

Supreme Court of Texas

Misc. Docket No. 24-9005

Preliminary Approval of Amendments to the Texas Rules of Appellate Procedure Related to the Fifteenth Court of Appeals

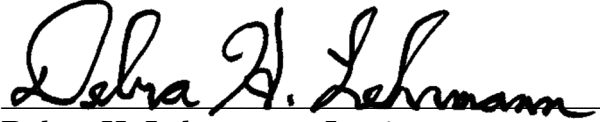
ORDERED that:

1. In accordance with the Act of May 21, 2023, 88th Leg., R.S. ch. 459 (S.B. 1045), the Court invites public comments on proposed new Texas Rule of Appellate Procedure 27a and on proposed amendments to Texas Rules of Appellate Procedure 25, 32, and 39. The new rule is shown in clean form, whereas the amendments are demonstrated in redline form.
2. Comments regarding the new and amended rules should be submitted in writing to rulescomments@txcourts.gov by May 1, 2024.
3. The Court will issue an order finalizing the rules after the close of the comment period. The Court may change the rules in response to public comments. The Court expects the amendments to take effect on September 1, 2024.
4. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

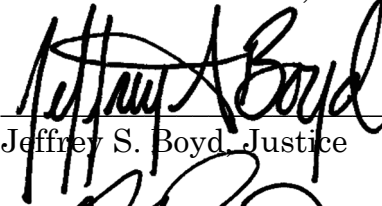
Dated: February 6, 2024.



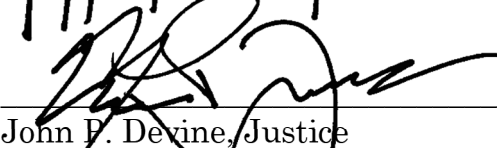
Nathan L. Hecht, Chief Justice



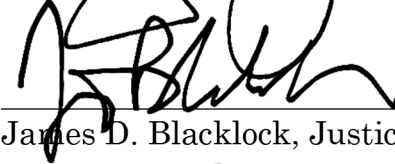
Debra H. Lehrmann, Justice



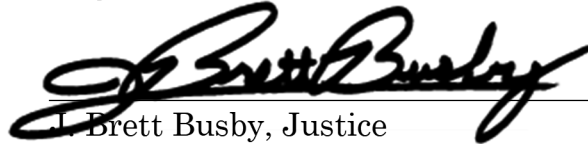
Jeffrey S. Boyd, Justice



John F. Devine, Justice



James D. Blacklock, Justice



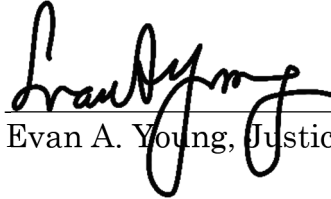
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF APPELLATE PROCEDURE

Rule 25. Perfecting Appeal

25.1. Civil Cases

- (a) *Notice of Appeal.* An appeal is perfected when a written notice of appeal is filed with the trial court clerk. If a notice of appeal is mistakenly filed with the appellate court, the notice is deemed to have been filed the same day with the trial court clerk, and the appellate clerk must immediately send the trial court clerk a copy of the notice.
- (b) *Jurisdiction of Appellate Court.* The filing of a notice of appeal by any party invokes the appellate court's jurisdiction over all parties to the trial court's judgment or order appealed from. Any party's failure to take any other step required by these rules, including the failure of another party to perfect an appeal under (c), does not deprive the appellate court of jurisdiction but is ground only for the appellate court to act appropriately, including dismissing the appeal.
- (c) *Who Must File Notice.* A party who seeks to alter the trial court's judgment or other appealable order must file a notice of appeal. Parties whose interests are aligned may file a joint notice of appeal. The appellate court may not grant a party who does not file a notice of appeal more favorable relief than did the trial court except for just cause.
- (d) *Contents of Notice.* The notice of appeal must:
 - (1) identify the trial court and state the case's trial court number and style;
 - (2) state the date of the judgment or order appealed from;
 - (3) state that the party desires to appeal;
 - (4) state the court to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the notice must state that the appeal is to either of those courts;
 - (5) state the name of each party filing the notice;
 - (6) in an accelerated appeal, state that the appeal is accelerated and state whether it is a parental termination or child protection case or an appeal from an order certifying a child to stand trial as an adult, as defined in Rule 28.4;

- (7) in a restricted appeal:
 - (A) state that the appellant is a party affected by the trial court's judgment but did not participate—either in person or through counsel—in the hearing that resulted in the judgment complained of;
 - (B) state that the appellant did not timely file either a postjudgment motion, request for findings of fact and conclusions of law, or notice of appeal; and
 - (C) be verified by the appellant if the appellant does not have counsel.
- (8) state, if applicable, that the appellant is presumed indigent and may proceed without paying costs under Rule 20.1.;
- (9) state whether the appeal involves a matter:
 - (A) brought by or against the state or a board, commission, department, office, or other agency in the executive branch of the state government, including a university system or institution of higher education;
 - (B) brought by or against an officer or employee of the state or a board, commission, department, office, or other agency in the executive branch of the state government arising out of that officer's or employee's official conduct; or
 - (C) in which a party to the proceeding challenges the constitutionality or validity of a state statute or rule and the attorney general is a party to the case.
- (e) *Notice of Notice.* The notice of appeal must be served on all parties to the trial court's final judgment or, in an interlocutory appeal, on all parties to the trial court proceeding. At or before the time of the notice of appeal's filing, the filing party must also deliver a copy of the notice of appeal to each court reporter responsible for preparing the reporter's record.
- (f) *Trial Court Clerk's Duties.* The trial court clerk must immediately deliver a copy of the notice of appeal to the appellate court clerk, to the trial judge, and to each court reporter responsible for preparing the reporter's record.

- (g) *Amending the Notice.* An amended notice of appeal correcting a defect or omission in an earlier filed notice may be filed in the appellate court at any time before the appellant’s brief is filed. The amended notice is subject to being struck for cause on the motion of any party affected by the amended notice. After the appellant's brief is filed, the notice may be amended only on leave of the appellate court and on such terms as the court may prescribe.
- (h) *Enforcement of Judgment Not Suspended by Appeal.* The filing of a notice of appeal does not suspend enforcement of the judgment. Enforcement of the judgment may proceed unless:
 - (1) the judgment is superseded in accordance with Rule 24, or
 - (2) the appellant is entitled to supersede the judgment without security by filing a notice of appeal.

Notes and Comments

Comment to 2024 change: Rule 25.1(d)(9) is adopted to implement Texas Government Code Section 22.220(d), which describes matters within the Fifteenth Court of Appeals’ exclusive intermediate appellate jurisdiction. The addition is designed to assist the courts of appeals in the orderly transfer of cases and to assist parties in determining which court should hear their appeal.

Rule 27a. Transfers Between Courts of Appeals (New Rule)

- (a) *Definitions.*
 - (1) “Transferor court” means the court of appeals in which the appeal is pending.
 - (2) “Transferee court” means the court of appeals to which a party requests or the transferor courts seeks to transfer the appeal.
- (b) *Application.*
 - (1) The transfer process in this rule applies to appeals:
 - (A) improperly taken to the Fifteenth Court of Appeals; or

- (B) over which the Fifteenth Court of Appeals has exclusive intermediate appellate jurisdiction.
- (2) This rule does not apply to appeals transferred by the Supreme Court for good cause, including for docket equalization purposes.
- (c) *Transfer by a Court of Appeals.*
 - (1) On a Party's Motion.
 - (A) A party may file a motion to transfer an appeal. The motion should be filed within 30 days after the appeal is perfected but must be filed by the date the appellee's brief is filed. The motion must be filed in the transferor court and may be supported by briefing. The movant must immediately notify the transferee court of the motion.
 - (B) The transferor court must notify the parties and the transferee court of its decision on the motion. The transferor court may transfer the appeal if:
 - (i) no party files an objection to the transfer within 10 days after the motion's filing or the transferor court determines that any filed objection lacks merit; and
 - (ii) the transferee court agrees to the transfer.
 - (C) The transferee court must file, within 20 days after receiving notice from the transferor court of its decision on the motion, a letter in the transferor court explaining whether it agrees with the transferor court's decision.
 - (2) On Its Own Initiative.
 - (A) The transferor court must notify the parties and the transferee court of its intent to transfer on its own initiative.
 - (B) The transferor court may transfer an appeal on its own initiative if:
 - (i) no party files an objection to the transfer within 10 days after receiving notice from the transferor court of its intent to transfer or the transferor court determines that any filed objection lacks merit; and

- (ii) the transferee court agrees to the transfer.
 - (C) The transferee court must, within 20 days after receiving notice from the transferor court of its intent to transfer, file a letter in the transferor court explaining whether it agrees with the transfer.
 - (3) Notice to Supreme Court and the Office of Court Administration. If the transferor court transfers an appeal under (1) or (2), the transferor court must notify the Supreme Court and the Office of Court Administration of the transfer.
- (d) *Transfer by the Supreme Court.*
- (1) If the transferor court and transferee court do not agree on whether the appeal should be transferred, then the transferor court must forward to the Supreme Court either:
 - (A) the party’s motion to transfer, any briefing, the transferee court’s letter under (c)(1)(C), and a letter explaining the transferor court’s decision on the motion; or
 - (B) a letter from the transferor court that explains its reasons for requesting transfer and that notes any party objections and the transferee court’s letter under (c)(2)(C).
 - (2) Unless exceptional circumstances require additional time, the documents in (1) must be submitted to the Supreme Court within 20 days after receipt of the transferee court’s letter under (c)(1)(C) or (c)(2)(C).
 - (3) After receipt of all relevant documents, the Supreme Court will consider and decide the motion or request by the transferor court to transfer.

Notes and Comments

Comment to 2024 change: Rule 27a is adopted to implement Texas Government Code Section 73.001. Paragraph (b)(1) limits the applicability of the transfer process in Rule 27a to the appeals described in Section 73.001(c). And paragraph (b)(2) makes clear that Rule 27a does not apply to “good cause” transfers under Section 73.001(a), which are handled under the Policies for Transfer of Cases Between Courts of Appeals adopted in Misc. Dkt. No. 06-9136.

Consistent with Section 1.15 of the Fifteenth Court of Appeals' enabling legislation, Rule 27a only applies to appeals perfected on or after September 1, 2024. See Act of May 21, 2023, 88th Leg., R.S., ch. 459 (S.B. 1045). It does not apply to appeals pending in the courts of appeals that were filed between September 1, 2023, and August 31, 2024, and of which the Fifteenth Court of Appeals has exclusive intermediate appellate jurisdiction under Texas Government Code Section 22.220(d). On September 1, 2024, those appeals should be transferred immediately to the Fifteenth Court of Appeals.

Rule 32. Docketing Statement

32.1. Civil Cases

Promptly upon filing the notice of appeal in a civil case, the appellant must complete and file in the appellate court a the dDocketing sStatement approved by the Office of Court Administration or another document that includes the same information.~~that includes the following information:~~

- (a) ~~(1) if the appellant filing the statement has counsel, the name of that appellant and the name, address, telephone number, fax number, if any, and State Bar of Texas identification number of the appellant's lead counsel; or~~
 - ~~(2) if the appellant filing the statement is not represented by an attorney, that party's name, address, telephone number, and fax number, if any;~~
- ~~(b) the date the notice of appeal was filed in the trial court and, if mailed to the trial court clerk, the date of mailing;~~
- ~~(c) the trial court's name and county, the name of the judge who tried the case, and the date the judgment or order appealed from was signed;~~
- ~~(d) the date of filing of any motion for new trial, motion to modify the judgment, request for findings of fact, motion to reinstate, or other filing that affects the time for perfecting the appeal;~~
- ~~(e) the names of all other parties to the trial court's judgment or the order appealed from, and:~~
 - ~~(1) if represented by counsel, their lead counsel's names, addresses, telephone numbers, and fax numbers, if any; or~~

- ~~(2) — if not represented by counsel, the name, address, and telephone number of the party, or a statement that the appellant diligently inquired but could not discover that information;~~
- ~~(f) — the general nature of the case — for example, personal injury, breach of contract, or temporary injunction;~~
- ~~(g) — whether the appeal's submission should be given priority, whether the appeal is an accelerated one under Rule 28.1 or another rule or statute, and whether it is a parental termination or child protection case or an appeal from an order certifying a child to stand trial as an adult, as defined in Rule 28.4;~~
- ~~(h) — whether the appellant has requested or will request a reporter's record, and whether the trial was electronically recorded;~~
- ~~(i) — the name, mailing address, telephone number, fax number, if any, email address, and Certified Shorthand Reporter number of each court reporter responsible for preparing the reporter's record;~~
- ~~(j) — whether the appellant intends to seek temporary or ancillary relief while the appeal is pending;~~
- ~~(k) — if the appellant filed a Statement of Inability to Afford Payment of Court Costs in the trial court:
 - ~~(1) — the date that the Statement was filed;~~
 - ~~(2) — the date of filing of any motion challenging the Statement;~~
 - ~~(3) — the date of any hearing on the appellant's ability to afford costs; and~~
 - ~~(4) — if the trial court signed an order under Texas Rule of Civil Procedure 145, the court's findings regarding the appellant's ability to afford costs and the date that the order was signed;~~~~
- ~~(l) — whether the appellant has filed or will file a supersedeas bond; and~~
- ~~(m) — any other information the appellate court requires.~~

Notes and Comments

Comment to 2024 change: Rule 32.1 is amended to remove the list of requirements of what information must be included in the docketing statement in favor of a form approved by the Office of Court Administration.

Rule 39. Oral Argument; Decision Without Argument

39.8. Clerk's Notice

The clerk must send to the parties—at least 21 days before the date the case is set for argument or submission without argument—a notice telling the parties:

- (a) whether the court will allow oral argument or will submit the case without argument;
- (b) the date of argument or submission without argument;
- (c) if argument is allowed, ~~the time allotted for argument; and:~~
 - (1) the time allotted for argument; and
 - (2) the location of the argument or instructions for joining the argument electronically, the court's designated contact information, and instructions for submitting exhibits; and
- (d) the names of the members of the panel to which the case will be argued or submitted, subject to change by the court.

A party's failure to receive the notice does not prevent a case's argument or submission on the scheduled date. Once issued, the court may amend the notice with less than 21 days before the case is set for argument or submission.

Notes and Comments

Comment to 2024 change: Rule 39.8 is amended to clarify requirements for notices and to clarify the court's ability to amend notices.