

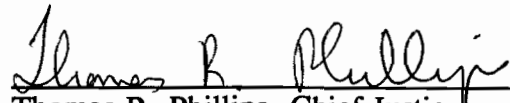
IN THE SUPREME COURT OF TEXAS

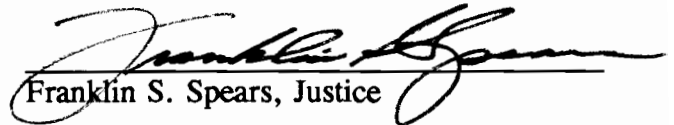
AMENDMENTS TO THE TEXAS RULES OF CIVIL PROCEDURE AND TEXAS RULES OF APPELLATE PROCEDURE

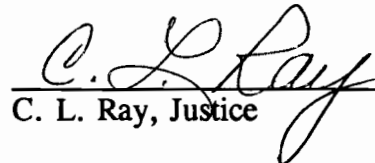
ORDERED:

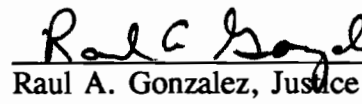
1. That amendments to Rules 166b.4, 301, and 749a of the Texas Rules of Civil Procedure, and to Rule 41(a)(1) of the Texas Rules of Appellate Procedure, made by Order of this Court dated April 24, 1990, are withdrawn, and those rules are amended as set forth below.
2. That these changes in the Order of this Court dated April 24, 1990, are effective retroactively to September 1, 1990.
3. That Texas Rule of Civil Procedure 45 and Texas Rule of Appellate Procedure 4 are amended as set forth below.
4. That the Clerk is directed to file an original of this Order with the Secretary of State forthwith, and to 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*.
5. That the Clerk shall file an original of this Order in the minutes of the Court to be preserved as a permanent record of the Court.

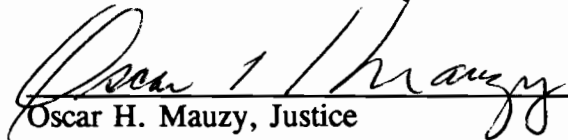
SIGNED AND ENTERED in duplicate originals this 4th day of September, 1990.

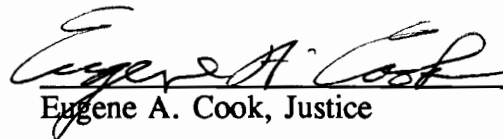

Thomas R. Phillips, Chief Justice


Franklin S. Spears, Justice

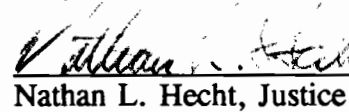

C. L. Ray, Justice


Raul A. Gonzalez, Justice


Oscar H. Mauzy, Justice


Eugene A. Cook, Justice


Jack Hightower, Justice


Nathan L. Hecht, Justice


Lloyd Doggett, Justice

TEXAS RULES OF CIVIL PROCEDURE

Rule 45. Definition and System

Pleadings in the district and county courts shall

(a) (No change.)

(b) (No change.)

(c) (No change.)

(d) be in writing, on paper measuring approximately 8 1/2 inches by 11 inches, and signed by the party or his attorney, and either the signed original together with any verification or a copy of said original and copy of any such verification shall be filed with the court. The use of recycled paper is strongly encouraged.

When a copy of the signed original is tendered for filing, the party or his attorney filing such copy is required to maintain the signed original for inspection by the court or any party incident to the suit, should a question be raised as to its authenticity.

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

Comment to 1990 change: To provide for filing of pleadings having either original or copies of signatures and verifications including documents telephonically transferred.

Rule 166b. Forms and Scope of Discovery; Protective Orders; Supplementation of Responses

* * *

4. Presentation of Objections. Either an objection or a motion for protective order made by a party to discovery shall preserve that objection without further support or action by the party unless the objection or motion is set for hearing and determined by the court. Any party may at any reasonable time request a hearing on any objection or motion for protective order. The failure of a party to obtain a ruling prior to trial on any objection to discovery or motion for protective order does not waive such objection or motion. In responding to an appropriate discovery request within the scope of paragraph 2 directly addressed to the matter, a party who seeks to exclude any matter from discovery on the basis of an exemption or immunity from discovery, must specifically plead the particular exemption or immunity from discovery relied upon and at or prior to

any hearing shall produce any evidence necessary to supporting such claim either in the form of affidavits served at least seven days before the hearing or by live testimony. ~~presented at a hearing requested by either the requesting or objecting party. When a party's objection concerns the discoverability of documents and is based on a specific immunity or exemption, such as attorney-client privilege or attorney work product, the party's objection may be supported by an affidavit or live testimony but, if the trial court determines that an IN CAMERA inspection in camera inspection and review by the court of some or all of the documents requested discovery is necessary, the objecting party must segregate and produce the documents. discovery to the court in a sealed wrapper or by answers made in camera to deposition questions, to be transcribed and sealed in event the objection is sustained. The court's order concerning the need for an inspection shall specify a reasonable time, place and manner for making the inspection.~~ When a party seeks to exclude documents from discovery and the basis for objection is undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights, rather than a specific immunity or exemption, it is not necessary for the court to conduct an inspection of the individual documents an inspection and review of the particular discovery before ruling on the objection. After the date on which answers are to be served, objections are waived unless an extension of time has been obtained by agreement or order of the court or good cause is shown for the failure to object within such period.

Rule 301. Judgments

[No change.]

Rule 749a. Pauper's Affidavit

If appellant is unable to pay the costs of appeal, or file a bond as required by Rule 749, he shall nevertheless be entitled to appeal by making strict proof of such inability within five days after the judgment is signed, which shall consist of his affidavit filed with the justice of the peace stating his inability to pay such costs, or any part thereof, or to give security, which may be contested within five days after the filing of such affidavit and notice thereof to the opposite party or his attorney of record by any officer of the court or party to the suit, whereupon it shall be the duty of the justice of the peace in whose court the suit is pending to hear evidence and determine the right of the party to appeal, and he shall enter his finding on the docket as part of the record. Upon the filing of a pauper's affidavit the justice of the peace or clerk of the court shall notice the opposing party of the filing of the affidavit of inability within one working day of its filing by written notification accomplished through first class

mail. It will be presumed prima facie that the affidavit speaks the truth, and, unless contested within five days after the filing and notice thereof, the presumption shall be deemed conclusive; but if a contest is filed, the burden shall then be on the appellant to prove his alleged inability by competent evidence other than by the affidavit above referred to. When a pauper's affidavit is timely contested by the appellee, the justice shall hold a hearing and rule on the matter within five days.

If the justice of the peace disapproves the pauper's affidavit, appellant may, within five days thereafter bring the matter before the county judge for a final decision, and, on request, the justice shall certify to the county judge appellant's affidavit, the contest thereof, and all documents, and papers thereto. The county judge shall set a day for hearing, not later than ~~ten~~ five days, and shall hear the contest de novo. If the pauper's affidavit is approved by the county judge, he shall direct the justice to transmit to the clerk of the county court, the transcript, records and papers of the case.

A pauper's affidavit will be considered approved upon one of the following occurrences: (1) the pauper's affidavit is not contested by the other party; (2) the pauper's affidavit is contested by the other party and upon a hearing the justice determines that the pauper's affidavit is approved; or (3) upon a hearing by the justice disapproving of the pauper's affidavit the appellant appeals to the county judge who then, after a hearing, approves the pauper's affidavit.

No writ of ~~restitution~~ possession may issue pending the hearing by the county judge of the appellant's right to appeal on a pauper's affidavit. If the county judge disapproves the pauper's affidavit, appellant may perfect his appeal by filing an appeal bond in the amount as required by Rule 749 within five days thereafter. If no appeal bond is filed within five days, a writ of ~~restitution~~ possession may issue.

Comment to 1990 change: Proceedings on pauper affidavits are revised. The term writ of restitution is corrected to writ of possession.

TEXAS RULES OF APPELLATE PROCEDURE

Rule 4. Signing, Filing and Service

(d) **Papers Typewritten or Printed.** All applications, briefs, petitions, motions and other papers shall be printed or typewritten. The use of recycled paper is strongly

encouraged. Typewritten papers must be with a double space between the lines and on heavy white paper in clear type.

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 thirty days after the judgment is signed, or, within ninety days after the judgment is signed if a timely motion for new trial has been filed by any party or if any party has timely filed a request for findings of fact and conclusions of law in a case tried without a jury. If a deposit of cash is made in lieu of bond, the same shall be made within the same period.



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

P.O. BOX 12248 CAPITOL STATION
AUSTIN, TEXAS 78711
(512) 463-1312

CLERK
JOHN T. ADAMS

JUSTICES
FRANKLIN S. SPEARS
C. L. RAY
RAUL A. GONZALEZ
OSCAR H. MAUZY
EUGENE A. COOK
JACK HIGHTOWER
NATHAN L. HECHT
LLOYD DOGGETT

EXECUTIVE ASST.
WILLIAM L. WILLIS

ADMINISTRATIVE ASST.
MARY ANN DEFIBAUGH

September 5, 1990

Honorable George S. Bayoud, Jr.
Secretary of State
Capitol Building, Room 127
Austin, Texas 78701

Dear Mr. Bayoud,

Please find enclosed, an original copy of the Supreme Court's order signed on September 4, 1990, promulgating amendments to the TEXAS RULES OF CIVIL PROCEDURE AND TEXAS RULES OF APPELLATE PROCEDURE. Article 1731a, the rule making act, provides that the Court shall file with the Secretary of State a copy of such rules.

In accordance with the above mentioned order, a duplicate original is filed in the permanent records of the Court and will be published in the next available issue of the Texas Bar Journal.

Sincerely,

John T. Adams
Clerk

Encl.1