

Supreme Court of Texas

Misc. Docket No. 23-9093

Final Approval of the Repeal of Texas Rule of Appellate Procedure 28.2 and of Amendments to Texas Rule of Appellate Procedure 28.3

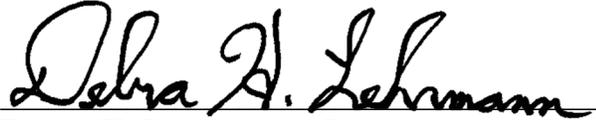
ORDERED that:

1. On July 25, 2023, in Misc. Dkt. No. 23-9047, the Court preliminarily approved the repeal of Texas Rule of Civil Procedure 28.2 and amendments to Texas Rule of Civil Procedure 28.3, effective September 1, 2023, and invited public comment.
2. Following the comment period, the Court made revisions to Texas Rule of Appellate Procedure 28's title and to Texas Rule of Appellate Procedure 28.3. This Order incorporates the revisions and contains the final version of the rules, effective immediately.
3. 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: November 17, 2023.



Nathan L. Hecht, Chief Justice



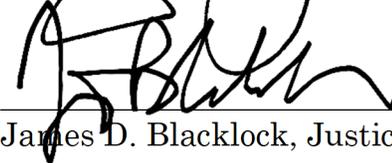
Debra H. Lehrmann, Justice



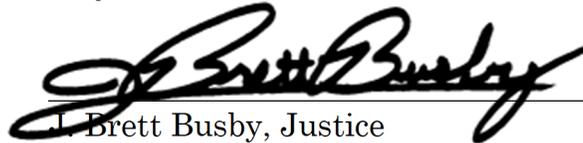
Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



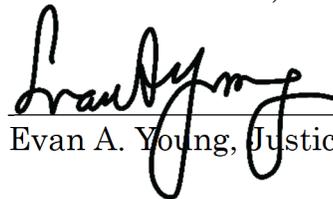
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF APPELLATE PROCEDURE

Rule 28. Accelerated, ~~Agreed~~, and Permissive Appeals in Civil Cases

[28.2. Repealed effective September 1, 2023]

28.3. Permissive Appeals in Civil Cases.

- (a) *Petition Required.* When a trial court has permitted an appeal from an interlocutory order that would not otherwise be appealable, a party seeking to appeal must petition the court of appeals for permission to appeal.
- (b) *Where Filed.* The petition must be filed with the clerk of the court of appeals having appellate jurisdiction over the action in which the order to be appealed is issued. The First and Fourteenth Courts of Appeals must determine in which of those two courts a petition will be filed.
- (c) *When Filed.* The petition must be filed within 15 days after the order to be appealed is signed. If the order is amended by the trial court, either on its own or in response to a party's motion, to include the court's permission to appeal, the time to petition the court of appeals runs from the date the amended order is signed.
- (d) *Extension of Time to File Petition.* The court of appeals may extend the time to file the petition if the party:
 - (1) files the petition within 15 days after the deadline, and
 - (2) files a motion complying with Rule 10.5(b).
- (e) *Contents.* The petition must:
 - (1) contain the information required by Rule 25.1(d) to be included in a notice of appeal;
 - (2) attach ~~a copy of the order from which appeal is sought;~~
(A) a copy of the order from which appeal is sought;

(B) a copy of every file-marked document that is material to the order from which appeal is sought and that was filed in the trial court; and

(C) a properly authenticated transcript of any relevant testimony from the underlying proceeding, including any relevant exhibits offered in evidence relating to the order from which appeal is sought; a statement that the transcript has been ordered and will be filed when it is received; or a statement that no evidence was adduced in connection with such order.

(3) contain a table of contents, index of authorities, issues presented, and a statement of facts; and

(4) argue clearly and concisely why the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion and how an immediate appeal from the order may materially advance the ultimate termination of the litigation.

(f) *Response; Reply; Cross-Petition; Time for Filing.* If any party timely files a petition, any other party may file a response or a cross-petition within 10 days. A party may file a response to a cross-petition within 10 days of the date the cross-petition is filed. A petitioner or cross-petitioner may reply to any matter in a response within 7 days of the date the response is filed. The court of appeals may extend the time to file a response, reply, and cross-petition.

(g) *Length of Petition, Cross-Petition, Response, and Reply.* A petition, cross-petition, response, and reply must comply with the length limitations in Rule 9.4(i)(2)(D)-(E).

(h) *Service.* A petition, cross-petition, response, and reply must be served on all parties to the trial court proceeding.

(i) *Docketing Statement.* Upon filing the petition, the petitioner must file the docketing statement required by Rule 32.1.

(j) *Time for Determination.* Unless the court of appeals orders otherwise, a petition, and any cross-petition, response, and reply,

will be determined without oral argument, no earlier than 10 days after the petition is filed.

(k) *When Petition Granted.* If the petition is granted, a notice of appeal is deemed to have been filed under Rule 26.1(b) on that date, and the appeal is governed by the rules for accelerated appeals. A separate notice of appeal need not be filed. A copy of the order granting the petition must be filed with the trial court clerk.

(l) *When Petition Denied.* If the court of appeals denies the petition, the court must explain in its decision the specific reasons for its finding that an appeal is not warranted. On petition for review, the Supreme Court may review the court of appeals' denial de novo, and, if the Supreme Court concludes that the statutory prerequisites for a permissive appeal are met, the Supreme Court may direct the court of appeals to grant permission to appeal.

Comment to 2023 change: Rule 28.2 is repealed. Rule 28.3 is amended to implement sections 51.014(g) and (h) of the Civil Practice and Remedies Code and governs the procedure for all permissive appeals filed after September 1, 2023.