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Appellate Procedure Reform 1981 Rules of Civil Procedure: Content and Comments.

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APPELLATE PROCEDURE REFORM

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I. BACKGROUND AND PURPOSE

A number of the procedural rules relating to the time designated for taking various steps required for appellate review of a trial court judgment have been amended effective January 1, 1981. The laudable goal of these revisions is to eliminate, insofar as practical, the jurisdictional requirements which have sometimes resulted in disposition of appeals on grounds unrelated to the merits of the appeal. Also, by simplifying the procedures for perfecting an appeal, appeals should be expedited.

The revisions had their genesis with the Texas Judicial Council screening all the appellate rules to locate traps whereby a jurisdictional time requirement could result in the automatic dismissal of an appeal. The principal difficulty encountered under the previous rules was that virtually all the time requirements were keyed to each other. It was essential under the prior rules, therefore, that the careful appellate lawyer keep track of the dates on which all prior jurisdictional events occurred.

A joint committee was appointed by the Judicial Section of the State Bar and the Committee on Administration of Justice.[1] This Committee, after extensive study of the existing appellate procedure, suggested a number of amendments to the Texas Rules of Civil Procedure.[2] The Committee proposed eliminating all jurisdictional requirements other than the timely filing of a motion for new trial, if applicable, and perfection of the appeal by timely

1. The members of the joint committee included: Chief Justice Clarence A. Guittard, Chairman; Justice Quentin Keith; Justice Charles L. Reynolds; Justice Bob Shannon; Hon. David M. Kendall, Jr.; Hon. Richard J. Clarkson; and Hon. William V. Dorsaneo, III.

2. *See* COMMITTEE ON ADMINISTRATION OF JUSTICE, *Report to the Supreme Court of Texas* (1979) (unpublished report).

filing a bond or otherwise complying with the rules.[3] Delay or omission in other procedural steps, such as filing the record, would be dealt with like delay or omission in filing briefs under the rules providing for dismissal or affirmance of the appeal on motion or after notice by the court.[4] In order to eliminate the present confusion of consecutive time periods, it was proposed that up until the time that the record is filed in the court of civil appeals, all time periods would begin with the date the judgment is signed.[5] This concept merely required housekeeping changes in several existing rules. After the record is filed in the court of civil appeals, the time periods under the existing rules remained unchanged.[6]

These *proposals* were submitted to the Supreme Court Advisory Committee and, after thorough review, were substantially approved by that Committee. The Advisory Committee's recommendations were submitted to the Supreme Court and, after consideration, were adopted with only minor drafting changes.[7]

II. Specific Rule Amendments

A. *Rule 297—Time to File Findings and Conclusions*

Rule 297 was amended to conform with changes in other rules which provide for time periods to begin running on the date the final judgment or order overruling a motion for new trial is signed or the motion is overruled by operation of law.[8]

B. *Rule 306a—Date of Judgment or Order*

Since all time periods relating to the perfection of an appeal are keyed to the date that the final judgment is signed, it is imperative

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3. *See id.*

4. *See id.*; The Supreme Court of Texas, *Order of June 10, 1980 Adopting Amendments to the Rules of Civil Procedure* (1980).

5. *See* Committee on Administration of Justice, *Report to the Supreme Court of Texas* (1979) (unpublished report).

6. *See id.*

7. *See* The Supreme Court of Texas, *Order of June 10, 1980 Adopting Amendments to the Texas Rules of Civil Procedure* (1980). The Texas Supreme Court was granted the power to make and institute civil rules of procedure in 1938. *See* Tex. Rev. Civ. Stat. Ann. arts. 1731a (Vernon 1962), 2328b (Vernon Supp. 1980-1981); McDonald, *The Background of the Texas Procedural Rules*, 19 Texas L. Rev. 229, 248 (1941); Pope & McConnico, *Texas Civil Procedure Rule Making*, 30 Baylor L. Rev. 5, 10, 12-19 (1978).

8. *Compare* Tex. R. Civ. P. 297 (1978) *with* Tex. R. Civ. P. 297.

that this date be clearly shown. In recognition of the apparent inability over the past thirty-five years to persuade all judges, attorneys, and clerks to cause "the date of signing" to be stated in the final judgment, the amended rule provides that the date of signing may be shown in the record by a certificate of the trial judge or otherwise, as provided in the rules. To clarify the requirement that the date of signing be shown, the amended rule eliminates the use of the term "rendition of judgment."[9]

C. *Rule 324—Prerequisites of Appeal*

Rule 324 was amended to clarify the instances in which it is *necessary* to file a motion for new trial in order to present a complaint. The rule provides that it shall be necessary to file a motion for new trial in order to present a complaint upon which evidence must be heard, such as jury misconduct or newly discovered evidence.[10] Otherwise, a motion for new trial shall not be a prerequisite to the right to complain on appeal in any jury or non-jury case.[11]

D. *Rule 329b—Time for Filing Motions (For New Trial)*

Rule 329b has been completely rewritten to carry out the objective of having all appellate steps run from the date the final judgment is signed.[12] This has been accomplished in the revised rule by the following procedure.

If a motion for new trial is filed, it shall be filed within 30 days after the judgment is signed. The strict 10 day period has been repealed. By allowing a 30 day period instead of the previous 10 days, there should be no necessity for filing formal motions for new trial.[13]

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9. *See, e.g.*, Walker v. Harrison, 597 S.W.2d 913, 916 (Tex. 1980); Burrell v. Cornelius, 570 S.W.2d 382, 383 (Tex. 1978); Stegall v. Cameron, 601 S.W.2d 771, 773-74 (Tex. Civ. App.—Dallas 1980, writ dism'd). *Compare* TEX. R. CIV. P. 306a (1978) *with* TEX. R. CIV. P. 306a.

10. *Compare* TEX. R. CIV. P. 324 (1978) *with* TEX. R. CIV. P. 324. The 1978 rule required filing a motion for new trial when a complaint was alleged "which has not been otherwise ruled upon." *See* TEX. R. CIV. P. 324 (1978). *See also* 4 R. MCDONALD, TEXAS CIVIL PRACTICE § 18.04 (rev. 1971).

11. *See* TEX. R. CIV. P. 324.

12. *See* TEX. R. CIV. P. 329b.

13. *See id.* Rule 329b provides that a motion for new trial shall be filed within thirty

One or more amended motions may be filed, without leave of court, *if* both filed before any prior motion is overruled and within 30 days after the judgment or order complained of is signed. An amended motion, therefore, gives no additional time. The former meaningless requirement of "presentment" is eliminated.[14]

If a written order ruling upon the original or amended motion for new trial is not signed within 75 days after the judgment is signed, it is overruled by operation of law on the 75th day.[15] Since both an original and an amended motion for new trial are overruled by operation of law at the same time, this date should now be clearly ascertainable. As amended, rule 329b, also eliminates the prior specificity of the 45 day extension order.[16] The provision for an agreed postponement of the time for hearing a motion for new trial is deleted.[17]

The trial court has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment within 30 days after it is *signed,* regardless of whether an appeal has been perfected.[18]

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(30) days after judgment is signed and *not* after the judgment is rendered; one or more amended motions may be filed before any preceeding motion is ruled on, but within thirty (30) days after the judgment complained of is signed. *See id.*

14. *See* Moore v. Mauldin, 428 S.W.2d 808, 809 (Tex. 1968). *See also* Roth v. Law, 579 S.W.2d 949, 955-56 (Tex. Civ. App.—Corpus Christi 1979, writ ref'd n.r.e.). The prior rule 329b included a requirement "to present" an original or amended motion to the court. This phrase, however, was never interpreted or applied in its literal or strict sense and as a result lost any substantive value. *See* Moore v. Maudlin, 428 S.W.2d 808, 809 (Tex. 1968); University of Texas v. Morris, 163 Tex. 130, 133-34, 352 S.W.2d 947, 949 (1962).

15. *See* TEX. R. CIV. P. 329b.

16. *See* TEX. R. CIV. P. 329b(3) (1978). "All motions and amended motions for new trial must be determined within not exceeding forty-five (45) days after the original or amended motion is filed . . . . " *Id.; see, e.g.,* Texas & N.O.R.R. v. Arnold, 388 S.W.2d 181, 184-85 (Tex. 1965) (notes of court reporter did not conform to "written agreement" under rule 329b); Texas Employers' Ass'n v. Dixson, 546 S.W.2d, 124, 126 (Tex. Civ. App.—Beaumont 1977, no writ) (estoppel did not alleviate filing requirement); Hulsey v. Keel, 541 S.W.2d 656, 657-58 (Tex. Civ. App.—San Antonio 1976, writ ref'd n.r.e.) (unsigned agreement did not conform to rule 329b). *See generally* Hodges, *Preparation for Appellate Complaint,* 12 HOUS. L. REV. 799, 809-11 (1975).

17. *Compare* TEX. R. CIV. P. 329b (no provision for agreed postponement) *with* TEX. R. CIV. P. 329b (1978) (successive written agreements of parties can extend time to determine motion for new trial).

18. Cases pre-dating the effective date of the new rule 329b interpreted the old rule as allowing the trial court the plenary power to vacate a judgment while an amended motion for new trial was pending. Transamerican Leasing Co. v. Three Bears, Inc., 567 S.W.2d 799, 800 (Tex. 1978); *accord,* McCormack v. Guillot, 597 S.W.2d 345, 345-46 (Tex. 1980) (trial court retains plenary power); Schley v. Structural Metals, Inc., 595 S.W.2d 572, 584 (Tex. 1979) (trial court retains jurisdiction over the cause and plenary power over its judgment);

If a motion for new trial is timely filed, plenary power continues for 30 days after all timely filed motions for new trial have been overruled by *signed order* or by operation of law, whichever occurs first.[19]

Subdivision (f) of rule 329b specifically spells out the effect of expiration of the trial court's plenary power over its judgment.[20] After such expiration the trial court has authority only to enter orders correcting clerical mistakes in the record of a judgment or to render judgment nunc pro tunc under rules 316 and 317; the judgment cannot be set aside except by Bill of Review.[21] The trial court, however, may sign an order setting aside a prior order which was void because it was entered after expiration of plenary power time.[22] This change grants the trial court authority to set aside a prior void order after the Supreme Court has granted leave to file an application for a writ of mandamus to compel such action. If a judgment is modified, corrected, or reformed *in any respect,* the time for appeal shall run from the time such modified, corrected, or reformed judgment is *signed.*[23] Additionally, the provision under the prior rule for an agreed postponement by the attorneys of the time for hearing a motion for new trial is eliminated.[24]

E. *Rule 353—Notice of Limitation of Appeal*

In conformity with other rule changes, notice of intent to limit

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Mathes v. Kelton, 569 S.W.2d 876, 878 (Tex. 1978) (trial court has plenary power to reverse, modify, or vacate its judgment at any time before it becomes final). *See generally* Figari, *Texas Civil Procedure,* 33 Sw. L.J. 455, 480 (1979).

19. *See* TEX. R. CIV. P. 329b. The new rule 329b provides that the trial court retains plenary power to modify or vacate a judgment thirty (30) days after it is signed or after all such timely filed motions for new trial are overruled. *See id.*

20. *See* TEX. R. CIV. P. 329b(f).

21. *Id.; see* TEX. R. CIV. P. 316 (mistakes in the record may be amended by judge in open court); TEX. R. CIV. P. 317 (omissions, mistakes, miscalculations, or misrecitals of sums of money or names can be corrected in the record).

22. *See* Walker v. Harrison, 597 S.W.2d 913, 915 (Tex. 1980); Harris County v. Miller, 576 S.W.2d 809, 809-10 (Tex. 1979); Figari, *Texas Civil Procedure,* 34 Sw. L.J. 415, 434 (1980).

23. *See, e.g.,* Anderson v. Casebolt, 493 S.W.2d 509, 510 (Tex. 1973); Dawson v. First Continental Real Estate Inv. Trust, 590 S.W.2d 560, 562 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ); Kollman Stone Indus., Inc. v. Keller, 574 S.W.2d 249, 252 (Tex. Civ. App.—Beaumont 1978, no writ).

24. *Compare* TEX. R. CIV. P. 329b (no provision for agreed postponement) *with* TEX. R. CIV. P. 329b (1978) (parties could extend time by written agreement).

the scope of an appeal must be served on the adverse party within 15 days after the judgment is signed, or if a motion for new trial is filed, within 75 days after the judgment is signed.[25]

F. *Rule 354—Cost Bond or Deposit*

Rule 354 has been amended to permit an officer of the court to move for a change in the amount of the bond or deposit.[26] The trial court's power to increase the amount of the bond continues for 30 days after the bond or certificate is filed.[27] If appellant fails to comply with the order increasing the amount of the bond, the appeal shall be subject to dismissal or affirmance on certificate.[28] No motion to increase the amount of the bond shall be filed in the appellate court until 30 days after the bond or certificate is filed.[29]

G. *Rule 355—Party Unable to Give Cost Bond*

The procedure for filing an affidavit of inability to give security for costs has been revised in several respects.[30] Any interested officer of the court or party to the suit may contest the affidavit.[31] Finally, if no contest is filed, or if no ruling is made thereon within 10 days after its filing, the allegations included within the affidavit

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25. The new rule allows for both 15 and 75 day time periods whereas the previous rule mandated notice to be served upon the adverse party within 15 days regardless of when the motion for new trial was filed or signed. *Compare* TEX. R. CIV. P. 353 *with* TEX. R. CIV. P. 353 (1978).

26. *See* TEX. R. CIV. P. 354.

27. *See id.*

28. *See* TEX. R. CIV. P. 387. Under the revised version of rule 387 in cases of appeal or writ of error the court may dismiss or affirm on failure to comply with the rules. As indicated in the comments after the rule, however, failure to comply with time requirements will not mandate automatic loss of appeal or writ of error. *See id.*

29. *See* TEX. R. CIV. P. 365 (rule 365 remains unchanged from 1978 rule).

30. *See* TEX. R. CIV. P. 355. Rule 355 reads in pertinent part: "(b) The appellant or his attorney shall give notice of the filing of the affidavit to the opposing party or his attorney within two days after the filing; otherwise, he shall not be entitled to prosecute the appeal without paying the costs or giving security therefor." *Id. Compare* TEX. R. CIV. P. 355 *with* TEX. R. CIV. P. 355 (1978).

31. *See* TEX. R. CIV. P. 355. Rule 355 reads in pertinent part:

> (c) Any interested officer of the court or party to the suit, may by sworn pleading, contest the affidavit within ten days after the affidavit is filed, whereupon the court trying the case (if in season) or (if not in season) 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.

Id.

are to be taken as true.[32]

H. *Rule 356—Time for Perfecting Appeal*

When an appeal bond is required, the bond, or affidavit in lieu thereof, shall be filed within 30 days after signing of the judgment or, if a motion for new trial is filed, within 90 days after the judgment is signed.[33] This rule conforms the time for perfecting an appeal to the changes made under revised rule 329b.[34] The appellate court may extend the time for late filing of the bond, deposit, or affidavit if filed within 15 days after the last day allowed; and if within the same period, a motion is filed in the appellate court "reasonably explaining" the need for an extension.[35]

If a contest of an affidavit is sustained, the time for filing the bond or deposit is extended for 10 days after the sustaining order is issued unless the trial court finds and recites that the affidavit was not filed in good faith.[36] This provision eliminates the procedural trap which was created under the old rule when a contest of an affidavit of validity was sustained.[37]

When a bond for costs on appeal is not required by law, the appellant should file a written notice of appeal with the clerk or

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32. *See* TEX. R. CIV. P. 355(e).

33. *See* TEX. R. CIV. P. 356.

34. *See* TEX. R. CIV. P. 329b.

35. The requirement of a "reasonable explanation" for the failure to file is included within rule 21c. In *Meshwert v. Meshwert* the court established that reasonable explanation meant any "plausible statement of circumstances indicating that failure to file . . . was not delibertate or intentional, but was the result of inadvertence, mistake or mischance." Meshwert v. Meshwert, 549 S.W.2d 383, 384 (Tex. 1977); *see, e.g.*, Chem-Saf Prods. Inc. v. Reilly Tar & Chem. Corp., 592 S.W.2d 26, 27 (Tex. Civ. App.—Beaumont 1979, no writ); Dawson v. First Continental Real Estate Inv. Trust, 590 S.W.2d 560, 563 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ); Alexander v. Bowens, 581 S.W.2d 714, 715 (Tex. Civ. App.—Dallas 1979, no writ).

36. *See* TEX. R. CIV. P. 356(b).

37. *See, e.g.*, King v. Payne, 156 Tex. 105, 110, 292 S.W.2d 331, 334 (1956); Glidden Co. v. Aetna Cas. & Sur. Co., 155 Tex. 591, 595, 291 S.W.2d 315, 318 (1956); Talley v. Talley, 587 S.W.2d 541, 542 (Tex. Civ. App.—Corpus Christi 1979, writ dism'd) (per curiam). The 1981 rule also attempts to alleviate the circumstances under which there may be a delay beyond the old thirty day limit on a ruling concerning a pauper's affidavit (thirty day limit). *Compare* TEX. R. CIV. P. 356(b) (time for perfecting appeal) *with* TEX. R. CIV. P. 356(b) (1978) (time for filing cost bond or making deposit). *See also* Brewer v. Texas, 576 S.W.2d 404, 405 (Tex. Crim. App. 1979) (rule change will also effect time limits for posting bail in criminal proceedings); McKnight, *Family Law: Husband and Wife*, 34 SW. L.J. 115, 144 (1980) (effect of rule on marital law).

judge within the time required for filing the bond.[38] Oral notice or a recital in the judgment of intent to appeal is insufficient.[39]

I. *Rule 376—Transcript*

Rule 376 has been amended to require the clerk of the trial court to forward the transcript immediately to the appellate court designated by the appealing party.[40] The rule also specifies the instruments to be included in the transcript unless otherwise designated by agreement of the parties.[41]

J. *Rule 377—Statement of Facts*

Rule 377 has been amended to encourage a partial statement of facts.[42] It does so by providing that when appellant has requested a partial statement of facts and stated the points to be relied upon, there shall be a presumption on appeal that nothing omitted from

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38. *See* TEX. R. CIV. P. 356(c). As indicated in the comments following the rule, the requirement of written notice is taken from old rule 354. *See* TEX. R. CIV. P. 354(c) (1978).

39. *See* Texas Animal Health Comm'n v. Nunley, 598 S.W.2d 233, 234 (Tex. 1980); City of Irving v. Lesley, 601 S.W.2d 742, 742 (Tex. Civ. App.—Dallas 1980, no writ). Prior case law had interpreted the language of rule 354(c), "[a]ppellant shall in lieu of bond file a notice of appeal which shall be filed with the clerk," as requiring a separate written motion to be filed. City of Irving v. Lesley, 601 S.W.2d 742, 743 (Tex. Civ. App.—Dallas 1980, no writ). The rule expressly requires a written document be filed with the clerk and does not allow a mere recital in the judgment or an oral statement directed to the record. *See* TEX. R. CIV. P. 356(c).

40. *Compare* TEX. R. CIV. P. 376 (1978) *with* TEX. R. CIV. P. 376. The new rule recites in pertinent part: "Upon the filing of the cost bond or deposit, the clerk of the trial court shall prepare under his hand and seal of the court and immediately transmit to the appellate court designated by the appealing party a true copy of the proceedings in the trial court, ..." TEX. R. CIV. P. 376.

41. *See* TEX. R. CIV. P. 376. The listing of documents to be included by the trial court has been expanded from the old rule to include:

> [T]he live pleadings upon which the trial was had; the order of the court upon any motions or exceptions as to which complaint is made; the charge of the court and the verdict of the jury, or the findings of fact and conclusions of law; bills of exceptions; the judgment of the court; the motion for new trial and the order of the court thereon; the notice of limitation of appeal with the date of giving or filing the same; any statement of the parties as to the matter to be included in the record; the bond on appeal or the certificate, affidavit, or notice in lieu of bond; a certified bill of costs, including the cost of the transcript and the statement of facts, if any, and showing any credits for payments made thereon; and any filed paper either party may designate as material.

Id.

42. *Compare* TEX. R. CIV. P. 377 *with* TEX. R. CIV. P. 378.

the record is relevant to these limited points.[43] Appellee may then designate additional portions of the evidence or facts to be included in the statement.[44] The amended rule also permits the filing of the statement of facts when it is certified by the official court reporter.[45] The rule, therefore, eliminates the frequent delays resulting from the former requirement of approval of the statement of facts by all the parties or the trial court. Provision is made for resolution of disputes regarding the accuracy of the statement of facts.[46]

K. *Rule 381—Time for Filing Bills of Exceptions*

Formal bills of exception are rarely required.[47] A bill of exception, when required, must be filed within 60 days after the judgment is *signed*, or within 90 days from that date if a timely motion for new trial is filed.[48] Upon a motion showing good cause, the bill may be included in a supplemental transcript.[49]

L. *Rule 385—Accelerated Appeals*

Rule 385 now applies to quo warranto proceedings as well as appeals from interlocutory orders.[50] The rule provides that no motion for new trial shall be filed in appeals for interlocutory orders.[51] In a quo warranto proceeding, however, a party *may* file a motion for new trial, but it shall not extend the time for perfecting the appeal or the time for filing appellant's brief. The trial court may grant a

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43. *See* TEX. R. CIV. P. 377(d).

44. *See id.*

45. *See* TEX. R. CIV. P. 377(e).

46. *See id.* If a dispute arises concerning the facts as stated in the reporter's transcript the trial court shall be the final judge. The rule allows the appellate court to return the transcript to the trial court for a hearing to settle the dispute. *See id.*

47. *See* TEX. R. CIV. P. 372. Objections to the charge and the court's rulings thereon may be included as a part of any transcript or statement of facts on appeal and, when so included in either, shall constitute a sufficient bill of exception. *See id.* (formal exceptions are not always required); TEX. R. CIV. P. 373 (formal exceptions to rulings or orders of the court unnecessary); TEX. R. CIV. P. 376b (court reporter shall keep a record of exceptions).

48. *See* TEX. R. CIV. P. 381.

49. *See* TEX. R. CIV. P. 428. "[T]he 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." *Id.*

50. *See* TEX. R. CIV. P. 385.

51. *See* TEX. R. CIV. P. 385(b).

motion for new trial in a quo warranto proceeding, if timely filed, within 50 days after the judgment or order appealed from is signed.[52] If not determined in that period, the motion for new trial is overruled by operation of law.

In *all* accelerated appeals, the bond, or rule 356 affidavit, shall be filed within 30 days after the judgment or order is signed, while the record shall be filed in the appellate court within 30 days after the judgment or order is signed.[53] Appellant's brief is due within 20 days after the record is filed, and appellee's brief shall be filed within 20 days after appellant's brief is filed.[54]

M. *Rule 386—Time to File Transcript and Statement of Facts*

The transcript and statement of facts shall be filed in the appellate court within 60 days after the judgment is signed if no motion for new trial is filed and within 100 days if a motion for new trial is filed.[55] The record shall be filed within 60 days after a writ of error is perfected.[56]

The amended rule provides that failure to timely file either the transcript or the statement of facts is *not* jurisdictional,[57] but shall be grounds for dismissing the appeal, affirming the judgment appealed from, disregarding materials filed late, or applying presumptions against the appellant, either upon appellee's motion or on the court's own motion, as the court shall determine.[58]

N. *Rule 414—Briefs*

Six copies of appellant's brief shall be filed in the court of civil appeals within 30 days after the filing of the transcript and statement of facts. Within 25 days after the filing of appellant's brief,

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52. *See* TEX. R. CIV. P. 385(c).
53. *See* TEX. R. CIV. P. 385(d).
54. *See id.*
55. *See* TEX. R. CIV. P. 386.
56. *See id.*
57. The wording of the old rule was construed in *Matlock v. Matlock* to dictate a jurisdictional failure when the transcript was not timely filed. Matlock v. Matlock, 151 Tex. 308, 312, 249 S.W.2d 587, 590 (1952); *see, e.g.*, Pollard v. American Hosp. & Life Ins. Co., 472 S.W.2d 116, 117 (Tex. 1971); Gallegos v. Truck Ins. Exch., 539 S.W.2d 353, 354 (Tex. Civ. App.—San Antonio 1976, no writ); Hodges, *Preparation For Appellate Complaint*, 12 HOUS. L. REV. 799, 811-12 (1975).
58. *See* TEX. R. CIV. P. 386.

six copies of appellee's brief shall be filed.[59] Additional time may be granted either party upon a showing of "reasonable explanation."[60]

III. Motions for Rehearing and Application for Writ of Error

There are no rule changes affecting the time periods of application for writ of error from an adverse judgment of the court of civil appeals.

A. *Rule 458—Motion and Second Motion for Rehearing*

A motion for rehearing must be filed within 15 days after the date of rendition of the judgment or decision of the court of civil appeals. The assignments of error relied upon for rehearing shall be distinctly specified in the motion.[61] Rule 458(b) was revised to clarify the point that if on rehearing the court of civil appeals changes its judgment or hands down an opinion in connection with overruling a motion for rehearing, any party may file a further motion for rehearing. Such further motion for rehearing, however, is not 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 civil appeals in a prior motion for rehearing.[62] This change eliminates the sometimes harsh result mandated by the prior rule.[63] The rule, as amended, provides that when a further motion for rehearing is filed, the requirements pertaining to a first motion for rehearing are applicable to the second motion for rehearing.[64]

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59. *See* Tex. R. Civ. P. 414.

60. *See id.* The term "reasonable explanation" is substituted in the new rule for the words "good cause." It is presumed that a "reasonable explanation" is determined by the guidelines in rule 21c. *Accord,* Meshwert v. Meshwert, 549 S.W.2d 383, 384 (Tex. 1977); *see* Tex. R. Civ. P. 21c.

61. *See* Tex. R. Civ. P. 458.

62. *See* Tex. R. Civ. P. 458(b).

63. *See* Oil Field Haulers Ass'n v. Railroad Comm'n, 381 S.W.2d 183, 187-88 (Tex. 1964). *Compare* Tex. R. Civ. P. 458(b) (1978) *with* Tex. R. Civ. P. 458. *See also* Thomas v. Morrison, 537 S.W.2d 274, 279-80 (Tex. Civ. App.—El Paso 1976, writ ref'd n.r.e.); Hatchell & Calvert, *Some Problems of Supreme Court Review,* 6 St. Mary's L.J. 303, 304-05 (1974).

64. *See* Tex. R. Civ. P. 458(a)-(b); 460; 468.

B. *Rule 468—Application for Writ of Error*

The time sequence for filing an application for writ of error under rule 468 is unchanged. The application for writ of error must be filed with the clerk of the court of civil appeals within 30 days after the overruling of a final motion for rehearing.[65] If any party files an application within this time period, any other party who was entitled to file such an application within such time, but failed to do so, shall have 10 additional days within which to file.[66]

IV. Conclusion

Although there have been some significant changes in the rules relating to appellate practice, it is the sincere belief of all concerned that appellate procedure has been simplified by these changes. By making all time periods leading to the perfection of an appeal date from the time the judgment is *signed*, the uncertainty surrounding the present consecutive time periods has been abolished. Appeals should no longer be dismissed for failure to timely perfect an appeal when a motion for new trial is overruled by operation of law.

Hopefully, under the new rules, dismissals for want of jurisdiction and resultant disposition of points of error without consideration of the merits will be kept to a bare minimum. Nevertheless, it must be kept in mind that procedural rules are necessary if appeals are to be expedited. The careful appellate practitioner will still find it necessary to read these rules in order to properly present an appeal.

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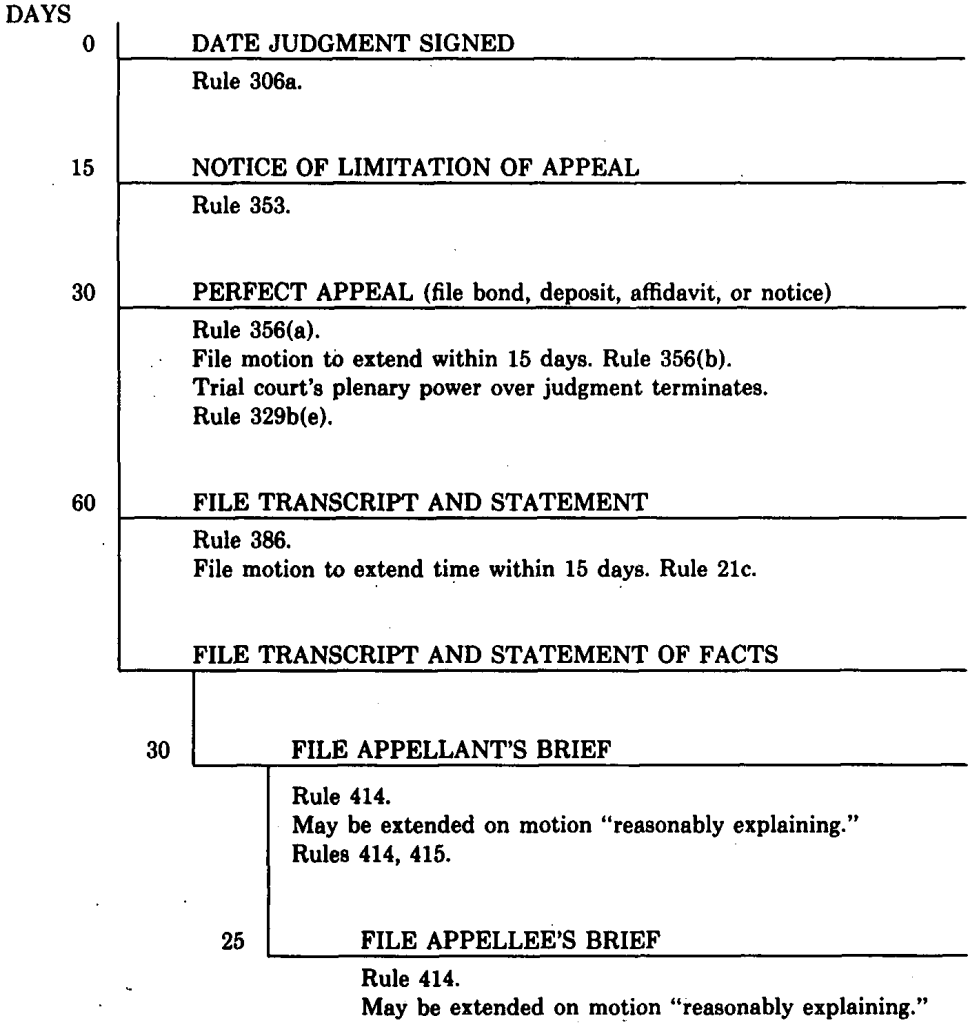
65. *See* Tex. R. Civ. P. 468.
66. *See id.*

APPELLATE TIMETABLE I

APPEAL WITHOUT MOTION FOR NEW TRIAL



APPELLATE TIMETABLE II

APPEAL WITH MOTION FOR NEW TRIAL

DAYS

0 — DATE JUDGMENT SIGNED

Rule 306a.

30 — FILE MOTION FOR NEW TRIAL (OR TO MODIFY JUDGMENT)

Rule 329b(a), (g).
It may be amended one or more times within the 30 days unless a prior motion has been overruled. Rule 329b(h).

NOTE: Trial court's action or inaction on the motion does not affect time for appeal unless motion is granted, and then time runs from new judgment (Rule 329b(h)).

75 — AN ORIGINAL OR AMENDED MOTION FOR NEW TRIAL IS OVERRULED BY OPERATION OF LAW.
Rule 329b(c).

75 — NOTICE OF LIMITATION OF APPEAL

Rule 353.

90 — PERFECT APPEAL (By bond, deposit, affidavit, or notice)

Rule 356(a).
File motion to extend time for perfecting appeal within 15 days. Rule 356(b).

100 — FILE TRANSCRIPT AND STATEMENT OF FACTS

Rule 414.
File motion to extend time for filing within 15 days. Rule 21c.

FILE APPELLANT'S BRIEF

Rule 386.
May be extended on motion "reasonably explaining."
Rules 414, 415.

FILE APPELLEE'S BRIEF

Rule 414.
May be extended on motion "reasonably explaining."

APPELLATE TIMETABLE III

ACCELERATED APPEALS (QUO WARRANTO AND INTERLOCUTORY APPEALS)

DAYS

0 DATE ORDER OR JUDGMENT IS SIGNED

Rule 306a.

30 PERFECT APPEAL AND FILE RECORD

Rule 385(d).
File motion to extend within 15 days.
Rule 21c.

The Court of Civil Appeals may shorten the time for filing briefs in appeals from an order granting, denying, or refusing a motion to dissolve a temporary injunction. Rule 385(f).

20 FILE APPELLANT'S BRIEF

Rule 385(d).
May be extended on motion "reasonably explaining."

20 FILE APPELLEE'S BRIEF

Rule 385(d).
May be extended on motion "reasonably explaining."

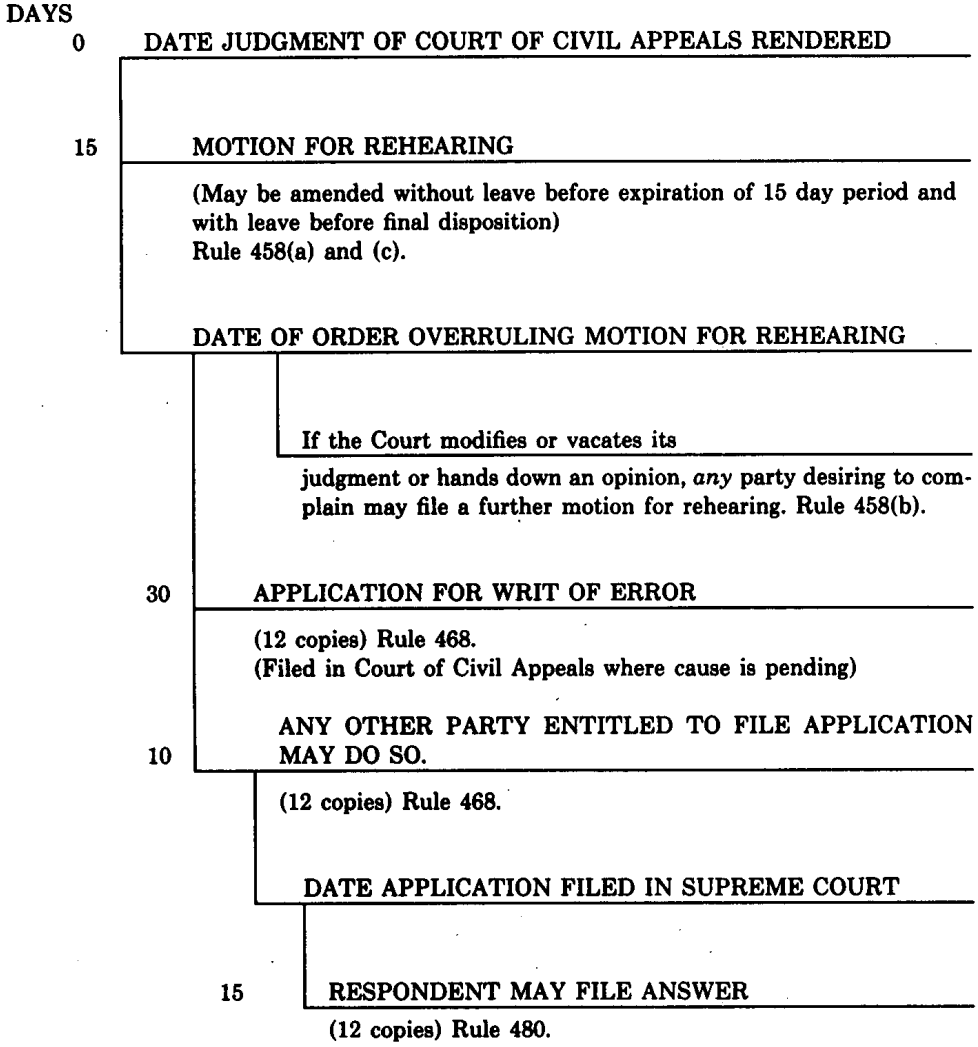
QUO WARRANTO ONLY

50 MOTION FOR NEW TRIAL MAY BE FILED WITHIN 50 DAYS

If not determined within that period, it is overruled by operation of law. Rule 385(c).

APPELLATE TIMETABLE IV

REVIEW OF JUDGMENT OF COURT OF CIVIL APPEALS (WHERE PERMITTED)



APPELLATE TIMETABLE V

CONTEST OF AFFIDAVIT IN LIEU OF BOND

DAYS		
0	DATE JUDGMENT IS SIGNED	
	Rule 306a.	
30	IF NO MOTION FOR NEW TRIAL IS FILED	
or		
90	IF A MOTION FOR NEW TRIAL IS TIMELY FILED	
	FILE AFFIDAVIT (IN LIEU OF BOND)	
	Rule 356(a). May be extended 15 days on motion "reasonably explaining."	
2	NOTICE TO APPELLEE	
	Rule 355(b), subject to Rule 5.	
10	FILE CONTEST by appellee or any interested	
	Officer of the court. Rule 355(c).	
10	RULING ON CONTEST	
	Affidavit is taken as true unless contest is sustained within 10 days. Rule 355(e).	
10	FILE BOND IF CONTEST SUSTAINED	
	Rule 356(b).	

Note: Times for filing record and briefs are not affected by contest proceedings, except that contest may "reasonably explain" need for more time under Rules 21c and 414.