

TRAP 1 Scope of Rules; Local Rules of Courts of Appeals.

(a) [No change.]

(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. [When an appeal or original proceeding is filed, copies of the court's local rules shall be provided to all counsel of record.]

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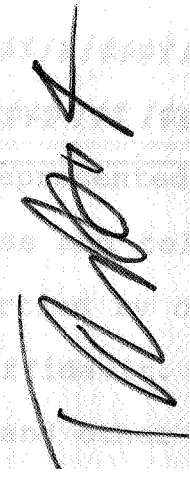
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the clerk shall mail or

TRAP 4. Signing, Filing and Service

(a) Signing. Each application, brief, motion or other paper filed shall be signed by at least one of the party/ [and] shall give the State Bar number, the mailing address and telephone number of the person whose name is signed thereto. A copy of the paper has been delivered or mailed to the party/ or the party's attorney. A party who is an attorney shall sign his brief and give his State Bar number. The statement of service on opposition filed by a party who is not a licensed attorney shall be verified by a licensed attorney.

(b) Filing. The filing of records, briefs, motions, and other papers in the appellate court as required by these rules shall be accomplished by filing them with the clerk, except that the court may permit the papers to be filed with the post office. He shall note thereon the filing date and the time they are transmitted to the office of the clerk. In a matter on 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 <sup>or before</sup> 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



TRAP 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/ [and] 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 the day of the week paper has been delivered or mailed to each of the 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 <sup>or before</sup> the day of the week before [on] 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. ~~[When the date of filing falls on a Saturday, Sunday, or legal holiday, any paper filed by mail is mailed on time when it is deposited in the mail on the last day for filing the same. ~~is extended in accordance with Appellate Rule 5(a).~~~~

- (c) (No change.)
- (d) (No change.)
- (e) (No change.)
- (f) (No change.)

(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 [and addresses] of the persons 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.

*or before*

TRAP 17 Issuance of Process by Appellate Court

(a) Any writ ~~of~~ [or] process issuing from any appellate court shall bear the teste 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) (No change.)

TRAP 17

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TRAP 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. [An amicus curiae brief shall not exceed 50 pages in length, exclusive of pages containing the table of contents, index of authorities, points of error, and any addendum containing statutes, rules, regulations, etc. The court may, upon motion and order, permit a longer brief.]

*Urban Appellate*

TRAP 41 Ordinary Appeal - When Perfected

(a) (No change.)

(b) (No change.)

(c) Prematurely Filed Documents. No appeal or 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~~ [time] of signing of the judgment or the ~~date~~ [time] 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.

*When appeal*

TRAP 43 Orders Pending Interlocutory Appeal in Civil Cases.

(a) (No change.)

(b) Security. Except as provided in subdivision (a) the trial court may permit interlocutory order[s] to be suspended pending an appeal therefrom by filing security pursuant to Rule 47. Denial of such suspension may be reviewed for abuse of discretion on motion by 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 ~~[or other proceedings~~  
~~under Rules 47 or 49.]~~

(d) (No change.)

(e) (No change.)

(f) (No change.)

(g) (No change.)

(h) (No change.)

orders  
pursuant to

Under Appellate

TRAP 47 Suspension of Enforcement of Judgment Pending Appeal in  
Civil Cases

(a) (No change.)

(b) (No change.)

(c) (No change.)

(d) (No change.)

(e) (No change.)

(f) (No change.)

(g) Conservatorship or Custody. When the judgment is one involving the conservatorship or custody of a ~~child~~ [minor], the appeal, with or without security shall not have the effect of suspending the judgment as to the conservatorship or custody of the ~~child~~ [minor], 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) (No change.)

(i) (No change.)

(j) (No change.)

(k) (No change.)

*Clara Office*

Rule 56. Receipt of the Record by Court of Appeals

(a) Duty of Clerk on Receiving Transcript. The courts of appeals shall receive the transcript sent to them, and receipt for same is required. The clerk need not be required to take a transcript out of the court or any express office, unless the postage thereon is fully paid. Upon receipt of the transcript, the clerk shall cause the clerk of the court of appeals to examine it in order to ascertain whether, in case of an appeal, a proper appeal bond or affidavit in lieu thereof (when bond is required) is given; and in case of a writ of error, whether the writ and bond or affidavit in lieu thereof (when required) appear to have been filed. If the clerk finds that the appeal or writ of error is not perfected, ~~he~~ [the clerk] shall note on the transcript the date of its reception and refer the matter to the court. If, in reference to the transcript, the court shall be of the opinion that the transcript shows that the appeal or writ of error has been duly perfected, ~~they~~ [it] shall order the transcript to be filed as of the date of its reception. If not, ~~they~~ [it] 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 ~~is~~ / ~~is not~~ [is] amended, the appeal shall be dismissed.

*Clara Appellate*

*not* [ ]

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 is 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~~ the clerk that the appeal or writ of error has not been duly perfected, ~~he~~ the clerk 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~~ it shall order the transcript to be filed as of the date of its reception. If not, ~~they~~ it 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 ~~is~~ is amended, the appeal shall be dismissed.

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If a transcript, properly endorsed (when endorsement is required), is received by the clerk within the time allowed by these rules, ~~he~~ [the clerk] shall endorse his [or her] 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 it in his [or her] 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~~ [the party's] attorney) tendering the statement of facts of the action and state the reasons therefor.

Rule 57. Docketing the Appeal

(a) (No change.)

(b) Attorneys' Names. Before an attorney has filed his [or  
her] brief he <sup>or she</sup> may notify the clerk in writing of the fact that he  
[or she] represents a named party to the appeal, which fact shall  
be ~~by the clerk~~ noted [by the clerk] upon the docket, opposite  
the name of the party for whom ~~he~~ [the attorney] appears, and  
shall be regarded by the court as having whatever effect is given  
to the appearance of a party to a case without [a] brief [having  
been] filed. After briefs have been filed, the name of the  
attorney or attorneys signed/ing] 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 [upon request.

*Uma approved*

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 ~~if~~ it would otherwise be entitled to.

*Clara Appled*

Rule 72.            Motions to Dismiss for Want of Jurisdiction

Motions to dismiss for want of jurisdiction to decide the appeal and for such [other] defects as defeat the jurisdiction in the particular case and [which] cannot be waived shall also be made, filed and docketed within thirty 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.

*Ure appeal*

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.

[NEW RULE]

Rule 82a

When a court of appeals reverses the judgment or decree of the court below, or proceeds to modify the judgment and to render such judgment or decree in favor of the appellant as should have been rendered by the court below, it shall render judgment in favor of the appellant 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 appellee and ordering the clerk of the court of appeals ~~shall~~ notify the district clerk to abstract and enforce the judgment of the court of appeals as in other cases.

to

Rule 90. Opinions, Publication and Citation

Text as amended by the Supreme Court effective January 1, 1988. See also text as adopted by the Court of Criminal Appeals, post.

s10H0S0B3T (a) Decision and Opinion. The court of appeals shall hand down a written opinion which shall be as brief as practicable but which shall address every issue raised and necessary to final disposition of the appeal. Where the issues are clearly settled, the court shall write a brief memorandum opinion/~~which shall 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 participating in the decision shall be noted on all written opinions or orders handed down by a panel.

~~(c)~~ [c] 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."

~~(d)~~ [(d)] 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



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.

*Walter A. Johnson*

SECTION NINE. APPLICATION FOR WRIT OF ERROR  
AND BRIEF IN RESPONSE [IN THE SUPREME COURT]

Rule 130. Filing of Application in Court of Appeals

(a) (No change.)

(b) [Number of Copies;] Time and Place of Filing. [Twelve copies of] T[t]he application shall be filed with the Clerk of the Court of Appeals within thirty days after the overruling of the last timely motion for rehearing filed by any party.

(c) (No change.)

(d) (No change.)

*Me approval*

Rule 133. Orders on Applications for Writ of Error

Text as amended by the Supreme Court effective January 1, 1988. See also text as adopted by the Court of Criminal Appeals, post.

(a) (No change.)

(b) Conflict in Decisions. In cases of conflict ~~named in~~ [under] 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 an 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) (No change.)

(Amended by Supreme Court order of July 15, 1987, eff. Jan. 1, 1988.)

A handwritten signature in cursive script, likely of a court official, located at the bottom center of the page.

Rule 134. When Application [Denied,] Dismissed or Refused

When the application shall have been filed for a period of ten days, if the court determines to [deny,] 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 fifteen days from the date of rendition of the judgment [denying,] 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[, refusing] 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.

*Clara Oppen*

Rule 135. Notice of Granting, Etc.

When the Supreme Court grants, [denies,] 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.

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SECTION TEN. DIRECT APPEALS [TO THE SUPREME COURT]

*Direct Appeals*

