court the record of the hearing. The appellate court may order a late filing of statement of facts.

Rule 54. Time to File Record.

- (a) In Civil Cases — Ordinary Timetable. The transcript and statement of facts, if any, shall be filed in the appellate court within 60 days after the judgment is signed, or, if a timely motion for new trial or to modify the judgment has been filed by any party, within 100 days after the judgment is signed. If a writ of error has been perfected to the court of appeals the record shall be filed within 60 days after perfection of the writ of error. Failure to file either the transcript or the statement of facts within such time shall not affect the jurisdiction of the court, but shall be ground for dismissing the appeal, affirming the judgment appealed from, disregarding materials filed, or applying presumptions against the appellant, either on appeal or on the court's own motion, as the court shall determine. The court shall have no authority to consider a late filed transcript or statement of facts, except as permitted by this rule.
- (b) In Criminal Cases — Ordinary Timetable. The transcript and statement of facts shall be filed in the appellate court within 60 days after the day sentence is imposed or suspended in open court or the order appealed from has been signed, if a motion for new trial is not filed. If a timely motion for new trial is filed, the transcript and statement of facts shall be filed within 100 days after the day sentence is imposed or suspended in open court or the order appealed from has been signed.
- (c) Extension of Time. An extension of time may be granted for late filing in a court of appeals of a transcript or statement of facts, if a motion reasonably explaining the need therefor is filed by appellant with the court of appeals not later than 15 days after the last date for filing the record. Such motion shall also reasonably explain any delay in the request required by Rule 53a.

Rule 55. Amendment of the Record.

- (a) Inaccuracies on the Statement of Facts. Any inaccuracies may be corrected by agreement of the parties; should any dispute arise, after filing in the appellate

court as to whether the statement of facts accurately discloses what occurred in the trial court, the appellate court shall submit the matter to the trial court, which shall, after notice to the parties and hearing, settle the dispute and make the statement of facts conform to what occurred in the trial court.

- (b) **Before Submission.** If anything material to either party is omitted from the transcript or statement of facts, before submission the parties by stipulation, or the trial court, upon notice and hearing, either before or after the record has been transmitted to the appellate court, or the appellate court, on a proper suggestion or on its own initiative, may direct a supplemental record to be certified and transmitted by the clerk of the trial court or the official court reporter supplying such omitted matter. The appellate court shall permit it to be filed unless the supplementation will unreasonably delay disposition of the appeal.
- (c) **Defects Appearing At or After Submission.** Should it be apparent during the submission or afterwards that the case has not been properly prepared as shown in the transcript, or properly presented in the brief or briefs, or that the law and authorities have not been properly cited, which will enable the court to decide the case, it may decline to receive the submission; or, if received, may set it aside and make such orders as may be necessary to secure a more satisfactory submission of the case; or should it appear to the court, after the submission of the cause, that the statement of facts has been prepared in violation of the rules, the court may require the appellant to furnish a proper statement of facts, and upon his failure to do so may disregard it.

Rule 56. Receipt of the Record by Court of Appeals.

- (a) **Duty of Clerk on Receiving Transcript.** The clerks of the courts of appeals shall receive the transcripts delivered and sent to them, and receipt for same if required; but they shall not be required to take a transcript out of the post office or any express office, unless the postage or charges thereon be fully paid. Upon receipt of the transcript, it shall be the duty of the clerk to examine it in order to ascertain whether or not, in case of an appeal, a proper appeal bond, notice of appeal or affidavit in lieu thereof (when bond is required) have been given; and in case of a writ of error, whether or not the petition and bond or affidavit in lieu thereof (when bond is required) appear to have been filed. If it seems to him that the appeal or writ of error has not been duly perfected, he shall note on the transcript the day of its reception and refer the matter to the court. If upon such reference the court shall be of the opinion that the transcript shows that the appeal or writ of error has been duly perfected, they shall order the transcript to be filed as of the date of its reception. If not, they shall cause notice of the defect to issue to the attorneys of record of the appellant, to the end that they may take steps to amend the record, if it can be done; for which a reasonable time shall be allowed. If the transcript does not show the jurisdiction of the court, and if after notice it be not amended, the appeal shall be dismissed.

If a transcript, properly endorsed (when endorsement is required), is received by the clerk within the time allowed by these rules, he shall endorse his filing thereon, showing the date of its reception, and shall notify both appellant and the adverse party of the receipt of the transcript. If it is not properly endorsed, or an original transcript is received after the time allowed, the clerk shall, without filing it, make a memorandum upon it of the date of its reception and keep in

in his office subject to the direction of the person who applied for it or to the disposition of the court, and shall notify the person who applied for a transcript why it has not been filed. The transcript shall not be filed until a proper showing has been made to the court for its not being properly endorsed or received in proper time, and upon this being done, the court may order it filed, if the rules have been complied with, upon such terms as may be deemed proper, having respect to the rights of the opposite party.

- (b) **Duty of Clerk on Receiving Statement of Facts.** Upon receipt of a statement of facts, the clerk shall ascertain if it is presented within the time allowed and also if it has been properly authenticated in accordance with these rules. If the clerk finds that the statement of facts is presented in time and has been certified by the official court reporter, the clerk shall file it forthwith; otherwise, the clerk shall endorse thereon the time of the receipt of such statement of facts, hold the same subject to the order of the court of appeals, and notify the party (or his attorney) tendering the statement of facts of the action and state the reasons therefor.

Rule 57. Docketing the Appeal.

- (a) **Docket Numbers.** Each case filed in a court of appeals shall be assigned a docket number that consists of four parts separated by hyphens: (1) the number of the supreme judicial district, (2) the last two digits of the year in which the case is filed, (3) the number which is assigned to the case, and (4) the designation "CV" for civil cases or "CR" for criminal cases. Each case filed in the court of appeals shall be docketed in the order of filing. A motion relating to an appeal perfected but not yet filed shall be docketed likewise and shall be assigned a number, which shall be also assigned to the appeal when filed.
- (b) **Attorneys' Names.** Before an attorney has filed his brief he may notify the clerk in writing of the fact that he represents a named party to the appeal, which fact shall be by the clerk noted upon the docket, opposite the name of the party for whom he appears, and shall be regarded by the court as having whatever effect is given to the appearance of a party to a case without brief filed. After briefs have been filed, the name of the attorney or attorneys signed to the brief shall be entered by the clerk on the docket, opposite the name of the appropriate party if such names have not already been so entered. The clerk shall add the names of additional counsel on request.

Rule 58. Premature Appeal.

- (a) Proceedings relating to an appeal need not be considered ineffective because of prematurity if a subsequent appealable order has been signed to which the premature proceeding may properly be applied.
- (b) If the appellate court finds that the appeal is premature because the order appealed from is not final, it may permit the defect to be cured and any subsequent proceedings to be shown in a supplemental record.
- (c) In civil cases, if the trial court has signed an order modifying, correcting, or reforming the order appealed from, or has vacated that order and signed another, any proceedings relating to an appeal of the first order may be considered applicable to the second, but shall not prevent any party from appealing from the second order pursuant to Rule 329b(h) of the Texas Rules of Civil Procedure. The second order and any proceedings concerning it may be included in either the original or a supplemental record.

Rule 59. Voluntary Dismissal.

- (a) Civil Cases.
- (1) The appellate court may finally dispose of an appeal or writ of error as follows:
 - (A) In accordance with an agreement signed by all parties or their attorneys and filed with the clerk; or
 - (B) On motion of appellant to dismiss the appeal or affirm the judgment appealed from, with notice to all other parties; provided, that no other party shall be prevented from seeking any appellate relief he would otherwise be entitled to.
 - (2) If no transcript has been filed, the agreement or motion shall be accompanied by certified or sworn copies of the judgment appealed from and of the appeal bond or other document perfecting or attempting to perfect the appeal or writ of error.
 - (3) A severable portion of the appeal may be disposed of in like manner without prejudice to the parties remaining.
- (b) Criminal Cases. The appeal may be dismissed if the appellant withdraws his notice of appeal at any time prior to the decision of the appellate court. The withdrawal shall be in writing signed by the appellant and his counsel and filed in duplicate with the clerk of the court of appeals in which the appeal is pending, who shall immediately forward the duplicate copy to the clerk of the trial court in which the notice of appeal was filed. Notice of appeal may not be withdrawn after the decision of the court of appeals is delivered without the consent of the State and approval of the court of appeals. If consent and approval are obtained, the opinion of the court of appeals shall be withdrawn and the appeal shall be dismissed. Notice of the dismissal shall be sent to the clerk of the trial court in which notice of appeal was filed.

Rule 60. Involuntary Dismissal.

- (a) Civil Cases.
- (1) If an appeal or writ of error is subject to dismissal for want of jurisdiction or for failure of appellant to comply with any requirements of these rules or any order of the court, the appellee may file a motion for dismissal or for affirmance and judgment for costs on the appeal bond or for the cash deposit. If the ground of the motion is failure to file the transcript, the motion shall be supported by certified or sworn copies of the judgment and the appeal bond or other document perfecting or attempting to perfect the appeal or writ of error.
 - (2) If it appears to the appellate court that an appeal or writ of error is subject to dismissal for want of jurisdiction or for failure to comply with any requirements of these rules or any order of the court, the court may, on its own motion, give notice to all parties that the case will be dismissed unless the appellant or any party desiring to continue the appeal or writ of error, files with the court within ten days a response showing grounds for continuing the appeal or writ of error.
- (b) Criminal Cases. An appeal shall be dismissed on the State's motion, supported by affidavit, showing that appellant has escaped from custody pending the appeal and that to the affiant's knowledge, has not voluntarily returned to lawful custody within the State within ten days after escaping. The appeal shall not be dismissed, or, if dismissed, shall be reinstated, on filing of an affidavit of an officer or other credible person showing

that appellant voluntarily returned to lawful custody within the State within ten days after escaping. If the appellant received a life sentence and is recaptured or voluntarily surrenders within 30 days after escaping, the appellate court, in its discretion, may overrule the motion to dismiss, or, if the motion has previously been granted, may reinstate the appeal.

Rule 61. Disposition of Papers When Appeal Dismissed In Civil Cases.

In all cases in which appeals or writs of error are dismissed, the appellant or party filing the transcript or statement of facts, without further leave of court, shall have the right to withdraw the transcript or statement of facts, unless it contains original papers belonging to an adverse party, in which event, leave of court shall be had before such original papers are withdrawn.

Section Five. Motions, Briefs, Argument And Submission in the Court of Appeals.

A. Motions in the Courts of Appeals.

Rule 70. Motions in the Courts of Appeals.

Motions made to postpone argument of the case to a future day, unless consented to by the opposite party, shall be supported by sufficient cause, verified by affidavit, unless such sufficient cause is apparent to the court.

Rule 71. Motions Relating to Informalities in the Record.

All motions relating to informalities in the manner of bringing a case into court shall be filed within 30 days after the filing of the transcript in the court of appeals; otherwise the objection shall be considered as waived, if it can be waived by the party.

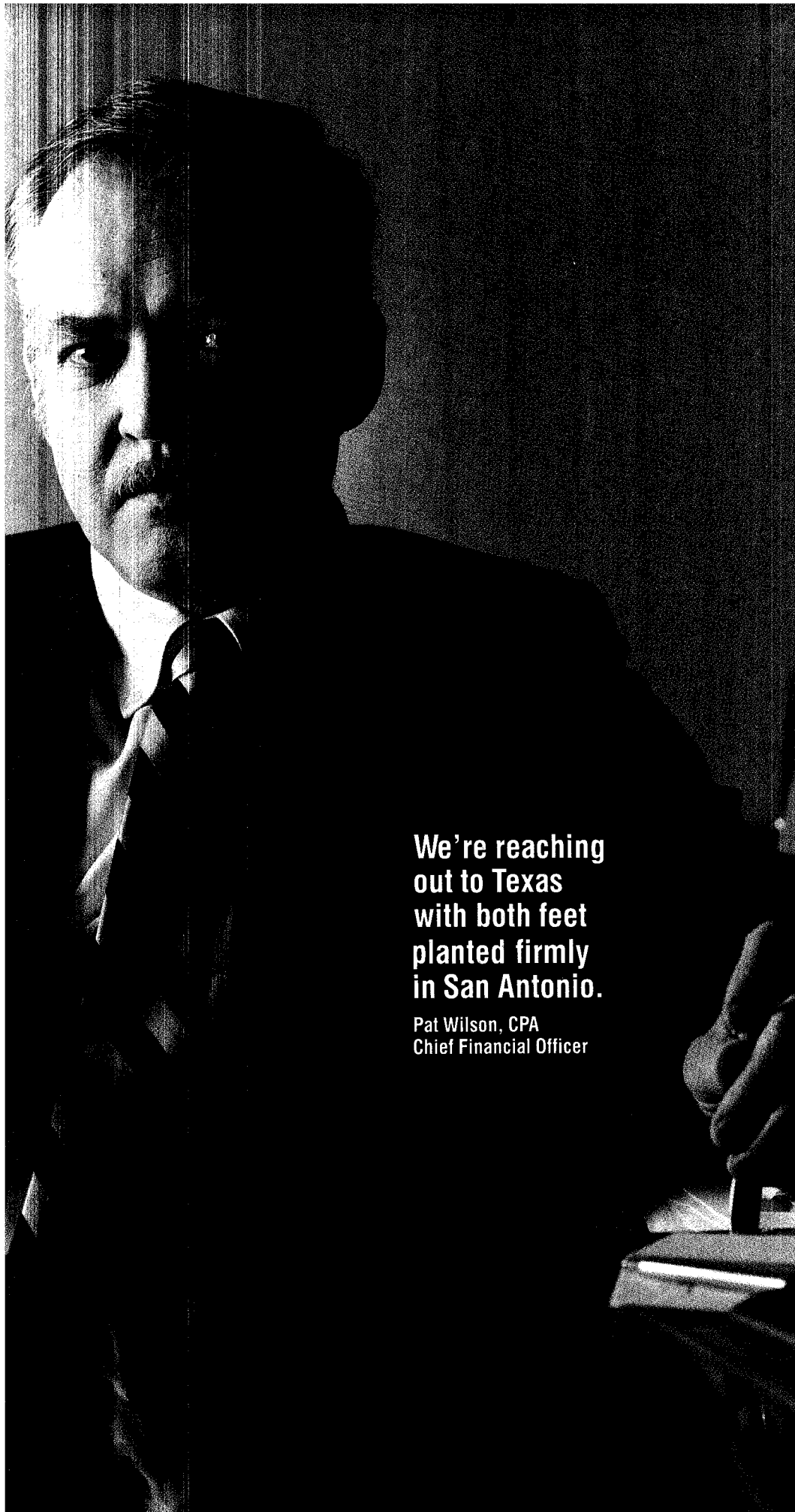
Rule 72. Motions to Dismiss for Want of Jurisdiction.

Motions to dismiss for want of jurisdiction to decide the appeal and for such defects as defeat the jurisdiction in the particular case and cannot be waived shall also be made, filed and docketed within 30 days after the filing of the transcript in the court of appeals; provided, however, if made afterwards they may be entertained by the court upon such terms as the court may deem just and proper.

Rule 73. Form and Content of Motions for Extension of Time.

All motions for extension of time shall be in writing and shall be filed with the Clerk of the Court of Appeals in which the case will be heard. Each such motion shall specify the following:

- (a) the court below and the date of judgment, together with the number and style of the case;
- (b) in criminal cases, the offense for which the appellant was convicted and the punishment assessed;
- (c) when extension of time is sought for filing the record, the filing dates of any original and amended motions for new trial, together with the date when they were overruled;
- (d) if the appeal has been perfected, the date when the appeal was perfected;
- (e) the deadline for filing of the item in question;
- (f) the length of time requested for the extension;
- (g) the number of extensions of time which have been granted previously regarding the item in question;
- (h) the facts relied upon to reasonably explain the need for an extension; and
- (i) when an extension of time is requested for filing the statement of facts, the facts relied upon to reasonably explain the need for an extension must be supported by the affidavit of the court reporter, or the certificate of



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the trial judge, which shall include the court reporter's estimate of the earliest date when the statement of facts will be available for filing.

B. Briefs and Argument in the Courts of Appeals.

Rule 74. Requisites of Briefs.

Briefs shall be brief. Briefs shall be filed with the Clerk of the Court of Appeals. They shall be addressed to "The Court of Appeals" of the correct Supreme Judicial District. In civil cases the parties shall be designated as "Appellant" and "Appellee," and in criminal cases as "Appellant" and "State."

- (a) Names of All Parties. A complete list of the names of all parties shall be listed at the beginning of the appellant's brief, so the members of the court may at once determine whether they are disqualified to serve or should recuse themselves from participating in the decision of the case.
- (b) Table of Contents and Index of Authorities. The brief shall contain at the front thereof a table of contents with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are cited. The subject matter of each point or group of points shall be indicated in the table of contents.
- (c) Preliminary Statement. The brief should contain a brief general statement of the nature of the cause or offense, i.e., whether it is suit for damages on a note, or a prosecution for murder, and the result in the court. Such statement should seldom exceed one-half page. The details should be reserved and stated in connection with the points to which they are pertinent.
- (d) Points of Error. A statement of the points upon which an appeal is predicated shall be stated in short form without argument and be separately numbered. In parentheses after each point, reference shall be made to the page of the record where the matter complained of is to be found. A point is sufficient if it directs the attention of the appellate court to the error about which complaint is made. In civil cases, complaints that the evidence is legally or factually insufficient to support a particular issue or finding, and challenges directed against any conclusions of law of the trial court based upon such issues or findings, may be combined under a single point of error raising both contentions if the record references and the argument under the point sufficiently direct the court's attention to the nature of the complaint made regarding each such issue or finding or legal conclusion based thereon. Complaints made as to several issues or findings relating to one ground of recovery or defense may be combined in one point, if separate record references are made.
- (e) Brief of Appellee. The brief of the appellee shall reply to the points relied upon by the appellant in due order when practicable; and in civil cases, if the appellee desires to complain of any ruling or action of the trial court, his brief in regard to such matters shall follow substantially the form of the brief for appellant.
- (f) Argument. A brief of the argument shall present separately or grouped the points relied upon for reversal. The argument shall include: (1) a fair, condensed statement of the facts pertinent to such points, with reference to the pages in the record where the same may be found; and (2) such discussion of the facts and the authorities relied upon as may be requisite to maintain the point at issue. If complaint is made of any part of the charge given or refused, such part of the charge shall be set out in full. If complaint is made of the improper

admission or rejection of evidence, the substance of such evidence so admitted or rejected shall be set out with references to the pages of the record where the same may be found. Repetition or prolixity of statement or argument must be avoided. Any statement made by appellant in his original brief as to the facts or the record may be accepted by the court as correct unless challenged by the opposing party.

- (g) Prayer for Relief. The nature of the relief sought should be clearly stated.
- (h) A court of appeals may direct that a party file a brief, or another brief, in a particular case. If any brief is unnecessarily lengthy or not prepared in conformity with these rules, the court may require same to be redrawn.
- (i) Number of Copies. Each party shall file six copies of his brief in the court of appeals in which the case is pending. Any court of appeals may by rule authorize the filing therein of fewer or more copies of briefs.
- (j) Briefs Typewritten or Printed. The brief of either party may be typewritten, or printed. If typewritten, it must be double spaced.
- (k) Appellant's Filing Date. Appellant shall file his brief within 30 days after the filing of the transcript and statement of facts, if any, except that in accelerated appeals and habeas corpus appeals appellant shall file his brief within the time prescribed by Rule 42 or Rule 44.
- (l) Failure of Appellant to File Brief.
 - (1) Civil Cases. In civil cases, when the appellant has failed to file his brief in the time prescribed, the appellate court may dismiss the appeal for want of prosecution, unless reasonable explanation is shown for such failure and that appellee has not suffered material injury thereby. The court may, however, decline to dismiss the appeal, whereupon it shall give such direction to the cause as it may deem proper.
 - (2) Criminal Cases. In criminal cases, appellant's failure to file a brief in the time prescribed shall not authorize dismissal of the appeal or, except as herein provided, consideration of the appeal without briefs. When the appellant's brief has not been filed within such time, the clerk of the appellate court shall notify counsel for the parties and the trial judge that appellant's brief has not been filed. If no satisfactory response is received within ten days, the appellate court shall order the trial judge 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. For this purpose the trial judge shall conduct such hearings as may be necessary, make appropriate findings and recommendations, and prepare a record of the proceedings. If the appellant is indigent, the judge shall take such measures as may be necessary to assure effective representation of counsel, which may include the appointment of new counsel. The record so made, including any orders and findings of the trial judge, shall be sent to the appellate court, which may take appropriate action to insure that the appellant's rights are protected, including contempt proceedings against counsel. If the trial judge finds that the appellant no longer desires to prosecute the appeal, or that he is not indigent but has failed to make necessary arrangements for fil-

ing a brief, the appellate court may consider the appeal without briefs, as justice may require.

- (m) **Appellee's Filing Dates.** Appellee shall file his brief within 25 days after the filing of appellant's brief. In civil cases, when appellant has failed to file his brief as provided in this rule, the appellee may, prior to the call of the case, file his brief, which the court may in its discretion regard as a correct presentation of the case, and upon which it may, in its discretion, affirm the judgment of the court below without examining the record.
- (n) **Modifications of Filing Time.** Upon written motion showing a reasonable explanation of the need for more time, the court may grant either or both parties further time for filing their respective briefs, and may extend the time for submission of the case. The court may also shorten the time for filing briefs and the submission of the cause in case of emergency, when in its opinion the needs of justice require it.
- (o) **Amendment or Supplementation.** Briefs may be amended or supplemented at any time when justice requires upon such reasonable terms as the court may prescribe, and if the court shall strike or refuse to consider any part of a brief, the court shall on reasonable terms allow the same to be amended or supplemented.
- (p) **Briefing Rules to be Construed Liberally.** The purpose of briefs being to acquaint the court with the points relied upon, the manner in which they arose, together with such argument of facts and law as will enable the court to decide the same, a substantial compliance with these rules will suffice in the interest of justice; but for a flagrant violation of this rule the court may require the case to be rebriefed.

Rule 75. Argument.

- (a) **Right to Argument.** When a case is properly prepared for submission, any party who has filed briefs in accordance with the rules prescribed therefor and who has made a timely request for oral argument under (f) hereof may, upon the call of the case for submission, submit an oral argument to the court.
- (b) **Subject Matter.** The arguments must be upon the disputed points, whether of law or fact, in support of the points relied on, on one side, and objections and counter-points on the other, and it must be confined to them, avoiding any reference or comment upon matters not involved in or pertaining to that which is found in the record.
- (c) **Requirement to Answer Questions.** Counsel will be expected to answer questions propounded by members of the court relating to the matter in the record and to the law or authorities cited by counsel in the argument.
- (d) **Time Allowed.** In the argument of cases in the court of appeals, each side may be allowed 30 minutes in the argument at the bar, with 15 minutes more in conclusion by the appellant.

In cases involving difficult questions, the time allotted may be extended by the court, provided application is made before argument begins. The court may, in its discretion, shorten the time allowed for oral argument.

Not more than two counsel on each side will be heard, except on leave of the court.

Counsel for amicus curiae shall not be permitted to argue except that an amicus may share time allotted to one of the counsel who consents and with leave of the court obtained prior to argument.

- (e) **When Only One Party Files a Brief.** If counsel for but one party has filed briefs, an argument by him may be

allowed, conformably to the preceding provisions as nearly as practicable, under the direction of the court.

- (f) A party to the appeal desiring oral argument shall file a request therefor at the time he files his brief in the case. Failure of a party to file a request shall be deemed a waiver of his right to oral argument in the case. Although a party waives his right to oral argument under this rule, the court of appeals may nevertheless direct such party to appear and submit oral argument on the submission date of the case.

The court of appeals may, in its discretion, advance civil cases for submission without oral argument where oral argument would not materially aid the court in the determination of the issues of law and fact presented in the appeal. Notice of the submission date of cases without oral argument shall be given by the clerk in writing to all attorneys of record, and to any party to the appeal not presented by counsel, at least 21 days prior to the submission date. The date of the notice shall be deemed to be the date such notice is delivered into the custody of the United States Postal Services in a properly addressed post-paid wrapper (envelope).

C. Submission in the Courts of Appeals.

Rule 76. Submission in Order of Filing; Service of Notice.

Causes not advanced as otherwise provided shall be submitted in the order of filing or in such other order as the court shall determine by rule. The clerk shall notify by letter the attorney and any party not represented by an attorney the date of submission and oral argument, but failure to receive notice will not necessarily prevent the submission of a case on the day on which it is set.

Rule 77. Order of Hearing and Deciding Civil Cases.

- (a) Civil cases which have not been advanced shall be set for submission at least two weeks ahead of the date of submission. The clerk shall notify by letter the attorneys and any party not represented by an attorney of the date of submission and oral argument.
- (b) Civil cases shall be decided in the order in which they are filed, but the following cases shall have precedence of all others:
 - (1) Cases in which the Railroad Commission is a party.
 - (2) Cases in which the State is a party.
 - (3) Cases given precedence by law or these rules.
 - (4) Cases submitted on oral argument for all parties to the cause.
 - (5) Appeals from interlocutory orders.
 - (6) Such other cases as the court, by order or rule, may direct.

Rule 78. Order of Hearing and Deciding Criminal Cases.

The courts of appeals shall hear and determine appeals in criminal actions at the earliest time it may be done, with due regard to the rights of parties and proper administration of justice.

Rule 79. Panel and En Banc Submission.

- (a) Except as provided in section 22.223 of the Government Code and these rules, original submissions of civil and criminal cases in a court of appeals shall be to a panel of the court consisting of three justices. A majority of the panel shall constitute a quorum and the concurrence of a majority of the panel shall be necessary for a decision. Except as otherwise provided in these rules, the decision of a panel of a court of appeals shall constitute the final decision of the court.

- (b) If for any reason only two justices participate in the decision of a panel of a court of appeals consisting of more than three justices and they cannot concur in a decision because they are equally divided, the Chief Justice of the Court of Appeals shall designate another justice of the court to participate in the decision of the case. After such justice is designated, the panel may order the case reargued, at its discretion. In the alternative, the Chief Justice of the Court of Appeals may convene the court en banc for the purpose of deciding the case. The en banc court may order the case reargued at its discretion.
- (c) If a court of appeals consists of only three justices and for any reason only two justices participate in the decision and they cannot concur in a decision because they are equally divided, such fact shall be certified to the Chief Justice of the Supreme Court who may temporarily assign a justice of another court of appeals or a qualified retired justice to participate in the decision of the case pursuant to law. The reconstituted panel may order the case reargued, at its discretion.
- (d) Where a case is submitted to an en banc court, whether on motion for rehearing or otherwise, a majority of the membership of the court shall constitute a quorum and the concurrence of a majority of the court sitting en banc shall be necessary to a decision. If a majority of the justices of the court sitting en banc cannot concur in a decision because they are equally divided, such fact shall be certified to the Chief Justice of the Supreme Court who may temporarily assign a justice of another court of appeals or a qualified retired justice to participate in the decision of the case pursuant to law. The reconstituted en banc court may order the case reargued, at its discretion.
- (e) A hearing or rehearing en banc is not favored and should not be ordered except in extraordinary circumstances. A vote need not be taken to determine whether a cause shall be heard or reheard en banc unless a justice of the en banc court requests a vote. If a vote is requested and a majority of the membership of the en banc court vote to hear or rehear the case en banc, the case will be heard or reheard en banc; otherwise, it will be decided by a panel of the court.

Section Six. Judgments, Opinions and Rehearing.

A. Judgment

Rule 80. Judgment of Court of Appeals.

- (a) Time. When a case has been submitted, the court of appeals shall render its judgment promptly.
- (b) Types of Judgment. The court of appeals may: (1) affirm the judgment of the court below, (2) modify the judgment of the court below by correcting or reforming it, (3) reverse the judgment of the court below and dismiss the case or render the judgment or decree that the court below should have rendered, or (4) reverse the judgment of the court below and remand the case for further proceedings.
- (c) Other Orders. In addition, the court of appeals may make any other appropriate order, as the law and the nature of the case may require.
- (d) Presumptions in Criminal Cases. The court of appeals shall presume that the venue was proved in the court below; that the jury was properly impaneled and sworn; that the defendant was arraigned; that he pleaded to the indictment or other charging instrument; that the court's charge was certified by the judge and

filed by the clerk before it was read to the jury, unless such matters were made an issue in the court below, or it otherwise affirmatively appears to the contrary from the record.

Rule 81. Reversal in Civil and Criminal Cases.

- (a) No Reversal If Error Remediabale. If the erroneous action or failure or refusal of the trial judge to act shall prevent the proper presentation of a cause to the court of appeals, and be such as may be corrected by the judge of the trial court, then the judgment shall not be reversed for such error, but the appellate court shall direct the said judge to correct the error, and thereafter the court of appeals shall proceed as if such erroneous action or failure to act had not occurred.
- (b) Reversible Error.
 - (1) Civil Cases. No judgment shall be reversed on appeal and a new trial ordered in any cause on the ground that the trial court has committed an error of law in the course of the trial, unless the appellate court shall be of the opinion that the error complained of amounted to such a denial of the rights of the appellant as was reasonably calculated to cause and probably did cause rendition of an improper judgment in the case, or was such as probably prevented the appellant from making a proper presentation of the case to the appellate court; and if it appears to the court that the error affects a part only of the matter in controversy and that such part is clearly separable without unfairness to the parties, the judgment shall only be reversed and a new trial ordered as to that part affected by such error, provided that a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested.
 - (2) Criminal Cases. If the appellate record in a criminal case reveals error in the proceedings below, the appellate court shall reverse the judgment under review, unless the appellate court determines beyond a reasonable doubt that the error made no contribution to the conviction or to the punishment.
- (c) Rendition Appropriate Unless Remand Necessary. When the judgment or decree of the court below shall be reversed, the court shall proceed to render such judgment or decree as the court below should have rendered, except when it is necessary to remand to the court below for further proceedings.

Rule 82. Judgment on Affirmance or Rendition in a Civil Case.

When a court of appeals affirms the judgment or decree of the court below, or proceeds to modify the judgment and to render such judgment or decree against the appellant as should have been rendered by the court below, it shall render judgment against the appellant and the sureties on his supersedeas bond, if any, for the performance of said judgment or decree, and shall make such disposition of the costs as the court shall deem proper, rendering judgment against the appellant and the sureties on his appeal or supersedeas bond, if any, for such costs as are taxed against him.

Rule 83. No Affirmance, Reversal or Dismissal For Want of Form or Substance.

A judgment shall not be affirmed or reversed or an appeal dismissed for defects or irregularities in appellate procedure, either of form or substance, without allowing a reasonable time to correct or amend such defects or irregularities provided the court may make no enlargement of the time for filing the transcript and statement of facts except pursuant to paragraph

(c) of Rule 54 and except that in criminal cases late filing of the transcript or statement of facts may be permitted on a showing that otherwise the appellate may be deprived of effective assistance of counsel.

Rule 84. Damages for Delay in Civil Cases.

In civil cases where the court shall determine that an appeal or writ of error has been taken for delay and without sufficient cause, then the appellate court may, as part of its judgment, award each prevailing appellee or respondent an amount not to exceed 10 percent of the amount of damages awarded to such appellee or respondent as damages against such appellant or petitioner. If there is no amount awarded to the prevailing appellee or respondent as money damages, then the appellate court may award, as part of its judgment, each prevailing appellee or respondent an amount not to exceed 10 times the total taxable costs as damages against such appellant or petitioner.

A request for damages pursuant to this rule, or an imposition of such damages without request, shall not authorize the appellate court to consider allegations of error that have not been otherwise properly preserved or presented for appellate review.

Rule 85. Remittitur in Civil Cases.

- (a) After Appeal Perfected. If, in any judgment rendered in a civil case in the district or county court, the court below determines that an excess of damages has been allowed, and before the plaintiff has remitted the excess as provided by Rule 315 of the Texas Rules of Civil Procedure, such judgment shall be removed to the court of appeals, it shall be lawful for the party in whose favor such excess of damages has been rendered to make a remittitur in the court of appeals in the same manner as in the district or county court. After revising the judgment, the court of appeals shall proceed to render the judgment that the court below ought to have given if the remittitur had been made in the court below.
- (b) Suggestion of Remittitur by Court of Appeals. In civil cases appealed to the court of appeals, if such court is of the opinion that the trial court abused its discretion in refusing to suggest a remittitur and that said cause should be reversed for that reason only, then said appellate court shall indicate to such party, or his attorney, within what time he may file a remittitur of such excess. If such remittitur is so filed, then the court shall reform and affirm such judgment in accordance therewith; if not filed as indicated then the judgment shall be reversed.
- (c) Refusal to Remit Not To Be Mentioned in Subsequent Trial. Whenever a court of appeals shall indicate that a verdict is excessive, and no remittitur shall be filed, no evidence shall be allowed, nor allusion made in a subsequent trial to the action of such appellate court in reference to the amount of excess of such verdict.
- (d) Voluntary Remittitur. If a case appealed to the court of appeals is reversed because of an error of law that affects only part of the damages or judgment, the affected party may voluntarily remit such amount within 15 days after the court's opinion or judgment. If such remittitur is filed and the court of appeals is of the opinion that such voluntary remittitur cures the reversible error, then such remittitur shall be accepted and the cause affirmed.

Rule 86. Mandate.

- (a) Issuance of Mandate. The clerk shall issue a mandate in accordance with the judgment and shall deliver it to the clerk of the trial court without waiting for the payment

of costs upon expiration of one of the following periods:

- (1) Forty-five days after the judgment, if no timely motion for rehearing or petition for discretionary review has been filed, and no timely motion has been filed to extend the time for filing petition for discretionary review and no discretionary review has been granted by the Court of Criminal Appeals on its own motion;
 - (2) Forty-five days after the last timely motion for rehearing has been overruled, if no timely application for writ of error or petition for discretionary review has been filed and no timely motion has been filed to extend the time for filing application for writ of error or petition for discretionary review and no discretionary review has been granted by the Court of Criminal Appeals on its own motion;
 - (3) Fifteen days after any timely motion to extend the time for filing an application for writ of error or petition for discretionary review has been overruled;
 - (4) Fifteen days after receipt by the clerk of an order of the Supreme Court denying writ of error or an order of the Court of Criminal Appeals refusing discretionary review.
- (b) The mandate may be issued earlier by agreement of the parties, or on motion showing good cause.
 - (c) If a writ of error has been denied by the Supreme Court or discretionary review has been refused by the Court of Criminal Appeals, the petitioner may move for a stay of mandate pending disposition by the Supreme Court of the United States of a petition for writ of certiorari. The motion shall show the grounds for such petition and the circumstances requiring a stay of the mandate. The court of appeals may grant such a stay if it finds that the grounds are substantial and that serious hardship would result to the petitioner or others from issuance of the mandate in the event of reversal by the Supreme Court of the United States.
 - (d) The mandate shall contain the file number of the case in the trial court. When the mandate of the court of appeals is received by the proper clerk, he shall file it with the papers of the cause, and note it upon the docket.
 - (e) Recall of Mandate. If a court of appeals vacates, modifies, corrects or reforms its judgment after the mandate has been issued, the mandate shall have no further effect and a new mandate may be issued. The clerk shall at once give notice of such act to the clerk of the trial court and to all parties.

Rule 87. Enforcement of Judgments After Mandate.

On receipt of the mandate by the clerk of the trial court, the judgment of the appellate court shall be enforced as follows:

- (a) In Civil Cases. When the judgment of the appellate court affirms the judgment of the trial court or modifies the judgment of the trial court as is contemplated by Rule 80(b), or renders such judgment as the court below should have rendered as contemplated by Rule 81(c), the trial court need not make any further order or decree and the clerk of the trial court shall proceed to issue execution thereon as in other cases.
- (b) In Criminal Cases.
 - (1) Judgment of Affirmance. When the judgment of the appellate court affirms the judgment of the court below in a case in which bail has been allowed, the clerk of the trial court shall send an acknowledgement to the clerk of the appellate

court of the receipt of the mandate and immediately file the same and forthwith issue a *capias* for the arrest of the defendant for the execution of the sentence of the court, which shall recite the fact of conviction, setting forth the offense and the judgment and sentence of the court, the appeal from and affirmance of such judgment and the filing of such mandate, and shall command the sheriff to arrest and take into his custody the defendant and place him in jail and therein keep him until delivered to the proper authorities, as directed by said sentence. Such *capias* may issue to any county of this State, and shall be executed and returned as in felony cases, except that no bail shall be taken in such cases. The sheriff shall forthwith execute such *capias* as directed. The sheriff shall notify the clerk of the trial court and the clerk of the appellate court when the mandate has been carried out and executed.

- (2) Judgment of Reversal. When the judgment of the appellate court reverses the judgment of the trial court and grants a new trial to the defendant, the cause shall stand as it would have stood in case the new trial had been granted by the trial court, and if in custody and entitled to bail the defendant shall be released upon his giving bail.

When the judgment of the appellate court reverses a judgment and orders the case to be dismissed, the defendant, if in custody, must be discharged.

- (3) Judgment of Acquittal. When the judgment of the appellate court reverses a judgment and orders the acquittal of the defendant, the defendant, if in custody, must be discharged and no further order or judgment of the court below shall be necessary.

Rule 88. Execution on Failure to Pay Costs in Civil Cases.

If neither party to a civil case pays the costs before the time prescribed for issuance of the mandate, the clerk of the appellate court shall prepare a bill of costs showing the party or parties against whom such costs have been adjudged and shall transmit it to the clerk of the trial court, who shall issue execution for same as for costs in the trial court. On collection, any costs due to the clerk of the appellate court shall be remitted to such clerk.

Rule 89. Appellant to Recover Costs in Civil Cases.

In any civil cause reversed by the court of appeals, the appellant shall be entitled to an execution in the trial court against the appellee for costs occasioned by such appeal, including costs for the transcript and statement of facts. Nothing herein shall be construed to affect the present law with reference to the accrual and taxing of costs in tax suits, and nothing herein shall be construed to limit or impair the power of the court of appeals to otherwise tax the costs for good cause.

B. Opinions

Rule 90. Opinions, Publication and Citation.

- (a) Decision and Opinion. The court of appeals shall decide every substantial issue raised and necessary to disposition of the appeal and hand down a written opinion which shall be as brief as practicable. Where the issues are clearly settled, the court shall write a brief memorandum opinion which should not be published.
- (b) Signing of Opinions. A majority of the justices participating in the decision of the case shall determine whether the opinion shall be signed by a justice or issued *per curiam*. The names of the justices participat-

ing in the decision shall be noted on all written opinions or orders handed down by a panel.

- (c) Standards for Publication. An opinion by a court of appeals shall be published only if, in the judgment of a majority of the justices participating in the decision, it is one that (1) 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; (2) involves a legal issue of continuing public interest; (3) criticizes existing law; or (4) resolves an apparent conflict of authority.
- (d) Concurring and Dissenting Opinions. Any justice may file an opinion concurring in or dissenting from the decision of the court of appeals. A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the criteria established in paragraph (c), but in such event the majority opinion shall be published as well.
- (e) Determination to Publish. A majority of the justices participating in the decision of a case shall determine, prior to the time it is issued, whether an opinion meets the criteria for publishing, and if it does not meet the criteria for publication, the opinion shall be distributed only to the persons specified in Rule 91, but a copy may be furnished to any interested person. On each opinion a notation shall be made to "publish" or "do not publish."
- (f) Rehearing. If a rehearing is granted, no opinion shall be published until after the decision on rehearing is issued.
- (g) Action of Court En Banc. The court en banc may

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modify or overrule a panel's decision with regard to the signing or publication of the panel's opinion or opinions in a particular case. A majority of justices shall determine whether written opinions handed down by the court en banc shall be signed by a justice or issued per curiam, and whether they shall be published.

- (h) Order of the Supreme Court. Upon the grant or refusal of an application for writ of error, whether by outright refusal or by refusal of reversible error, an opinion previously unpublished shall forthwith be released for publication, if the Supreme Court so orders.
- (i) Unpublished Opinions. Unpublished opinions shall not be cited as authority by counsel or by a court.

Rule 91. Copy of Opinion and Judgment to Attorneys, Etc.

On the date an opinion of an appellate court is handed down, it shall be the duty of the clerk of the appellate court to mail or deliver to the clerk of the trial court, to the trial judge who tried the case, and to one of the attorneys for the plaintiffs or the State and one of the attorneys for the defendants a copy of the opinion delivered by the appellate court and a copy of the judgment rendered by such appellate court as entered in the minutes. The copy received by the clerk of the trial court shall be by him filed among the papers of the cause in such court. When there is more than one attorney on each side, the attorneys may designate in advance the one to whom the copies of the opinion and judgment shall be mailed. In criminal cases, copies shall also be provided to the State Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711 and to the Clerk of the Court of Criminal Appeals and any appellant representing himself.

C. Rehearing

Rule 100. Motion and Second Motion for Rehearing.

- (a) Motion for Rehearing. Any party desiring a rehearing of any matter determined by a court of appeals or any panel thereof must, within 15 days after the date of rendition of the judgment or decision of the court, file with the clerk of the court a motion in writing for a rehearing, in which the points relied upon for the rehearing shall be distinctly specified.
- (b) Reply. No reply to a motion for rehearing need be filed unless requested by the court.
- (c) Decision on Motion. If a majority of the justices of the court of appeals or of the panel that was assigned the case are of the opinion that the case should be reheard, the motion shall be granted and the case shall be resubmitted. If a majority of the court of appeals or of the panel that was assigned the case are of the opinion that the case should not be reheard, the motion for rehearing shall be overruled. If a motion for rehearing is granted, the court or panel may make final disposition of the cause with or without rebriefing and oral argument, and may make such orders as are deemed appropriate under the circumstances of the particular case.
- (d) Second Motion for Rehearing. If on rehearing the court of appeals or any panel thereof modifies its judgment, or vacates its judgment and renders a new judgment, or hands down an opinion in connection with the overruling of a motion for rehearing, a further motion for rehearing may, if a party desires to complain of the action taken, be filed within 15 days after such action occurs. However, in civil cases, a further motion for rehearing shall not be required or necessary as a predicate for a point in the application for writ of error if the asserted point of error was overruled by the court of appeals in a prior motion for rehearing.
- (e) Amendments. Any motion for rehearing may be

amended as a matter of right any time before the expiration of the 15-day period allowed for filing it, and with leave of the court any time before its final disposition.

- (f) En Banc Reconsideration. A majority of the justices of the court en banc may order an en banc reconsideration of any decision of a panel within 15 days after such decision is issued with or without a motion for reconsideration en banc. A majority of the justices may call for an en banc review by (1) notifying the clerk in writing within said 15 day period, or (2) by written order issued within said 15-day period, either with or without en banc conference. In such event, the panel decision shall not become final, and the case shall be resubmitted to the court for an en banc review and disposition.
- (g) Extensions of Time. An extension of time may be granted for late filing in a court of appeals of a motion or a second motion for rehearing, if a motion reasonably explaining the need therefor is filed with the court of appeals not later than 15 days after the last date for filing the motion.

Rule 101. Reconsideration on Petition For Discretionary Review.

Within 15 days after a petition for discretionary review to the Court of Criminal Appeals has been filed with the Clerk of the Court of Appeals which delivered the decision, a majority of justices who participated in the decision may summarily reconsider and correct or modify the opinion and judgment of the court and shall cause the clerk to certify a copy thereof and include it among the materials forwarded to the Clerk of the Court of Criminal Appeals in accordance with Rule 202(f).

Section Seven. Certified Questions in Civil Cases.

Rule 110. Certified Questions in Civil Cases.

- (a) Questions of Law Certified. In exceptional cases urgently requiring accelerated disposition of the appeal, the court of appeals may certify one or more controlling questions of law to the Supreme Court for decision, but the Supreme Court may decline to decide the questions if it decides that the case should be presented by application for writ of error. After certification of such questions, the cause shall be retained for judgment in harmony with the decision of the Supreme Court on the question certified.
- (b) Motion to Certify. At any time within 15 days after judgment in the court of appeals, either party may file a motion asking the court to certify a question to the Supreme Court.
- (c) Certification Procedure. When any court of appeals shall certify to the Supreme Court any question of law for determination, either upon its own motion or that of any party, the certificate shall be accompanied by the briefs filed in the court of appeals. Also, the court of appeals may accompany such certificate with the entire record in the case, or any part thereof that it deems advisable. The court of appeals shall also accompany the certificate with all or any part of the record that any party to the suit may request. All cases certified to the Supreme Court shall be accompanied by a proposed or tentative opinion of the court of appeals, which proposed or tentative opinion shall set forth the views and tentative opinion of the court of appeals on the questions certified.

Rule 111. Proceedings on Certified Questions.

When a certified question from a court of appeals is presented to the Clerk of the Supreme Court, he will file and docket it and send it at once to the consultation room. If the court should determine that the question is not properly certified under the statute and these rules so as to give jurisdiction to answer it, it will be dismissed without a hearing. Otherwise, it will be set down for argument on a day to be fixed by the court in regular session. The clerk shall issue notices to the attorneys whose names appear on record in the case of the day on which the question or questions shall be submitted, at least 15 days before the said date set for hearing.

Rule 112 Answer to Question.

The Supreme Court, on receiving such record, and certified question of law, from the court of appeals transmitting the same, shall examine such record and certified question of law, and render an opinion as in other cases; which opinion, when so rendered by the Supreme Court on the record and question of law presented therein, shall be final and shall be the law on the question involved until said opinion shall have been overruled by the Supreme Court or abrogated by legislative enactment, and the court of appeals shall be governed thereby. After the question is decided, the Supreme Court shall immediately notify the lower court of its decision.

Rule 113. Decision of Supreme Court.

When the Supreme Court decides a question certified to it by a court of appeals, such decision shall be binding upon the court of appeals.

Section Eight. Original Proceedings.

Rule 120. Habeas Corpus in Civil Cases.

- (a) Commencement. A petition seeking the issuance of a writ of habeas corpus shall be presented to the clerk of the appellate court along with the appropriate deposit for costs, as provided in Rule 13.
- (b) Petition. The petition shall be in the following form and contain the following information:
 - (1) The party seeking the writ shall be denominated relator.
 - (2) The petition shall identify all parties whose interest would be directly affected by the proceedings and shall state the addresses of all such interested parties.
 - (3) The petition shall contain a certificate of service upon all interested parties or a certificate explaining the absence of service.
 - (4) The petition shall set forth in a concise and positive manner a summary of the facts necessary to establish relator's right to the relief sought.
 - (5) The petition shall be accompanied by a brief in support of the petition.
 - (6) The petition shall be accompanied by proof of restraint of the relator.
 - (7) The petition shall be accompanied by a certified copy of the order, judgment or decree of which relator has been held to be in violation, a certified copy of the motion and order or judgment of contempt, a certified copy of the order or judgment of commitment, and when appropriate, a statement of facts.
 - (8) The petition shall contain an affidavit verifying the truth of all factual allegations.
- (c) Concurrent Jurisdiction. When the Supreme Court and

one or more courts of appeals are authorized to exercise concurrent jurisdiction over matters of habeas corpus, the petition seeking issuance of the writ shall first be presented to a court of appeals. The petition for writ of habeas corpus filed in the Supreme Court shall state the date of any presentation to a court of appeals and that court's action on the petition.

- (d) Action on Petition. If the court is of the tentative opinion that the writ should issue, the court will set the amount of bond, order relator released and schedule the petition for oral argument. Otherwise, the court shall deny the writ without further hearing.
- (e) Notification by Clerk. The clerk shall notify all identified parties or their attorneys of record of the action of the court and of the date set for oral argument, if oral argument is set. In the event oral argument is set, relator shall immediately make the appropriate additional deposit for costs, as provided by Rule 13.
- (f) Reply. In the event the case is set for oral argument, any interested party may submit an additional brief of authorities and a verified answer provided, however, such additional brief and answer shall be filed with the clerk and served upon all other parties at least ten days prior to the date scheduled for oral argument, unless another time is designated by the court.
- (g) Order of Court. If after hearing oral argument, the court determines that the writ should be granted, it shall enter an order to that effect. Otherwise, the court shall remand relator to custody and direct the clerk to issue an order of commitment. If relator is not available for return to custody, pursuant to the order of commitment, the court may declare the bond to be forfeited.
- (h) Notice of Order. When the appellate court grants, refuses or dismisses a habeas corpus proceeding or a motion for rehearing, the clerk of the court shall notify the parties or their attorneys of record by sending them a letter by first-class mail.

Rule 121. Mandamus, Prohibition and Injunction in Civil Cases.

- (a) Commencement. An original proceeding for a writ of mandamus, prohibition or injunction in an appellate court shall be commenced by delivering to the clerk of the court the following:
 - (1) Motion for leave to file. When the court of appeals is authorized to exercise concurrent jurisdiction over an original proceeding, the motion should first be presented to the court of appeals. The motion for leave to file in the Supreme Court shall state the date of presentation of the petition to the Supreme Court and that court's action on the motion or petition or the compelling reason that a motion was not first presented to the court of appeals.
 - (2) Petition. The petition shall include this information and be in this form:
 - (A) The party seeking relief shall be denominated relator, and the party against whom relief is sought shall be denominated respondent.
 - (B) If any judge, court, tribunal or other respondent in the discharge of duties of a public character is named as respondent, the petition shall disclose the name of the real party in interest, if any, or the party whose interest would be directly affected by the proceeding. The petition shall state the address of each respondent and real party in interest.
 - (C) The petition shall set forth in a concise and positive manner all facts that are necessary to

establish relator's right to the relief sought. It shall be accompanied by a certified or sworn copy of the order complained of and other relevant exhibits.

- (D) The petition shall state the relief sought and the basis for the relief, as well as the compelling circumstances which establish the necessity for the writ to issue.
 - (E) The petition shall include or be accompanied by a brief of authorities and argument in support of the petition.
 - (F) The petition shall contain an affidavit verifying the truth of all factual allegations.
 - (G) The petition shall contain a certificate of service, or a certificate explaining the absence of service.
 - (H) Three copies of the motion, petition and brief shall be delivered to the clerk.
- (3) The deposit for costs, as provided by Rule 13.
- (b) Service. Relator shall promptly serve upon respondent and each real party in interest a copy of the motion, petition and brief.
 - (c) Action on Motion. The court may request that respondent or the real party in interest submit a reply, and in that event, the clerk will so notify all identified parties. When it appears that relator may be unduly prejudiced by delay, or the court concludes for any other reason that a reply should not be requested, it may act upon the motion without giving prior notice to the respondent. If the court is of the tentative opinion that relator is entitled to the relief sought, the motion for leave to file will be granted, the petition filed, and the cause placed upon the docket. Otherwise, the motion will be overruled.
 - (d) Temporary Relief. If the facts stated in the petition show that relator will be prejudiced unless immediate temporary relief is granted, the court may grant temporary relief after granting the motion for leave to file, without notice to respondents, as the exigencies of the case require. The court may require a bond for the protection of the adverse parties as a condition to the temporary relief. An order granting temporary relief shall be effective until the final decision of the case, unless vacated or modified.
 - (e) Notification. The clerk shall notify by mail all identified parties of the filing of the petition and, within seven days after mailing the notice of the filing, respondent and any real party in interest, separately or jointly, may file with the clerk and serve upon the relator an answer, a brief of authorities, opposing exhibits, and a verified statement of any undisputed facts material to the proceeding. The court in its discretion may shorten or extend the time. The reply shall comply with the requirements set forth herein for the petition. In the event the motion is granted, relator shall immediately make the additional deposit for costs required by Rule 13.
 - (f) Oral Argument. In the event the motion is granted, the appellate court will schedule the petition for oral argument and relator, respondent or any other real party in interest, separately or jointly, may file and serve an additional brief of authorities and a verified answer provided, however, such additional brief and answer shall be filed with the clerk and served upon all other parties at least five days prior to the date scheduled for oral argument, unless another time is designated by the court.
 - (g) Notice of Order. When the appellate court grants, refuses or dismisses a mandamus or other original pro-

ceeding, or a motion for rehearing, the clerk of the court shall notify the parties or their attorneys of record by sending them a letter by first-class mail.

Rule 122. Orders of Supreme Court on Petition for Mandamus and Prohibition.

In cases over which the Supreme Court has mandamus or prohibition jurisdiction and in which the action or order of the respondent is in conflict with a previous opinion of the Supreme Court or is contrary to the Constitution, a statute or a rule of civil or appellate procedure, the Supreme Court may grant leave to file the petition and may, after respondent and any real party in interest has had an opportunity to file a reply as provided by paragraph (e) of Rule 121, without hearing argument, grant the writ and make such orders in writing as may be appropriate.

Section Nine. Application for Writ of Error and Brief in Response.

Rule 130. Filing of Application in Court of Appeals.

- (a) Method of Review. The Supreme Court may review final judgments of the courts of appeals upon writ of error.
- (b) Time and Place of Filing. The application shall be filed with the Clerk of the Court of Appeals within 30 days after the overruling of the last timely motion for rehearing filed by any party.
- (c) Successive Applications. If any party files an application within the time specified or as extended by the Supreme Court any other party who was entitled to file such an application but failed to do so shall have ten additional days from the date of filing any preceding application in which to file it.
- (d) Extension of Time. An extension of time may be granted for late filing in a court of appeals of an application to the Supreme Court for writ of error if a motion reasonably explaining the need therefor is filed with the Supreme Court not later than 15 days after the last date for filing an application. A motion for late filing of an application shall be directed to and acted upon by the Supreme Court. A copy of the motion shall be filed at the same time in the court of appeals, and the Clerk of the Supreme Court shall notify the court of appeals of the action taken on the motion by the Supreme Court.

Rule 131. Requisites of Applications.

The application for writ of error shall be addressed to "The Supreme Court of Texas," and shall state the name of the party or parties applying for the writ. The parties shall be designated as "Petitioner" and "Respondent." Applications for writs of error shall be as brief as possible. The respondent should file a brief in response. The application shall contain the following:

- (a) Names of All Parties. A complete list of the names of all parties shall be listed on the first page of the application, so the members of the court may at once determine whether they are disqualified to serve or should recuse themselves from participation in the decision of the case.
- (b) Table of Contents and Index of Authorities. The application shall contain at the front thereof a table of contents with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the application where the same are cited. The subject matter of each point or group of points shall be indicated in the table of contents.
- (c) Statement of the Case. The application should contain

a brief general statement of the nature of the suit, — for instance, whether it is a suit for damages, on a note, or in trespass to try title, and that the statement as contained in the opinion of the court of appeals is correct, except in the particulars pointed out. Example: "This is a suit for damages in excess of \$1,000 for personal injuries growing out of an automobile collision. The opinion of the court of appeals correctly states the nature and results of the suit, except in the following particulars: (If any.)" Such statement should seldom exceed one-half page. The details of the case should be reserved to be stated in connection with the points to which they are pertinent.

- (d) **Statement of Jurisdiction.** Except in those cases in which the jurisdiction of the court depends on a conflict of decisions under subsection (a)(2) of section 22.001 of the Government Code, the petition should merely state that the Supreme Court has jurisdiction under a particular subsection of section 22.001 of the Government Code. Example: "The Supreme Court has jurisdiction of this suit under subsection (a)(6) of section 22.001 of the Government Code." When jurisdiction of the Supreme Court depends on a conflict of decisions, the conflict on the question of law should be clearly and plainly stated.
- (e) **Points of Error.** A statement of the points upon which the application is predicated shall be stated in short form without argument and be separately numbered. In parentheses after each point, reference shall be made to the page of the record where the matter complained of is to be found. Whether the matter complained of originated in the trial court or in the court of appeals, it shall be assigned as error in the motion for rehearing in the court of appeals. Points will be sufficient if they direct the attention of the court to the error relied upon. Complaints about several issues or findings relating to one element of recovery or defense may be combined in one point, if separate record references are made.
- (f) **Brief of the Argument.** The brief of the argument may present separately, or grouped if germane, the points of error relied upon for reversal, the argument to include such pertinent statements from the record as may be requisite, together with page references and such discussion of the authorities as is deemed necessary to make clear the points of error complained of. The opinion of the court of appeals will be considered with the application, and statements therein, if accepted by counsel as correct, need not be repeated.
- (g) **Prayer for Relief.** The nature of the relief sought by the application should be clearly stated.
- (h) **Amendment.** The application or brief in support thereof may be amended at any time when justice requires upon such reasonable terms as the court may prescribe.
- (i) **Court May Require Application Redrawn.** If any brief or application for writ of error is unnecessarily lengthy or not prepared in conformity with these rules, the Supreme Court may require same to be redrawn.

Rule 132. Filing and Docketing Application in Supreme Court.

- (a) **Duty of Clerk of Court of Appeals.** When an application for writ of error to the Supreme Court is filed with the Clerk of the Court of Appeals, he shall record the filing of the application, and shall promptly forward it to the Clerk of the Supreme Court with the original record in the case and the opinion of the court of appeals, the motions filed in the case, and certified copies of the judgment and orders of the court of appeals. The clerk need not forward any exhibits that

are not documentary in nature unless ordered to do so by the Supreme Court.

- (b) **Expenses.** The party applying for the writ of error shall deposit with the Clerk of the Court of Appeals a sum sufficient to pay the expressage or carriage of the record to and from the Clerk of the Supreme Court.
- (c) **Duty of the Clerk of Supreme Court.** The Clerk of the Supreme Court shall receive the application for writ of error, shall file it and the accompanying record from the court of appeals, and shall enter the filing upon the docket, but he shall not be required to receive the application and record from the post office or express office unless the postage or express charges shall have been paid. The clerk shall notify the attorneys of record by letter of the filing of the application in the Supreme Court.

Rule 133. Orders on Applications for Writ of Error.

- (a) **Notation on Denial of Application.** In all cases where the judgment of the court of appeals is correct and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court will refuse the application with the docket notation "Refused." In all cases where the Supreme Court is not satisfied that the opinion of the court of appeals in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal, the Court will deny the application with the notation "Refused. No Reversible Error." In all cases where the Supreme Court is without jurisdiction of the case as presented in the application, it will dismiss the application with the docket notation "Dismissed for Want of Jurisdiction."
- (b) **Conflict in Decisions.** In cases of conflict named in subsection (a)(2) of section 22.001 of the Government Code, the Supreme Court will grant the application for writ of error, unless it is in agreement with the decision of the court of appeals in the case in which the application is filed. In that event said Supreme Court will so state in its order, with such explanatory remarks as may be deemed appropriate. If the decision of the court of appeals is in conflict with a previous opinion of the Supreme Court, is contrary to the constitution, the statutes or any rules promulgated by the Supreme Court, the Supreme Court may, upon granting writ of error and without hearing argument in the case, reverse, reform or modify the judgment of the court of appeals, making, at the same time, such further orders as may be appropriate.
- (c) **Moot Cases.** If a cause or an appealable portion thereof is moot, the Supreme Court may, in its discretion and after notice to the parties, upon granting writ of error and without hearing argument with reference thereto, dismiss such cause or the appealable portion thereof without reference to the merits of the appeal.

Rule 134. When Application Dismissed or Refused.

When the application shall have been filed for a period of ten days, if the court determines to refuse or dismiss the same, whether or not the respondent has filed a brief in response, the clerk of the court will retain the application, together with the record and accompanying papers, for 15 days from the date of rendition of the judgment refusing or dismissing the writ. At the end of that time, if no motion for rehearing has been filed, or upon the overruling or dismissal of a motion for rehearing, the Clerk of the Supreme Court shall transmit to the court of appeals a certified copy of the orders denying or dismissing the application and of the order overruling the motion for rehearing and shall return all filed papers to the Clerk of the Court of

Appeals, except the application for writ of error, any brief in response and any other briefs filed in the Supreme Court.

Rule 135. Notice of Granting, Etc.

When the Supreme Court grants, refuses, or dismisses an application for writ of error or a motion for rehearing, the clerk of the court shall notify the parties or their attorneys of record by letter.

Rule 136. Briefs of Respondents and Others.

- (a) Time and Place of Filing. Briefs in response to the application for writ of error shall be filed with the Clerk of the Supreme Court within 15 days after the filing of the application for writ of error unless additional time is granted.
- (b) Form. Briefs of the respondent or other party shall comply with the provisions of the rules prescribed for an application for writ of error and particularly with the provisions of Rule 131(b), (c), (e), (f), (g), and (h).
- (c) Objections to Jurisdiction. If the petitioner fails to assert valid grounds for jurisdiction by the Supreme Court, the respondent shall state in the brief the reasons that the Supreme Court has no jurisdiction.
- (d) Reply and Cross-Points. Respondent shall confine his brief to reply points that answer the points in the application for writ of error or that provide independent grounds for affirmance and to such cross-points that respondent has preserved and that establish respondent's rights.
- (e) Reliance on Prior Brief. If respondent relies upon his brief in the court of appeals, respondent shall file with the Clerk of the Supreme Court 12 legible copies of such brief.
- (f) Amendment. The brief in response may be amended at any time when justice requires upon such reasonable notice as the court may prescribe.

Section Ten. Direct Appeals.

Rule 140. Direct Appeals.

In compliance with section 22.001(c) of the Government Code, the following rules of procedure for direct appeals to the Supreme Court are promulgated.

In obedience to an act of the Regular Session of the Forty-eighth Legislature approved February 16, 1943, and entitled "An Act authorizing appeals in certain cases direct from trial courts to the Supreme Court; authorizing the Supreme Court to prescribe rules of procedure for such appeals; and declaring an emergency," which act was passed by authority of an amendment known as Section 3-b of Article 5 of the Constitution, the following procedure is promulgated:

- (a) In view of Section 3 of Article 5 of the Constitution which confines the appellate jurisdiction of the Supreme Court to questions of law only, this court under the present and later amendment, above cited, and such present and any future legislation under it, has and will take appellate jurisdiction over questions of law only, and in view of Sections 3, 6, 8 and 16 of such Article 5, will not take such jurisdiction from any court other than a district or county court.
- (b) An appeal to the Supreme Court directly from such a trial court may present only the constitutionality or unconstitutionality of a statute of this State when the same shall have arisen by reason of the order of a trial court granting or denying an interlocutory or permanent injunction.
- (c) Such appeal shall be in lieu of an appeal to the court of appeals and shall be upon such question or questions of

law only, and a statement of facts shall not be brought up except to such extent as may be necessary to show that the appellant has an interest in the subject matter of the appeal and to show the proof concerning the promulgation of any administrative order that may be involved in the appeal. If the case involves the determination of any contested issue of fact, even though the contested evidence should be adduced as to constitutionality or unconstitutionality of a statute, or as to the validity or invalidity of an administrative order, neither the statute or statutes, above mentioned, nor these rules, apply, and such an appeal will be dismissed.

- (d) Except where they are inconsistent with this rule, the rules now or hereafter prescribed in instances of appeal to the court of appeals shall, insofar as they are applicable, apply to appeals to the Supreme Court pursuant to such amendment to the Constitution and the legislation thereunder.

Section Eleven. Motions in the Supreme Court.

Rule 160. Form and Content of Motions for Extension of Time.

All motions for extension of time for filing an application for writ of error shall be filed in, directed to, and acted upon by the Supreme Court. A copy of the motion shall be filed at the same time in the court of appeals and the Clerk of the Supreme Court shall notify the court of appeals of the action taken on the motion by the Supreme Court. Each such motion shall specify the following:

- (a) The court of appeals and the date of its judgment, together with the number and style of the case;
- (b) the date upon which the last timely motion for rehearing was overruled;
- (c) the deadline for filing the application; and
- (d) the facts relied upon to reasonably explain the need for an extension.

Section Twelve. Submission and Oral Argument.

Rule 170. Order of Submission.

Causes may be heard and submitted in such order as the Supreme Court may deem to be in the best interest and convenience of the parties or their attorneys.

Rule 171. Submission Day.

- (a) When Case Ready for Submission. A case shall stand for submission upon the first regular day of the submission of causes coming after the expiration of 20 days from the day on which the writ of error was granted; provided the notice of granting the writ shall have been given ten days before such submission day. If not so given, then the case shall be subject to submission on the first regular submission day which falls ten days after giving of notice.
- (b) Regular Submission Day. Causes in the Supreme Court will be regularly submitted on Wednesday of each week, though a case may be set down for submission upon another day by the permission or direction of the court.

Rule 172. Argument.

- (a) Time. In the argument of cases in the Supreme Court, each side may be allowed 30 minutes in the argument at the bar, with 15 minutes more in conclusion by petitioner. In cases involving difficult questions, the time allotted may be extended by the court, provided application is made before the day of argument. The

court may, in its discretion, shorten the time for argument. It may also align the parties for purposes of presenting oral argument.

- (b) Number of Counsel. Not more than two counsel on each side will be heard, except on leave of the court.
- (c) Amicus Curiae. Counsel for an amicus curiae shall not be permitted to argue except that he may share time allotted to one of the counsel who consents and on leave of the court obtained prior to time for argument.

Section Thirteen. Decision, Judgment and Mandate.

Rule 180. Decision.

In each cause, the Supreme Court shall either affirm the judgment of the court of appeals, or reverse and render such judgment as the court of appeals should have rendered, or remand the cause to the court of appeals, or reverse the judgment and remand the cause to the trial court, if it shall appear that the justice of the cause demands another trial.

Rule 181. Judgments in Open Court.

In all cases decided by the Supreme Court, its judgments or decrees will be pronounced in open court; and the opinion of the court will be reduced to writing in such cases as the court deems of sufficient importance to be reported. Where the court, after the submission of a case, is of the opinion that the court of appeals has entered a correct judgment, and that the writ should not have been granted, the court may set aside the order granting the writ, and dismiss or refuse the application as though the writ had never been granted, without writing any opinion.

Rule 182. Judgment on Affirmance or Rendition.

Whenever the Supreme Court shall affirm the judgment or decree of the trial court or the court of appeals, or proceeds to modify the judgment and to render such judgment or decree against the appellant in the court of appeals as should have been rendered by the trial court or the court of appeals, it shall render judgment against the appellant and the sureties upon his supersedeas bond, if any, for the performance of said judgment or decree, and shall make such disposition of the costs as the court shall deem proper, rendering judgment against the appellant or petitioner and the sureties on his appeal or supersedeas bond, if any, for such costs as are taxed against him.

Rule 183. Enforcement of Judgment.

Upon the rendition by the Supreme Court of any such judgment or decree as is contemplated by the preceding rule, it shall not be necessary for the trial court from which the cause was removed to make any further order or decree therein, but the clerk of the trial court, on receipt of the mandate of the Supreme Court or the court of appeals, shall proceed to issue execution thereon as in other cases.

Rule 184. Reversal and Remand.

- (a) No Reversal if Error Remediable. If the erroneous action or failure or refusal to act by either the trial judge or any judge or official employee of the court of appeals, shall prevent the proper presentation of a cause to the Supreme Court, and be such as may be corrected by the judge or official below, then the judgment shall not be reversed for such error, but the Supreme Court will direct the said judge or official to correct the error, and thereafter the Supreme Court will proceed as if such erroneous action or failure to act had not occurred.
- (b) Reversible Error. No judgment shall be reversed on appeal and a new trial ordered in any cause on the

ground that an error of law has been committed by the trial court in the course of the trial, unless the Supreme Court shall be of the opinion that the error complained of amounted to such a denial of the rights of the petitioner as was reasonably calculated to cause and probably did cause the rendition of an improper judgment in the case, or was such as probably prevented the petitioner from making a proper presentation of his case to the appellate courts; and if it appears to the court that the error affects a part only of the matter in controversy and that such part is clearly separable without unfairness to the parties, the judgment shall only be reversed and a new trial ordered as to that part affected by such error, provided that a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested.

- (c) Nature of Remand. If the judgment of a court of appeals shall be reversed, the Supreme Court may remand the case either to the court of appeals from which it came or to the trial court for another trial.

Rule 185. No Affirmance, Reversal or Dismissal for Want of Form or Substance.

The Supreme Court will not affirm or reverse a judgment or dismiss a writ of error for defects or irregularities in appellate procedure, either of form or substance, without allowing a reasonable time to correct or amend such defects or irregularities.

Rule 186. Mandate.

- (a) Issuance of Mandate. At the expiration of 15 days from the rendition of judgment if no motion for rehearing has been filed, or at the expiration of 15 days after overruling the motion for rehearing, the clerk shall issue and deliver the court's mandate in the cause to the lower court without further payment of costs. In cases in which the Supreme Court declines to grant an application for writ of error, costs of the Supreme Court shall be paid in the court of appeals and the mandate issued from that court. Every mandate issued by the Supreme Court shall contain the file number in the trial court.
- (b) Motion for Stay Order. A party may move for a stay of the mandate pending disposition by the Supreme Court of the United States of a petition for writ of certiorari. The motion shall show the grounds for such petition and the circumstances requiring a stay of the mandate. The Supreme Court may grant such a stay if it finds that the grounds are substantial and that serious hardship would result to the party or others from issuance of the mandate in the event of reversal by the Supreme Court of the United States.
- (c) Recall of Mandate. If the Supreme Court vacates, modifies, corrects, or reforms its judgment after the mandate has issued, the mandate shall have no further effect and a new mandate may be issued. The clerk shall at once give notice of such action to the clerk of the court to which the mandate was directed, and to all parties.

Section Fourteen. Motion for Rehearing.

Rule 190. Motion for Rehearing.

- (a) Time for Filing. A motion for rehearing may be filed with the clerk of the court within 15 days after the date of rendition of the judgment or decision of the court or the order refusing or dismissing an application for writ of error. In exceptional cases, if the ends of justice require, the court may shorten the time within which the motion may be filed or even deny the right to file it

altogether.

- (b) Contents and Service. The points relied upon for the rehearing shall be distinctly specified in the motion. The motion shall state the name and address of the attorneys of record for the parties, and if there is no attorney of record, the name and address of the party. The party filing such motion shall deliver or mail to each party, or his attorney of record, a true copy of such motion, and shall note on the motion so filed with the clerk that such copies have been so furnished.
- (c) Notice of the Motion. Upon the filing of the motion, the clerk shall notify the attorneys of record or other parties by mail of the filing.
- (d) Answer and Decision. The parties shall have five days after notice in which to file an answer to the motion. Upon the filing of an answer or the expiration of the five-day period, the motion shall be deemed submitted to the court and ready for disposition. The court may limit the time in which a motion for rehearing or an answer may be filed, and may act upon any motion at any time after it is filed. The court for good cause may deny leave to file a motion for rehearing. The court will not entertain a second motion for rehearing.

Section Fifteen. Discretionary Review in Criminal Cases.

Rule 200. Discretionary Review in General.

- (a) The Court of Criminal Appeals, on its own motion, with or without a petition for discretionary review being filed by the appellant or the State, may review a decision of a court of appeals in a criminal case.
- (b) Discretionary review by the Court of Criminal Appeals is not a matter of right, but of sound judicial discretion.
- (c) In determining whether to grant or deny discretionary review, the following, while neither controlling nor fully measuring the Court of Criminal Appeals' discretion, indicates the character of reasons that will be considered:
 - (1) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter;
 - (2) Where a court of appeals has decided an important question of state or federal law which has not been, but should be, settled by the Court of Criminal Appeals;
 - (3) Where a court of appeals has decided an important question of state or federal law in conflict with the applicable decisions of the Court of Criminal Appeals or the Supreme Court of the United States;
 - (4) Where a court of appeals has declared unconstitutional, or appears to have misconstrued, a statute, rule, regulation, or ordinance;
 - (5) Where the justices of the court of appeals have disagreed upon a material question of law necessary to its decision; and
 - (6) Where 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.
- (d) A motion for rehearing in the court of appeals shall not be a prerequisite to the granting of discretionary review, with or without petition, by the Court of Criminal Appeals.
- (e) The Court of Criminal Appeals or any judge thereof may enter an order requiring the Clerk of the Court of

Appeals to forward promptly the original record in the case, the opinions of the court of appeals, the motions filed therein, and certified copies of any judgments and orders of the court of appeals to the Court of Criminal Appeals in order to aid the court in deciding whether to grant or deny discretionary review. If discretionary review is not granted, the court will enter an order to return the appellate record to the Clerk of the Court of Appeals.

Rule 201. Discretionary Review Without Petition.

- (a) The Court of Criminal Appeals may on its own motion by a vote of any four judges of the court grant review of a decision of a court of appeals in a criminal case at any time before the court of appeals' decision becomes final as determined by Rule 86, and this rule. An order granting review shall be filed with the Clerk of the Court of Criminal Appeals who shall send a copy to the Clerk of the Court of Appeals.
- (b) In order to provide sufficient time for the Court of Criminal Appeals to decide whether to grant or deny discretionary review, the court or a judge thereof may file an order for review with the Clerk of the Court of Criminal Appeals who shall send a copy to the Clerk of the Court of Appeals.
- (c) Unless otherwise limited in the order itself, an order for review shall extend the 45 days' time before issuance of the mandate of the court of appeals for an additional 45 days. An order for review shall be signed by a judge of the Court of Criminal Appeals.
- (d) An order granting review prevents the issuance of the mandate of a court of appeals pending the further order of the Court of Criminal Appeals.
- (e) If four judges do not agree to review a decision of a court of appeals within the time as extended under (c) above, the mandate of the court of appeals shall issue.

Rule 202. Discretionary Review With Petition.

- (a) The Court of Criminal Appeals may review a decision of a court of appeals in a criminal case upon petition by the appellant or the State.
- (b) The original petition shall be filed with the Clerk of the Court of Appeals which delivered the decision within 30 days after the day the judgment is entered or within 30 days after the day the last timely motion for rehearing is overruled.
- (c) Even if the time specified in paragraph (b) has expired, a party who is otherwise entitled to file a petition may do so within 10 days after the timely filing of another party's petition.
- (d) A petition for discretionary review shall be as brief as possible. It shall be addressed to the "Court of Criminal Appeals of Texas" and shall state the name of the party or parties applying for review. The petition shall include the following:
 - (1) Index. The petition should contain at the front thereof a subject index, including an abbreviated rendition of the ground or question presented for review, with page references where the discussion of each ground or question presented may be found and also a list of authorities alphabetically arranged, together with references to pages of the petition where same are cited.
 - (2) Statement of the Case. The petition shall contain a brief general statement of the nature of the case. Such statement should seldom exceed one-half page. The details of the case should be reserved to be stated in connection with the grounds or questions to which they are pertinent.

- (3) Statement of the Procedural History of the Case. The petition should state the dates of the delivery of any opinion or order of the court of appeals, the dates of the filing of any motion for rehearing or a statement that none was filed, and the dates of the overruling or other disposition of any motions for rehearing.
- (4) Grounds for Review. A statement of the grounds upon which the petition is predicated shall be stated in short form without argument and the grounds shall be separately numbered. Where the party filing the petition has access to the record, he shall (after each ground) refer to the page of the record where the matter complained of is found. In lieu of 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 the questions should be short and concise and should not be argumentative or repetitious.
- (5) Reasons for Review. A direct and concise argument, with supporting authorities, amplifying the reasons relied on for the granting of review. See Rule 200(c). The opinions of the court of appeals will be considered with the petition, and statements therein, if accepted by counsel as correct, need not be repeated.
- (6) Prayer for Relief. The nature of the relief sought by the petition should be clearly stated.
- (7) The Court may strike, order redrawn or summarily refuse any petition for discretionary review that is unnecessarily lengthy or is not prepared in conformity with these rules.
- (8) The petition for discretionary review may be typewritten or printed. If it is typewritten, it must be with a double-space between the lines and on heavy white paper (8¹/₂ inches x 11 inches) in clear type. The Clerk of the Court of Appeals shall file the original petition and forward it, together with any copies furnished by the petitioner pursuant to Rule 4(b)(2), to the Court of Criminal Appeals.
- (e) When a petition for discretionary review is filed in the court of appeals, the petitioner shall, at the same time, cause copies of the petition to be delivered to the attorney of record for the opposing party and to the State Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711.
- (f) Within 15 days after the filing of the petition for discretionary review the Clerk of the Court of Appeals shall note upon his record the filing of said petition, and forward to the Clerk of the Court of Criminal Appeals the petition and any copies thereof furnished by counsel, together with the original record in the case, the motions filed therein, and certified copies of any judgments, opinions and orders of the court of appeals. The clerk need not so forward any exhibits that are not documentary in nature unless ordered to do so by the Court of Criminal Appeals.
- (g) The petition with the original record in the case, the motions filed therein, and certified copies of any judgments, opinions, and orders of the court of appeals shall be filed with the Court of Criminal Appeals.
- (h) The Clerk of the Court of Criminal Appeals shall receive all petitions for discretionary review, shall file the petition and the accompanying record from the court of appeals, shall enter the same upon the docket, and shall notify the attorneys of record by United States mail of the filing and docketing of petitions for discretionary review in the Court of Criminal Appeals. The

opposing party shall have 30 days after the timely filing of the petition in the Court of Criminal Appeals unless additional time is allowed, within which to file a reply to the petition with the Clerk of the Court of Criminal Appeals. When a reply is filed or the time for filing same has expired, the petition shall be deemed submitted to the court and ready for disposition. The court may dispense with notice and may grant or refuse the petition immediately upon the filing of the petition where, in its opinion, the circumstances require it.

- (i) True copies of all replies, motions, and papers delivered to the Clerk of the Court of Criminal Appeals for filing shall be served on the opposing counsel and the State Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711.
- (j) The petition or any reply may be amended or supplemented at any time when justice requires upon such reasonable terms as the court may prescribe. The record may be amended in the Court of Criminal Appeals under the same circumstances and on the same terms as in the court of appeals.
- (k) After administrative processing, a petition for discretionary review shall be assigned by the administrative staff to a judge, in rotation, and the judge to whom such assignment is made shall have the responsibility for making an initial review and of reporting on such petition to the court for a determination of whether to grant or refuse the petition for discretionary review.

If four judges of the Court of Criminal Appeals do not vote to grant a petition for discretionary review, the court will refuse the petition with a docket notation "refused." If four judges vote to grant the petition for discretionary review, the court shall enter the docket notation that discretionary review is "granted" and the case shall be set for submission on oral argument. Provided, however, that the court, in its discretion, upon granting discretionary review and without hearing oral argument, may affirm, reverse, reform, correct, or modify the decision of the court of appeals, making such further orders as may be appropriate. Moreover, after the granting of discretionary review, if five judges are of the opinion that discretionary review was improvidently granted, the petition may be dismissed.
- (l) When the court refuses or dismisses a petition for discretionary review, whether the respondent has filed a reply or not, the clerk of the court will retain the petition, together with the record and accompanying papers, for at least 15 days from the date of rendition of the order refusing or dismissing discretionary review. At the end of that time, if no motion for rehearing has been timely filed, or upon the overruling or dismissal of such motion, in case one has been filed, the Clerk of the Court of Criminal Appeals shall transmit to the court of appeals which rendered the decision below a certified copy of the orders refusing or dismissing such petition and of any order overruling a motion for rehearing thereof, and shall return the appellate record to the clerk thereof, but shall retain the petition for discretionary review.

Rule 203. Brief on the Merits.

- (a) If review is granted, the petitioning party (or, if there was no petition, the party who lost in the court of appeals) shall file a brief within 30 days after the granting of review.
- (b) The opposing party shall file a brief within 30 days after the filing of the petitioning party's brief.
- (c) Briefs shall comply with Rule 74. Copies shall be filed and served as required by Rule 202(i).

- (d) The Court of Criminal Appeals may direct that a party file a brief, or another brief, in a particular case.

Section Sixteen. Direct Appeals and Extraordinary Matters Including Post Conviction Applications for Writ of Habeas Corpus.

Rule 210. Direct Appeals in Death Penalty Cases.

- (a) Record. Rules 50 through 55 shall govern preparation and filing of the record on appeal of a case in which the death penalty has been assessed.
- (b) Briefs. Appropriate provisions of Rule 74 shall govern preparation and filing of briefs in a case in which the death penalty has been assessed, except only an original and one copy need be filed.

Rule 211. Extraordinary Matters.

- (a) Motion for Leave. A motion for leave to file must accompany original applications for writ of habeas corpus, mandamus, and other extraordinary writs and motions and 11 copies of such papers shall be presented to the clerk for distribution to the judges of the court.
- (b) Initial Review. After administrative processing, all original applications for writ of habeas corpus, mandamus, and other extraordinary writs, shall be assigned by the administrative staff to a judge, in rotation, and the judge to whom such assignment is made shall have the responsibility for making an initial review and of reporting on such case to the court for a determination of whether to grant leave to file. Upon presentation to the court, motion for leave to file may be denied or the application may be handled in accordance with such other instructions or orders as shall be issued by the court.
- (c) Tentative Disposition. In the event that at least five members of the court are of the tentative opinion that the case should be filed and set for submission, motion for leave to file will be granted and the case shall then be handled and disposed of in accordance with such instructions or orders as may be issued by the court. No motions for rehearing or reconsideration will be entertained from the denial of a motion for leave to file an original application. The court, however, may reconsider such a denial of a motion for leave to file on its own motion.

Rule 212. Special Cases.

- (a) Presentation of Motions. Motions for extension of time and motions filed with respect to cases pending on the court's docket (e.g., to advance on the docket), after administrative processing, shall be presented by the clerk or the administrative staff to the Presiding Judge, or to a judge designated by the Presiding Judge, who may grant or deny the motion or refer it to the en banc conference for consideration.
- (b) Disposition. The motion will be handled and disposed of in accordance with the instructions of the Presiding Judge, the designated judge, or the en banc conference.

Rule 213. Postconviction Applications for Writs of Habeas Corpus.

- (a) Initial Review. After administrative processing, post-conviction applications for writ of habeas corpus pursuant to Article 11.07 of the Code of Criminal Procedure shall be assigned by the administrative staff to a judge, in rotation, and the judge to whom such an

assignment is made shall have the responsibility of making an initial review and reporting on such case to the court. The court may deny relief upon the findings and conclusions of the trial court with or without an evidentiary hearing. The court may likewise deny relief based upon its own review of the application or may issue such other instructions or orders as may be appropriate.

- (b) Tentative Disposition. In the event that at least five members of the court are of the tentative opinion that the case should be filed and set for submission to the court, the cause will be docketed and heard as though originally presented to the court or as an appeal. No motions for rehearing or reconsideration will be entertained from a denial of relief without docketing of the cause. The court, however, may on its own motion reconsider such initial disposition.

Section Seventeen. Submissions, Oral Arguments and Opinions.

Rule 220. Notification.

Unless the Court of Criminal Appeals directs that a particular cause be argued orally, when a cause may be submitted on oral argument the Clerk of the Court of Criminal Appeals shall notify counsel of record to inform the clerk within 30 days from the date on the notification whether oral argument is desired. Failure to respond timely will constitute a waiver of oral argument. The clerk is directed to use all reasonable diligence to notify counsel of record of settings, but failure to receive notice will not necessarily prevent submission of the cause on the day it is set.

Rule 221. Oral Argument.

Unless extended by the Court of Criminal Appeals in a special case, the total maximum time for oral argument shall be 20 minutes per side. Counsel for the appellant or petitioner is entitled to open and conclude the argument. Counsel will not be permitted to read at length from the briefs, records, or authorities. Counsel may make an oral correction to his brief, but multiple additional citations should not be made orally; they should be reduced to writing and filed with the clerk.

Rule 222. Submissions En Banc.

- (a) The court shall sit en banc for hearing appeals in death penalty cases, cases of discretionary review, cases in which leave to file was granted under Rule 211(a), cases which were docketed under Rule 213(b), and rehearings under Rule 230.
- (b) The clerk, as directed by the court, shall at appropriate times in advance of submission set cases for submission en banc.
- (c) After they are submitted, the cases shall be arranged by the clerk in nine separate stacks, with such stacks to be as nearly equal in terms of workload as the clerk in his judgment shall determine. The court shall then, in the presence of a majority of the judges, determine by lot which stack shall be assigned to which judge for initial study, drafting of opinion, and reporting to the en banc conference.

Rule 223. Opinions.

- (a) In each case decided by it the Court of Criminal Appeals will deliver a written opinion setting forth the reason for its decision and germane precedent extant. Any judge may file an opinion dissenting from or concurring in the decision of the Court.
- (b) A majority of the judges shall determine whether opin-

ions delivered by the Court of Criminal Appeals shall be signed by a judge or be issued per curiam and whether they shall be published.

- (c) Unpublished opinions shall neither be deemed nor cited as precedent.
- (d) On the date of delivery of any opinion or order the Clerk of the Court of Criminal Appeals shall mail copies of said opinions or orders to (1) counsel of record (2) the State Prosecuting Attorney, (3) the clerk of the trial court, and (4) the Clerk of the Court of Appeals which rendered the decision below, and (5) an appellant representing himself.

Section Eighteen. Rehearings and Mandate.

Rule 230. Rehearings.

- (a) A motion for rehearing may be filed with the Clerk of the Court of Criminal Appeals within 15 days after the initial opinion or order is delivered, unless the time is shortened or enlarged by the court. However, no motion for rehearing will be received from an order granting discretionary review.
- (b) The motion for rehearing must briefly and distinctly state its grounds, together with any supporting arguments. A reply to the motion need not be filed unless requested by the court. An original and 11 copies of the motion and any reply thereto shall be filed. Copies of the motion and any reply shall be delivered to the opposing party and the State Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711. Any motion for rehearing or reply thereto may be amended or supplemented with leave of the court at any time prior to final disposition. A motion for rehearing or a reply thereto is not subject to oral argument.
- (c) If five members of the Court are of the opinion that a rehearing should be granted in whole or in part, the motion will be granted and the cause will be thereafter set for submission to the court. Otherwise, the motion for rehearing will be denied.
- (d) The clerk will give all parties notice of the disposition of the motion.
- (e) If a motion for rehearing is granted, the court may resubmit the case without oral argument. If oral argument is permitted, counsel will be limited to 15 minutes per side. The movant is entitled to open and conclude the argument. The clerk will notify all parties of the time for such resubmissions.
- (f) If the court delivers an opinion on rehearing which changes the disposition of the cause from that on original submission, the losing party may file a motion for rehearing within 15 days after said opinion is delivered. In such event, the procedures outlined in (a) through (e) above will be followed.

Rule 231. Mandate.

When a decision of the Court of Criminal Appeals becomes final, the clerk of the court shall issue a mandate to the court below, including the court of appeals whose decision has been reviewed on petition for discretionary review. A decision of the court shall be final at the expiration of 15 days from the ruling on the final motion for rehearing or from the rendition of the decision if no motion for rehearing is filed.

Rule 232. Stay of Mandate.

The Court of Criminal Appeals may stay the mandate of the court for not more than 60 days on motion of a party to permit the timely filing of an appeal or petition for writ of certiorari to the United States Supreme Court. After the expiration of the

time mentioned in this rule, the mandate of the court shall issue.

Rule 233. Stay of Execution in Death Penalty Cases.

The order of a trial court setting the date for execution in a death penalty case may be modified or withdrawn by that trial court should such court determine that an evidentiary hearing or other proceedings are necessary on an application for writ of habeas corpus filed pursuant to Article 11.07 of the Code of Criminal Procedure. In such event the warrant of execution shall be recalled.

Rule 234. Undisposed Cases.

All cases filed in the Court of Criminal Appeals and not disposed of at the end of the term shall be automatically continued to the next succeeding term of said court.

LIST OF REPEALED STATUTES

The following enumerated articles of the Code of Criminal Procedure of 1965, enacted by Acts 1965, 59th Leg., Ch. 722, effective January 1, 1966, and amendments and additions thereto through the 1985 Regular Session of the 69th Legislature are deemed to be repealed as they relate to posttrial, appellate and review procedures in criminal cases and criminal law matters pursuant to House Bill No. 13, Acts 1985, 69th Leg., Ch. 685, p. 5136. Their repeal is effective simultaneously with the effective date of the comprehensive body of rules promulgated by the Court of Criminal Appeals. All consecutive numbers in the enumeration are inclusive.

ENUMERATION

Articles: 36.20; 40.01-40.11; 41.01-41.05; 42.04a; 42.06; 44.02 proviso only; 44.03; 44.05; 44.06; 44.08; 44.09; 44.11; 44.21-44.24; 44.26; 44.27; 44.30-44.32; 44.33, except first sentence and section (b); 44.34; 44.36; 44.37; 44.38, including Acts 1985, 69th Leg., Ch. 440, p. 2993; 44.40; 44.45, second sentence of section (a), subsections (1)-(7) of section (b) and section (d) only.

The Juvenile Law Section Of the State Bar of Texas Presents

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During the State Bar of Texas Convention
June 20, 1986, 2:00 - 4:00 p.m.
Hyatt Regency Cottonwood Room, Houston

For Registration Information, contact the State
Bar Services Department, 512/463-1515.

Order Adopting an Appendix For Criminal Cases to Texas Rules Of Appellate Procedure

BE IT ORDERED by the Court of Criminal Appeals that the following appended formats prescribed for the record on appeal and related forms are hereby adopted and promulgated to apply in criminal cases and criminal law matters [Article V, §5 and Article 4.04, C.C.P.], under authority of and in conformity with Acts 1985, 69th Leg., Ch. 685, p. 5136, §§1-4, Articles 44.33 and 44.45, Code of Criminal Procedure and Rules 18(b), 51(c) and 53(h), Texas Rules of Appellate Procedure.

BE IT FURTHER ORDERED that the Clerk of this Court shall file with the Secretary of State of the State of Texas, for and in behalf and as the act of this Court, a duplicate original copy of this order and this appendix, and the Clerk shall cause them to be published in the *Texas Register* and the *Texas Bar Journal*, as provided by the above Act.

BE IT FURTHER ORDERED that these formats and rules become effective September 1, 1986, and remain in effect unless and until disapproved, modified or changed by the Legislature or unless and until supplemented or amended by this Court pursuant to the above authority.

BE IT FURTHER ORDERED that the substance of Rule 201 and of Forms 3, 4 and 5, Rules of Post Trial and Appellate Procedure, adopted and promulgated July 17, 1981, as amended by order dated July 24, 1981, be and they are hereby repealed effective September 1, 1986.

BE IT FURTHER ORDERED that this order and this appendix shall be recorded in the minutes of this Court, and that the original of this order signed by members of this Court and of this appendix shall be preserved by the Clerk of this Court as a permanent record of this Court.

SIGNED and ENTERED in duplicate originals this 10th day of April, 1986.

/s/ John F. Onion, Jr.
Presiding Judge

/s/ Tom G. Davis
Judge

/s/ W.C. Davis
Judge

/s/ Sam Houston Clinton
Judge

/s/ Michael J. McCormick
Judge

/s/ Marvin O. Teague
Judge

/s/ Chuck Miller
Judge

/s/ Charles F. (Chuck) Campbell
Judge

/s/ Bill White
Judge

Appendix for Criminal Cases Texas Rules of Appellate Procedure

Rule 1. The Record on Appeal

Pursuant to the provisions Rules 51(c) and 53(h), the Court of Criminal Appeals directs that a record consisting of transcript and statement of facts (formerly transcription of court reporter's notes) in case of an appeal or writ of error (Article 44.43, C.C.P.) from trial court to an appellate court shall be prepared in accordance with applicable Rules in the following formats, respectively:

- (a) Transcript
 - (1) Proceedings, instruments and other papers specified in Rule 51(a) and matters designated by the parties pursuant to Rule 51(b) shall be collected and copied and then assembled by the clerk of the trial court in the order in which they occurred or were filed. The judge of the trial court may order included a copy of any proceeding, instrument or paper he deems proper, except original papers and exhibits [see Rule 51(d)]. There must be space between the materials such that each may be readily distinguished from the other, and there must be noted at the top the name of each instrument and other papers and at the bottom the date of filing. As far as practicable each order and judgment shall show the date of signing by the judge, as well as the date of entry in the minutes.

- (2) The transcript is and shall be designated Volume 1 of the record (or more if necessary), and consecutive pagination must be at the foot of each page.
- (3) The front cover page shall be labeled in bold type "TRANSCRIPT" and it shall state the number and style of the criminal case, the court in which the case is pending, the name of the judge presiding and the names and mailing addresses of attorneys for the parties. The Clerk shall endorse thereon the day the transcript was transmitted to the court of appeals and shall sign his name officially thereto, and shall provide a space for the Clerk of the Court of Appeals to endorse his filing thereon, showing the date received, and to enter the docket number assigned to the cause. For those purposes the following form will be sufficient.

TRANSCRIPT

(Trial Court) No. _____

In the ___ District (County) Court of _____
County, Texas, Honorable _____,
Judge Presiding.

_____, Appellant

vs.

The State of Texas

Appealed to the Court of Appeals for the ___ Supreme Judicial
District of Texas, at _____,
Texas.

Appellate Attorney for
Appellant:

(name) _____
(address) _____

Appellate Attorney for
State:

(name) _____
(address) _____

Delivered to Court of Appeals for the ___ Supreme Judicial
District of Texas, at _____, Texas
on the ___ day of _____, 19__.

(signature) _____
(name of trial court clerk) _____
(title) _____

(Court of Appeals) Cause No. _____

Filed in the Court of Appeal for the ___ Supreme Judicial
District of Texas, at _____, Texas
this ___ day of _____, 19__.

_____, Clerk
By _____, Deputy

VOLUME ___

- (4) Contents may be either legibly duplicated, printed or typewritten. Typewriting shall be on good heavy white paper, in clear type not less than standard pica type, with a double space between the lines and types on only one side of the paper, with no sheet cut or mutilated. When printed the transcript must be on both sides of the paper, in not less than small pica type, bound and pagged in



Remember family or friends
with Special Occasion, Get Well
or Memorial cards.

WE'RE FIGHTING FOR
YOUR LIFE

**American Heart
Association**



pamphlet form of octavo size and fastened at the back; in all other respects it shall conform to rules for typewritten transcripts.

- (5) On the first pages there shall be a detailed index identifying each instrument or other paper as it is denominated and indicating the page where it appears. The index must conform to the order in which matters appear as transcribed, rather than alphabetical. It shall be double spaced.
- (6) After the index there shall be a caption in substantially the following form:

The State of Texas
County of _____

At a term of _____ (County Court or Judicial District Court) of _____ County, Texas, which began on the ___ day of _____, 19___, and which terminated (or will terminate by operation of law) on the ___ day of _____, 19___, the Honorable _____, sitting as Judge of said court, the following proceedings were held in this cause towit:

The State of Texas

vs. No. _____

- (6) A transcript shall conclude 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 above and foregoing proceedings, instruments and other papers contained in Volume ___, Pages ___ inclusive, to which this certification is attached and made a part thereof, are true and correct copies of all proceedings, instruments and other papers specified by Rule 51(a) and matters designated by the parties pursuant to Rule 51(b) in Cause No. _____, styled The State of Texas vs. _____ in said court.

GIVEN UNDER MY HAND AND SEAL of said Court at Office in _____, Texas this ___ day of _____, 19___.

(name) _____
(title) _____

By _____, Deputy

(b) Statement of Facts

- (1) The front cover page shall state the number and style of the criminal case, the court in which the proceeding is pending, the names and mailing addresses of attorneys for the parties. It shall be labeled in bold type "STATEMENT OF FACTS" and it shall be designated as Volume II of the record (or the next consecutive Roman numeral). For those purposes the following form will be sufficient.

(Trial Court) No. _____

THE STATE OF TEXAS IN THE ___ COURT

VS.

(NAME OF DEFENDANT) OF ___ COUNTY, TEXAS

STATEMENT OF FACTS
Volume II of ___ Volumes

APPEARANCES:

(Attorney for the State)
(Mailing address)

For the State of Texas;

(Attorney(s) for Defendant)
(Mailing address(es))

For the Defendant.

On the ___ day of _____, 19___, the above and entitled cause came on to be heard (for trial) in the said Court, Honorable (name of judge presiding), Judge Presiding, and the following proceedings were held, towit:

- (2) The statement of facts shall be typewritten or printed on opaque and unglazed white paper not less than 13-pound weight, 8½ by 11 inches in size, in good standard type of pica size, 10 or 12 letters per linear inch, double spaced and in upper and lower case type, an average of 25 lines of type per page and typed on only one side of the paper, with no sheets cut or mutilated. The margin on the left-hand side of the page shall be not less than 1¼ inches nor more than 2 inches. The pages shall be numbered consecutively at the bottom of each page, securely bound on the left margin, and labeled on the cover thereof "Volume ___ of ___ Volumes."
- (3) Each separate proceeding and hearing (pretrial hearing, voir dire, trial on the merits, punishment hearing, etc.) shall be bound in a separate volume, or as many volumes as necessary to prevent each from being more than two inches thick, and the first page of the statement of facts of each such proceeding or hearing shall be numbered "1" and each page thereafter numbered consecutively at the foot of the page.
- (4) The court reporter shall include at the beginning of each volume of the statement of facts both an alphabetical and chronological index referring to the page at which the direct examination, the cross-examination, the re-direct examination, and the re-cross examination of each witness begins. The index may be as shown in the following example or in any other form which shows the same information:

INDEX

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
John Doe	4	8
<u>RE-DIRECT</u>		<u>RE-CROSS</u>
16		20

The index shall be placed in front of each volume of the statement of facts and a master index of all witnesses shall be placed in the first volume of the statement of facts.

The court reporter shall also show in a separate table in the first volume of the statement of facts the page at which any exhibit or other document copied therein appears, and the pages at which it is identified (when an exhibit is identified by more than one witness, page references shall be made where each witness identified the exhibit), offered, marked, received, and shown. The table of exhibits may be as shown in the following example or in any other form which shows the same information:

EXHIBITS' TABLE

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>
S-1	Copy of Judgment in Cause #13112
 <u>MARKED</u>	 <u>IDENTIFIED</u>
3	4
 <u>OFFERED</u>	 <u>REC'D</u> <u>SHOWN</u>
5	6 82

- (5) Unless ordered otherwise pursuant to Rule 51(d), neither physical evidence (gun, clothing, controlled substance, etc.) nor ordinarily an original exhibit is to be included in the record on appeal. Each item of physical evidence must be described alone on a separate piece of paper; it and a legible copy of other exhibits will appear respectively on a separate page of the statement of facts. However, when a legible copy of a photograph or any paper

exhibit may not be made, the original exhibit shall be included in the record under order of the trial court made pursuant to Rule 51(c).

- (6) Copies of exhibits received in each separate proceeding or hearing, including those descriptions of physical evidence, will be placed in numerical order at the end of the statement of facts of that proceeding or hearing, or in a separate volume if the exhibit material is voluminous.
- (7) The statement of facts shall contain a certificate signed by the court reporter in substance as follows:

THE STATE OF TEXAS §
 COUNTY OF _____ §

I, _____, official court reporter in and for the _____ court of _____ County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

WITNESS my hand this the ___ day of _____, 19__.

 (Signature)
 Official Court Reporter

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Binders for copies of the *Texas Bar Journal* are now available for only \$8.00 each (plus tax, postage and handling).

The new binders, which are 9³/₄" x 12¹/₄" with a 3¹/₂" spine, easily accommodate the magazine's larger format that was adopted with the January 1986 issue.

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 P.O. Box 12487, Capitol Station
 Austin, TX 78711

Please allow three weeks for delivery.

Permanent Bar card number _____
(Required to process your order)

Name _____

Address _____

City/State/Zip _____

Order placed by _____

Please check if this is a change of address.

Quantity _____ (1502) @ \$8.00 each
 Total for items ordered \$ _____

Add 5.125% sales tax
 (please include tax or exemption certificate)
 (omit if out of state) \$ _____

Add 1% Austin MTA Tax
 (applicable only to Austin area residents) \$ _____

(1502)-246 Postage and handling (per order) \$ 2.00

TOTAL (Please make checks payable to
 State Bar of Texas) \$ _____

Rule 2. Supplemental Record on Appeal.

Pursuant to the provisions of Rule 45 the Court of Criminal Appeals directs that a supplemental record consisting of material in a transcript or a statement of facts shall be prepared in the format prescribed for each in 1(a) and (b), respectively, so far as it is feasible, and that the supplemental record be certified in one of the following forms as appropriate.

(a) Form 1:

The State of Texas § In the _____ Court
 v. § of
 [Defendant] § _____ County, Texas

Order for Supplemental [or
 "Modified"] Record Without Hearing

A supplemental record [or "modification of the record"] having been deemed necessary on the defendant's motion [or "the State's motion," or "both parties' motion(s)," or "the court's own motion," or "the order of the Court of Appeals," or "the order of the Court of Criminal Appeals"], and the defendant and the State having been notified by certified or registered mail of same, and both parties having waived in writing a formal hearing thereon, the Court finds that the record is supplemented [or "modified"] in the following particulars and orders the same to be transmitted or delivered to the [name of proper court].

Supplemental Transcript, Vol. I, comprising pages 1-____,

Statement of Facts, Vol. ____, comprising pages 1-____, [etc.].

Signed and ordered entered this ____ day of _____, 19____.

 Judge Presiding

(b) Form 2:

The State of Texas § In the _____ Court
 v. § of
 [Defendant] § _____ County, Texas

Order for Supplemental [or
 "Modified"] Record Without Hearing

The supplemental record [or "modification of the record"] having been deemed necessary on the defendant's motion [or "the State's motion," or "both parties'

motion(s)," or "the court's own motion," or "the order of the Court of Appeals," or "the order of the Court of Criminal Appeals"], and the defendant and the State having been notified by certified or registered mail of same, and the defendant [or "the State," or "both parties"] have objected within 5 days from receipt of notice, the court set the matter down for hearing, and, after hearing, entered orders which caused the record to speak the truth. Such proceeding is included in the record. The Court finds that the record is supplemented [or "modified"] in the following particulars and orders the same to be transmitted or delivered to the [name of proper court].

Supplemental Transcript, Vol. I, comprising pages 1-____,

Statement of Facts, Vol. ____, comprising pages 1-____, [etc.].

Signed and ordered entered this ____ day of _____, 19____.

 Judge Presiding

Rule 3. Preparing the Appellate Record.

Pursuant to Rule 18(b) the Court of Criminal Appeals directs that envelopes containing a record on appeal shall conform to every specification in that rule; that the front of each envelope shall be printed substantially as shown on the form below and that the clerk of an appellate court must set forth on the front of the first envelope containing the record on appeal the information so prescribed.

(a) Form 3:

_____ 2
 No. _____ 1

 Appellant
 _____ 3

 County

¹ Court of Appeals shall use this line.

² Court of Criminal Appeals shall use this line.

³ Offense and punishment shall be entered on this line.

Trial Court _____
 Trial Court No. _____
 Trial Judge _____
 Disposition _____
 Date _____
 Justice _____ P.C. _____ S _____
 Panel _____ Quarter _____ En Banc _____
 S/F _____
 St. B. _____
 Ap. B. _____
 Supp. Tr. _____
 Supp. B. _____
 Pro Se _____



Order of April 10, 1986 Adopting

Amendments

To Texas Rules of Civil Procedure

Effective September 1, 1986

IT IS ORDERED by the Supreme Court of Texas with reference to the Texas Rules of Civil Procedure:

1. That the following amendments to existing rules are made and the following rules are repealed;

2. That such amendments become effective on September 1, 1986;

3. That the notes appended to these amendments are for the convenience of the bench and bar, but they are not a part of the rules and they are incomplete;

4. That this order showing amendments and appending notes shall be filed by the Clerk of this Court, for and in behalf and as the act of this Court, by means of a duplicate original copy of this order, with the Secretary of State; and the publication of such amendments shall be made by the Clerk of this Court, for and in behalf and as the act of this Court in the Texas Bar Journal and a copy thereof mailed by said Clerk to each registered member of the State Bar of Texas, at least 60 days before the effective date thereof;

5. That this order, including such amendments with the appended notes, shall be recorded in the minutes of this Court, and that one original filed copy of this order shall be preserved by the Clerk of this Court as a permanent record of this Court;

6. That the rules now so amended are as follows: 2, 3a, 5, 18a, 306a, 306c;

7. That the rules now repealed are as follows: 14a, 18b, 21c, 352-515;

SIGNED AND ENTERED in duplicate originals this 10th day of April, 1986.

/s/ John L. Hill
Presiding Justice

/s/ Sears McGee
Justice

/s/ Robert M. Campbell
Justice

/s/ Franklin S. Spears
Justice

/s/ C.L. Ray
Justice

/s/ James P. Wallace
Justice

/s/ Ted Z. Robertson
Justice

/s/ William W. Kilgarlin
Justice

/s/ Raul A. Gonzalez
Justice

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.

Change by Order of April 10, 1986, effective September 1, 1986.

Comment: Amended to delete any reference to appellate procedure.

Rule 3a. Rules by Other Courts.

Each administrative judicial district, each district court, and each county court may, from time to time, make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made shall before their promulgation be furnished to the Supreme Court of Texas for approval.

Change by Order of April 10, 1986, effective September 1, 1986.

Comment: Amended to delete any reference to appellate procedure. The words "Court of Appeals, each" have been deleted.

Rule 5. Enlargement.

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 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; but it may not enlarge the period for taking any action under the rules relating to new trials except as stated in these rules; provided, however, if a motion for new trial 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 one day or more 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; provided, however, that a legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

Change by Order of April 10, 1986, effective September 1, 1986.

Comment: Amended to delete any reference to appellate procedure.

The phrase "or motions for rehearing or the period for taking an appeal or writ of error from the trial court to any higher court or the period for application for writ of error in the Supreme Court" and the phrase "motion for rehearing, any matter relating to taking an appeal or writ of error from the trial court to any higher court, or application for writ of error" have been deleted.

Rule 14a. Repealed by Order of April 10, 1986, effective September 1, 1986.

Rule 18a. Recusal or Disqualification of Judges.

(a) At least ten days before the date set for trial or other

hearing in any court other than the Supreme Court, the Court of Criminal Appeals or the court of appeals, any party may file with the clerk of the court a motion stating grounds why the judge before whom the case is pending should not sit in the case. The grounds may include any disability of the judge to sit in the case.

- (b) (Unchanged).
- (c) (Unchanged).
- (d) (Unchanged).
- (e) (Unchanged).
- (f) (Unchanged).
- (g) The Chief Justice of the Supreme Court may also appoint and assign judges in conformity with this rule and pursuant to Article 200a-1.

Change by Order of April 10, 1986, effective September 1, 1986.

Comment: The words "the Court of Criminal Appeals" have been added in (a); and subsection "1" has been added to (g).

Rule 18b. Repealed by Order of April 10, 1986, effective September 1, 1986.

Rule 21c. Repealed by Order of April 10, 1986, effective September 1, 1986.

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. (Unchanged).
3. (Unchanged).
4. No notice of judgment. If within twenty days after the judgment or other appealable order is signed, a party adversely affected by it or his attorney has neither received the notice required by paragraph 3. of this rule nor acquired actual knowledge of the order, then with respect to that party all the periods mentioned in paragraph 1. shall begin on the date that such party or his attorney received such notice or acquired actual knowledge of the signing, whichever occurred first, but in no event shall such periods begin more than 90 days after the original judgment or other appealable order was signed.
5. (Unchanged).
6. (Unchanged).
7. When process served by publication. With respect to a motion for new trial filed more than 30 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.

Change by Order of April 10, 1986, effective September 1, 1986.

Comment: Amended to delete any reference to appellate procedure.

The phrase "in connection with an appeal, including but not limited to an original or amended motion for new trial, an appeal bond, certificate of cash deposit, or notice or affidavit in lieu thereof, and bills of exception, and for filing of the petition for writ of error if review is sought by writ of error, and for filing in the appellate court of the transcript and statement of facts" is deleted from Section 1; the phrase, "except the period for filing a petition for writ of error" is deleted from Section 4; and the words "30 days before" are deleted from Section 7.

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 date 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 date of signing of the judgment.

Change by Order of April 10, 1986, effective September 1, 1986.

Comment: Amended to delete any reference to appellate procedure.

The phrases "appeal bond or affidavit in lieu thereof, notice of appeal, or notice of limitation of appeal;" "and every such appeal bond or affidavit or notice of appeal or notice of limitation of appeal" and "or the date of the overruling of motion for new trial, if such a motion is filed," have been deleted.

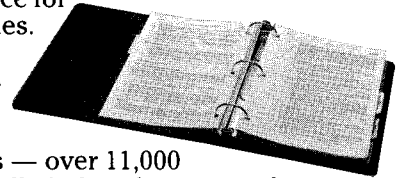
Rules 352-515. Repealed by Order of April 10, 1986, effective September 1, 1986.



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